

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**CRYSTAL LUJAN, *Applicant***

**vs.**

**HOAG MEMORIAL HOSPITAL PRESBYTERIAN;  
Self-Insured, Administered by CORVEL, *Defendants***

**Adjudication Number: ADJ10450766  
Santa Ana District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION  
AND DENYING PETITION  
FOR REMOVAL**

Defendant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on October 4, 2024, wherein the WCJ found that re-evaluations with the Panel Qualified Medical Evaluator (PQME) in psychiatry and the PQME in urology were not warranted.

Defendant contends in the Petition that the PQME re-evaluations would not prejudice applicant or delay the proceedings; that the prior PQME reports do not constitute substantial medical evidence due to the passage of time; and that in order for it to proceed with its vocational evaluation report, it requires the re-evaluations.<sup>1</sup>

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the report of the workers' compensation administrative law judge with respect thereto. Based on our

---

<sup>1</sup> Defendant also contends that it should be entitled to a further deposition of applicant. However, that issue was not raised at trial and the WCJ did not make a finding on that issue. Thus, we do not address it.

review of the record, and based on the analysis in the WCJ's Report, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.

### **BACKGROUND**

Applicant filed Applications for Adjudication (Applications) on February 6, June 27, and July 5, 2016, in which she alleged that while assisting a patient on July 30, 2015, in the course of her work for defendant, she injured multiple body parts. (2/6/16 Application; 6/27/16 Amended Application; 7/5/16 Amended Application.)

PQME evaluations of applicant were conducted by a number of doctors, including a psychiatric evaluation by Dr. Howard M. Greils and urology evaluations by Dr. Ernest H. Agatstein. (Applicant's Exbs. 8-14.)

The matter went to trial on September 18 and October 9, 2023, on the issue of whether a replacement panel in internal medicine was warranted. (9/18/23 MOH; 10/9/23 MOH.) The parties stipulated that applicant was employed by defendant; that the injuries to her coccyx and lumbar spine were arising out of and in the course of her employment (AOE/COE); that all other body parts were deferred; and that the PQMEs in "psychiatry, neurology, orthopedics, and [urology]" all found that she had reached maximum medical improvement. (*Ibid.*)

On December 1, 2023, the WCJ issued Findings of Fact and Order, finding that applicant sustained injury AOE/COE to her coccyx and lumbar spine; and that a replacement PQME in the field of internal medicine was not warranted. (12/1/23 F&O, at p. 2).

Applicant filed a Declaration of Readiness to Proceed (DOR), on May 23, 2024, alleging that an expedited hearing was needed because "defendants have set the evaluation with urology QME Dr. Agatstein, however applicant has objected given that applicant is already MMI by this QME." (5/23/24 DOR.)

The issue for the June 24, 2024, trial was "whether reevaluations with urology PQME Dr. Ernest Agatstein and psych QME Dr. Howard M. Greils are warranted, given the stipulation made at the October 9, 2023 trial, MOH/SOE, p. 2, lines 5-6." (6/24/24 First Amended PTCS; 6/24/24 MOH.) Applicant's exhibits 8 through 17, which consisted of two reports from Dr. Greils, five reports from Dr. Agatstein, transcripts of Dr. Agatstein's deposition, and the final report from the Primary Treating Physician, Dr. Richard Dorsey, were admitted into evidence. (6/24/24 MOH at pp. 2-3.) The WCJ ordered the parties to file trial briefs and indicated that the matter would be

submitted on August 6, 2024. (*Id.*, at p. 1.) Trial briefs were filed by both parties. (7/15/24 Defendant’s Trial Brief; 7/24/24 Applicant’s Trial Brief.)

On October 4, 2024, the WCJ issued the Findings of Fact, in which the WCJ found, in relevant part, that applicant was employed by defendant, that the injuries to her lumbar spine and coccyx were AOE/COE, and that “[r]e-evaluations with the PQME in psychiatry, Dr. Howard Greils and the PQME in urology, Dr. Ernest Agatstein, are not warranted.” (10/4/24 Findings of Fact, at pp. 1-2.)

## DISCUSSION

### I.

Former Labor Code section 5909<sup>2</sup> provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on November 1, 2024, and 60 days from the date of transmission is December 31, 2024. This decision is issued by or on December 31, 2024, so that we have timely acted on the petition as required by section 5909(a).

---

<sup>2</sup> All section references are to the Labor Code unless otherwise indicated.

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 1, 2024, and the case was transmitted to the Appeals Board on November 1, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 1, 2024.

## II.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered “final” orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650] [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’”]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661])

[[t]he term [‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, although the Findings of Fact include findings regarding the threshold issues of applicant’s employment by defendant and that applicant’s injury was AOE/COE, the WCJ issued a finding of injury AOE/COE on December 1, 2023, which was not challenged by either party. Accordingly, the December 1, 2023 finding is now final, we do not address it in this decision, and we dismiss the Petition as one for reconsideration.

Defendant’s Petition, however, challenges only the non-final finding that PQME re-evaluations of applicant, in urology and psychiatry, were not warranted. (Petition, at pp. 2-6.) Thus, defendant is challenging only interlocutory findings/orders therein. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, defendant made neither required showing. Thus, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Therefore, we will dismiss the Petition as one seeking reconsideration and deny it as one seeking removal.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

I CONCUR,

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**DECEMBER 31, 2024**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**CRYSTAL LUJAN  
MEHR & ASSOCIATES  
CHOU LAW GROUP**

**MB/es**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.  
CS