WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TERESA ALMANZA, *Applicant*

vs.

UNIVERSAL MOLDING COMPANY[1];
THE HARTFORD, *Defendants*

Adjudication Numbers: ADJ11105160, ADJ11105159, ADJ11106156, ADJ11105161
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration, or in the alternative removal, of the Joint Order Vacating Submission to Develop the Record and Setting Matter for Status Conference ("Order") of September 25, 2024, wherein the workers' compensation judge (WCJ) vacated submission of the case to develop the record. Applicant contends that there was no prejudicial effect from the alleged ex parte communication and that defendant waived their objection.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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[1] We note that "Universal Molding Company" is listed as applicant's employer, but elsewhere defendant indicates that the name is "UMC Acquisition Corporation." Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See *Coldiron v. Compuware Corp*. (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and that failure to do so may subject the offending party to sanctions]. Here, defendant has failed to comply with its mandatory duty under WCAB Rule 1039 and Coldiron to clearly identify the employer, and this conduct is subject to sanctions. Moreover, from the applicant's perspective, if the correct defendant is not identified, any award to applicant may potentially be unenforceable. (See Lab. Code, §§5806, 5807.) Upon return of this matter, the parties should make all efforts to correct the official address record forthwith.

We have considered the Petition for Reconsideration or in the alternative, removal, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the WCJ's Order, and return this matter to the WCJ for further proceedings.

FACTS

In case ADJ11105160, applicant, while employed by defendant as a machine operator, Occupational Group Number 320, during the period, July 30, 1997, through October 17, 2017, sustained injury arising out of and in the course of employment to her neck, low back, shoulders, wrists, and hands, and claims to have sustained injury arising out of and in the course of employment to her lower extremities, arms, psyche, and sleep.

In case ADJ11105159, applicant, while employed by defendant as a machine operator, Occupational Group Number 320, on October 17, 2017, sustained injury arising out of and course of employment to her right forearm and right elbow and claims to have sustained injury arising out of and in the course of employment to her psyche and sleep.

The two cases were consolidated on the first day of the trial on November 30, 2023, and case ADJ11105160 was designated as the master file. (11/30/23 Minutes of Hearing (MOH) and Order of Consolidation of Cases, p. 2.)[2]

The trial continued on May 28 and June 27, 2024; applicant was the only witness. She testified that she had worked for defendant for 20 years and her job title was machine operator. (5/28/24 MOH/SOE, p. 3.) On October 17, 2017, she was injured when a co-worker turned on the machine and her right arm got stuck in it. (5/28/24 MOH/SOE, p. 3.) Her arm was stuck for approximately 15 minutes, and she was yelling and in great pain. (5/28/24 MOH/SOE, p. 3.) Her right arm was damaged, and she suffered psychiatric issues. (5/28/24 MOH/SOE, p. 3.) She also had pain in her left shoulder, back, and both wrists. (5/28/24 MOH/SOE, p. 3.) She lives alone but has a lot of help from her daughter and granddaughter. (5/28/24 MOH/SOE, p. 3.) She did not have a family member with her at the evaluation on October 7, 2022. (5/28/24 MOH/SOE, p.

[2] Two other related cases, ADJ11105161 and ADJ11106156, were ordered off calendar that day and the parties later stipulated to dismiss those cases. (11/30/23 MOH and Order of Consolidation of Cases, p. 2; 5/28/24 Minutes of Hearing/ Summary of Evidence (MOH/SOE), p. 2.)

5.) Her granddaughter may have driven her to both of her exams with Dr. Levine but did not come into the examining room with her. (5/28/24 MOH/SOE, p. 5.)

At the trial on June 27, 2024, applicant testified that she was still in pain and that her injury affected her activities of daily living and made her sad. (6/27/24 MOH/SOE, p. 2.) She did not remember if her daughter came to a doctor's appointment, and she did not recall who was with her when she had an exam with Dr. Heskiaoff. (6/27/24 MOH/SOE, p. 2.) The matter was submitted at the conclusion of the trial on June 27, 2024. (6/27/24 MOH/SOE, p. 1.)

The initial psychological panel qualified medical evaluator (PQME) report by Dr. Levine, dated May 7, 2021, was only admitted for identification purposes and not admitted into evidence. (Jt. Ex 2, Dr. Levine QME Report, dated 5/7/21; 5/28/24 MOH/SOE, p. 2.)

PQME Dr. Levine then provided a re-evaluation report of November 2, 2022; this report was admitted into evidence. (Jt. Ex. 1, Dr. Levine QME Re-eval Report, dated 11/2/22.) Applicant reported to Dr. Levine that a co-worker had turned on the cutting machine at work while her arm was under it, crushing her right arm below the elbow for several minutes. (Jt. Ex. 1, pp. 2, 56.) Applicant also stated that the co-worker did not assist her and ignored her screams for help until a supervisor instructed him to turn off the machine. (Jt. Ex. 1, pp. 2, 56.) A different co-worker took her to the emergency room where they removed the mental burrs and stitched her wound. (Jt. Ex. 1, pp. 2, 56.) Applicant reported having memory difficulty since the accident and Dr. Levine also found that she had a poor memory. (Jt. Ex. 1, pp. 3, 6, 57.) Applicant's daughter attended the re-evaluation with her and described applicant's living situation, memory, and tendency to isolate herself. (Jt. Ex. 1, p. 3.) Dr. Levine concluded that the primary cause of applicant's psychiatric injury was the work-related incident of October 16, 2017. (Jt. Ex. 1, p. 58.) Dr. Levine also stated that applicant had reached maximum medical improvement from a psychological perspective. (Jt. Ex. 1, p. 58.) Dr. Levine also determined that applicant was permanently disabled and that 100% of the cause of her disability was due to the industrially related psychiatric injury. (Jt. Ex. 1, p. 58.)

As relevant here, during his deposition of March 2, 2023, Dr. Levine testified that applicant's daughter accompanied her to the evaluation, and that her daughter stated that her mother's mental health had declined since the initial evaluation and that she had moved out of the family home and was isolating herself. (Def.'s Ex. A, deposition of PQME Dr. Levine, dated 3/2/23, p. 17.)

On September 25, 2024, the WCJ issued the Order and included this narrative: "It therefore appears that the reporting of Dr. Levine should be stricken due to the ex-parte communication that took place." The Order also stated that:

> GOOD CAUSE APPEARING: SUBMISSION OF THE CASE IS HEREBY VACATED for development of the record.
>
> The matter is hereby set for Status Conference before the Honorable Diane Phillips on October 16, 2024, at 1:30 p.m., at the Workers Compensation Appeals Board located at 320 W. 4th Street, 9th Floor, Los Angeles, CA 90013. IT IS FURTHER ORDERED THAT THE PARTIES MEET AND CONFER PRIOR TO THE STATUS CONFERENCE IN AN EFFORT TO EITHER RESOLVE OR TO DETERMINE WHETHER THEY CAN AGREE TO AN AGREED MEDICAL EXAMINER IN PSYCHE OR IF THEY MAY BE AGREEABLE TO THE APPOINTMENT OF A REGULAR PHYSICIAN IN PSYCHE.

(Order, p. 2.)

DISCUSSION

I.

For the reasons explained below, we will treat the Petition as one for reconsideration. We note that unfortunately, orders that include narrative statements cause precisely the sort of confusion that occurred here.

Applicant seeks reconsideration or removal of the Order, which included an order for the parties to meet and confer prior to the status conference in an effort to resolve or determine whether they could agree to an agreed medical evaluator (AME) in psyche or a regular physician in psychiatry. The WCJ also noted within the Order that it "appears that the reporting of Dr. Levine should be stricken due to the ex-parte communication that took place."

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" *(Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits (*Maranian v.*

Workers' Comp. Appeals Bd. (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650]). Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id*. at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[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.

In *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 661 [81 Cal.Comp.Cases 1122], the WCJ denied "without prejudice" defendant's petition to strike the agreed medical examiner (AME) Report because it was based in part on ex parte communication that is prohibited by Labor Code[3] section 4062.3(g).[4] The Court of Appeal found that the denial of the petition to strike without prejudice was not a final order that was subject to reconsideration. (*Id*. at p. 662.)

Section 4062.3(h) states that "the party making the communication prohibited by this section… ***shall*** be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the medical evaluation, additional discovery costs, and attorney's fees for related discovery [Emphasis added]." We agree with the decision in *Gaona* where it indicates that the order striking a medical report where an ex parte communication has occurred is a non-final order under section 4062.3(g). However, an issue left unaddressed by the Court in *Gaona* is the mandatory provision of section 4062.3(h), which appears to require that the party who makes the communication is automatically liable for payment of costs and attorney's fees. An order that requires a party to pay costs and attorney's fees is a final order.

Therefore, in an abundance of caution, we treat the Petition as one for reconsideration.

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[3] All further statutory references are to the Labor Code unless otherwise noted.

[4] "Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation." (Cal Lab Code § 4062.3(g).)

II.

Former section 5909 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 October 28, 2024, and 60 days from the date of transmission is Saturday, December 21, 2024. The next business day that is 60 days from the date of transmission, is Monday, December 23, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)[5] This decision is issued by or on Monday, December 23, 2024, so that we have timely acted on the petition as required by section 5909(a).

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.

[5] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 22, 2024, and the case was transmitted to the Appeals Board on October 22, 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 October 22, 2024.

III.

Applicant contends that the Dr. Levine's PQME Report of November 2, 2022, should not have been struck based on the alleged ex parte communication. Section 4062.3(i) states that:

> (i) Subdivisions (e) and (g) shall not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination.

(Lab Code § 4062.3.)

There are numerous problems with the Order. First, it states that the report of Dr. Levine "should be stricken" due to the ex-parte communication that took place, and then it states that the parties must meet and confer to either resolve or determine whether they agree to an AME or the appointment of a regular physician. However, it is not entirely clear whether the WCJ actually ordered the November 2, 2022 report struck from the record or not. In fact, it is not until her Report that the WCJ clarified that she intended to strike the PQME report of November 2, 2022. (Report, p. 3.)

Further, if the PQME report was struck from the record, the WCJ did not provide any notice or an opportunity to be heard on this issue. The issue of ex parte communication was not raised as an issue for trial. (11/30/23 MOH, pp. 3-4.) Dr. Levine's initial report of May 7, 2021 was not admitted into evidence and was only marked for identification, but defendant failed to object to admission of Dr. Levine's report of November 2, 2022, pursuant to section 4062.3(g). (5/28/24 MOH/SOE, p. 2.) The WCJ issued the Order without discussing the reasons for her decision or appropriately ruling on the admission of evidence into the record. Without the benefit of a record, it is impossible for us to evaluate the various issues related to the alleged ex part communication.

Next, it is not clear if the communication between applicant's daughter and Dr. Levine was a prohibited ex parte communication. Any decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Bracken v. Workers' Comp. Appeals Bd*. (1989) 214 Cal. App. 3d 246 [54 Cal.Comp.Cases 349; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

If an injured worker has memory issues, the worker may not be able to provide the medical-legal evaluator with an accurate and adequate history and therefore the resulting medical-legal report may not be substantial evidence. (*Phipps v. Frito-Lay, ACE Am. Ins.,* (March 20, 2019, ADJ9323388, ADJ9392268) 2019 Cal. Wrk. Comp. P.D. LEXIS 108, *19.) Therefore, in some circumstances, it may be appropriate for the medical-legal evaluator to interview the person most knowledgeable about the employee to supplement the employee's history and symptoms as reported by the employee during the examination. (*Id*.; *Trujillo v. TIC* (March 11, 2019, ADJ8531754) 2019 Cal. Wrk. Comp. P.D. LEXIS 90, *20.) Medical-legal evaluators are entrusted to utilize their judgment, experience, training and skill in evaluating an employee. (See e.g., *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 849-854 [75 Cal.Comp.Cases 837]; see also *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc).)

> In such cases, it may be appropriate for the medical evaluator to interview the applicant's spouse to confirm or expand on the narrative that the applicant has given to the evaluator. As long as such "oral or written communications" are disclosed, we see no reasonable basis to order a replacement panel. At the end of his Report, the WCJ correctly points out that, short of a replacement panel, defendant has the option of deposing the present PQME to determine what effect, if any, the input from applicant's wife has on the doctor's opinion.

(*Frost v. Bay* (Dec. 21. 2012, ADJ7067658) [2012 Cal. Wrk. Comp. P.D. LEXIS 623, *4-5.]

Applicant reported that she had memory issues, and Dr. Levine also found evidence of memory problems. (Jt. Ex. 1, pp. 3, 6, 57.) Yet, we do not have an adequate record to evaluate whether it was appropriate for the medical-legal evaluator to interview the person most knowledgeable about the employee to supplement the employee's history and symptoms as reported by the employee during the examination.

Additionally, the prohibition against ex parte communication may not apply to applicant's daughter as she may not be a party pursuant to section 4062.3(g) "If a *party* communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation. (Lab. Code, § 4062.3(g) [emphasis added].) "Party" means any person or entity joined in a case, including but not limited to: (1) An applicant; (2) A defendant; or (3) A lien claimant. (Cal. Code Regs., tit. 8, § 10305(q).) Further, the prohibition against ex parte communication "shall not apply to oral or written communications … at the request of the evaluator in connection with the examination." (Lab. Code, § 4062.3(i).) It is not apparent from the record before us if the communication with the daughter was at the request of Dr. Levine in connection with the examination. Thus, we cannot evaluate whether the prohibition against ex parte communications applies to the daughter, and if the communication was exempt as it was at Dr. Levine's request.

Furthermore, defendant may have waived its objection to Dr. Levine's report pursuant to section 4062.3(g). If the aggrieved party chooses to terminate the evaluation due to an ex parte communication, that party must exercise its right to seek a new evaluation within a reasonable time following discovery of the prohibited communication. (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1815 (Appeals Board en banc).) Otherwise, their option to seek a new evaluation may be waived. (*Id*.) Dr. Levine's report was dated November 2022, his deposition occurred in March 2023, and the trial started in November 2023. Yet, as explained above, defendant never clearly voiced its objection to the reporting as the only reference in the trial record is to the May 7, 2021 reporting where the WCJ simply marked the reporting for identification with no reason provided. Consequently, it appears that defendant may have waived their time to object to any alleged ex parte communication.

The issue we face on appeal is that we do not have the necessary record to evaluate the numerous issues related to the communication between applicant's daughter and Dr. Levine. The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc) (*Hamilton*).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Id*. at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.) The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Id*. at p. 477.)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer

evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

It is not clear whether defendant raised the issue of ex parte communication, and what the circumstances were if defendant did so. The WCJ did not hold a hearing or admit any evidence into the record on the issue of whether Dr. Levine's communication with applicant's daughter was prohibited ex parte communication, so that we do not have a sufficient record to consider the issue in the first instance. Moreover, as a matter of due process, applicant is entitled to a hearing before Dr. Levine's November 2022 report is struck from the record.

Therefore, we will rescind the Order and return this matter to the trial court for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the September 25, 2024 Joint Order Vacating Submission to Develop the Record and Setting Matter for Status Conference is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 25, 2024 Joint Order Vacating Submission to Develop the Record and Setting Matter for Status Conference is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2024

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

TERESA ALMANZA
LAW OFFICES OF ROBERT LEE
LAW OFFICES OF LYDIA B. NEWCOMB

JMR/mc

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