DONALD W. GUBBINS,  

Applicant,  

vs.  

METROPOLITAN INSURANCE COMPANIES; TRAVELERS INDEMNITY COMPANY OF ILLINOIS,  

Defendant(s).  

On December 2, 1996, applicant sought reconsideration of an Order Denying Petition for allowance of multiple medical-legal examinations (Order) issued November 13, 1996, in which a workers’ compensation referee (WCR) denied applicant’s request for an order allowing multiple medical-legal examinations at defendant’s expense. Applicant contended that the WCR erred in denying his request for multiple medical-legal examinations at defendant’s expense, asserting that Labor Code section 4060 violates article XIV, section 4 of the California Constitution.

On March 14, 1997, pursuant to Shipley v. Workers’ Comp. Appeals Bd. (1992) 7 Cal.App.4th 1104 [57 Cal.Comp.Cases 493], the Workers’ Compensation Appeals Board (Board) granted applicant’s Petition for Reconsideration. Reconsideration was granted for further study of the facts and the applicable law in order to give the Board a complete understanding of the record and to enable it to make a just and reasoned decision. The Board has now completed its review of the record.

Pursuant to Labor Code section 5900, a petition for reconsideration may be properly made only from a final order, decision, or award. (Lab. Code, § 5900.) The November 13, 1996 Order is not a final order but a procedural order which does not
determine the substantive rights of the parties. *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39 [43 Cal.Comp.Cases 661]; *Beck v. Workers’ Comp. Appeals Bd.* (1979) 44 Cal.Comp.Cases 190 (writ denied). Therefore, the Board will vacate its Order Granting Reconsideration and dismiss the Petition for Reconsideration. However, for the reasons set forth below, the Board will grant removal, rescind the November 13, 1996 Order, and return this matter to the WCR for further proceedings and decision.

A review of the record reveals that on June 14, 1995, applicant filed a claim for workers’ compensation benefits, alleging that while employed as an insurance salesman by Metropolitan Insurance Companies (Metropolitan), during the period June, 1993 to June 1994, he sustained cumulative trauma to his spine, cardiovascular system and psyche arising out of and in the course of his employment.

On July 21, 1995, defendant set three separate medical-legal examinations, one with a cardiologist, one with a psychiatrist, and one with an orthopedic surgeon. On August 1, 1995, applicant informed defendant that he would attend one evaluation but would not attend the other two evaluations, unless defendant would agree to reciprocal evaluations by different experts on applicant’s behalf and at the expense of the defendant. By correspondence, dated September 6, 1995, defendant responded to the applicant that it would not agree to reciprocal multiple evaluations. The September 6, 1995 correspondence stated, in relevant part, as follows:

“Labor Code section 4060 clearly authorizes the defendants herein to conduct multiple medical-legal evaluations at their own expense. And, that same Labor Code Section permits your client to obtain multiple medical-legal evaluations as well. It merely limits the obligation to pay for them.”

On August 26, 1996, applicant filed a Petition for Allowance of Multiple Medical-Examinations (Labor Code Section 4060 (c).) In his petition, applicant requested an order for allowance of multiple medical examinations at defendant’s expense pursuant to
Labor Code section 4060. Applicant argued that because he was claiming injury to separate parts of the body and defendant had set up three separate examinations relating to those parts of the body, applicant was entitled to reciprocal multiple evaluations at defendant’s expense. On November 13, 1996, the WCR issued an Order denying applicant’s request. It is from this decision that applicant sought reconsideration.

Labor Code section 4060 provides, in pertinent part, as follows:

“(a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.

“(b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician either in whole or in part on behalf of the employee prior to the filing of a claim form and prior to the time the claim is denied or becomes presumptively compensable under Section 5402. However, reports of treating physicians shall be admissible.

“(c) If a medical evaluation is required to determine compensability at any time after the period specified in subdivision (b), and the employee is represented by an attorney, each party may select a qualified medical evaluator to conduct a comprehensive medical-legal evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense. The parties may, at any time, agree on one medical evaluator to evaluate the issues in dispute.”

Labor Code section 4064, subdivision (a), provides:

“(a) The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms. An unrepresented employee who has already obtained a medical evaluation under Sections 4060, 4061, or 4062 shall not obtain
any additional comprehensive medical evaluations at the employer's expense for the same disputed medical issue.”

Labor Code section 4621, subdivision (a), provides:

“(a) In accordance with the rules of practice and procedure of the appeals board, the employee, or the dependents of a deceased employee, shall be reimbursed for his or her medical-legal expenses and reasonably, actually, and necessarily incurred, except as provided in Section 4064. The reasonableness of, and necessity for, incurring these expenses shall be determined with respect to the time when the expenses were actually incurred. Costs for medical evaluations, diagnostic tests, and interpreters' services incidental to the production of a medical report shall not be incurred earlier than the date of receipt by the employer, the employer's insurance carrier, or, if represented, the attorney of record, of all reports and documents required by the administrative director incidental to the services. This subdivision is not applicable unless there has been compliance with Section 4620.”

After reviewing the record, the Board is persuaded that in the present matter where the defendant has set up three separate examinations and there are three distinct parts of the body involved, both fundamental fairness and the law entitle the applicant to balancing, equivalent examinations. As noted above, Labor Code section 4060, subdivision (c) provides that if a medical examination is required to determine compensability at any time after the period specified, each party may select a qualified medical examiner to conduct such an evaluation. Thus, if medical evaluations in different specialties are required to determine compensability of different parts of the body, then separate evaluations are justified. Clearly, in a case such as this one, a cardiologist would not be willing or qualified to evaluate or comment upon areas beyond his professional expertise (e.g., psychiatric and orthopedic conditions).

Furthermore, the Board is persuaded that this result is consistent with Labor Code section 4064. Specifically, subdivision (a) of Section 4064 requires that “each comprehensive medical-legal evaluation shall address all contested medical issues
arising from all injuries reported on one or more claim forms...."

Here, evaluations are contemplated in the context of multiple injuries being reported in one claim form and requiring evaluations in different areas of expertise. Thus, a reasonable interpretation of Labor Code sections 4060 and 4064, as set forth above, would entitle applicant to balancing multiple, equivalent examinations under the circumstances of this case.

Accordingly, because the Board is persuaded that the applicant is entitled to multiple medical legal-examinations in the present matter, it will grant removal to rescind the November 13, 1996 Order, and return this matter to the WCR for further proceedings consistent with this opinion and decision.

For the foregoing reasons,

**IT IS ORDERED** that the Order Granting Petition for Reconsideration issued March 14, 1997, be, and the same is hereby **VACATED**, and applicant’s Petition for Reconsideration filed December 2, 1996, be, and the same is hereby **DISMISSED**.

**IT IS FURTHER ORDERED** that removal, be, and it is hereby **GRANTED**, and as the Decision After Removal of the Workers’ Compensation Appeals Board, that the Order Denying Petition for allowance of multiple medical-legal examinations issued November 13, 1996, be, and the same is hereby **RESCINDED**, and applicant’s Petition for Allowance of Multiple Medical-Legal Examinations is hereby **GRANTED**.
IT IS FURTHER ORDERED that this matter, be, and the same is hereby
RETURNED to the workers’ compensation referee for further proceedings consistent
with the Board’s opinion and decision.

WORKERS’ COMPENSATION APPEALS BOARD

(s/) COLLEEN S. CASEY

I CONCUR,

(s/) RICHARD P. GANNON

(s/) ARLENE N. HEATH

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

JULY 17, 1997

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT
LIEN CLAIMANTS.

GUBBINS