

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

**YOLANDA RANGEL, *Applicant***

**vs.**

**MEXICAN AMERICAN OPPORTUNITY FOUNDATION;  
EVEREST NATIONAL INSURANCE COMPANY,  
*Administered by SEDGWICK CMS, Defendants***

**Adjudication Number: ADJ10849328  
Salinas District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 15, 2024.

The WCJ found, in relevant part, that applicant's Petition to Reopen was timely filed; that based on the determination provided in a report written by PQME Dr. Stone (PQME) an MRI of applicant's right shoulder is necessary, as well as a determination regarding further disability to the knees; that applicant shall be allowed to assert a claim for psychological injury within her Petition to Reopen, based on psychological symptoms reported by the PQME in his first report; and, that based on the PQME's determinations and request for an additional PQME in psychology to evaluate applicant, the parties should proceed to agree on an Agreed Medical Evaluator, or to request an additional QME, to evaluate applicant's psychological complaints, and to assess the date of onset, causation, and need for treatment. The WCJ ordered that: "the parties proceed with obtaining the MRI of the right shoulder as requested by PQME Dr. Stone and that the parties proceed with selection of either an AME, or request for an additional QME panel in the specialty of psychology to address the Applicant's symptoms, need for treatment and determine causation and the date this condition arose, as requested by PQME Dr. Stone."

In the Petition for Reconsideration (Petition) defendant contends that there is no evidence of new and further disability; that injuries or disabilities occurring more than five years after the date of injury cannot constitute new and further disability; that the WCJ improperly considered the issue of applicant's claimed psychological injury in the context of a new and further disability claim; that no additional discovery is warranted; and that applicant's use of a cane does not constitute a new injury.

The WCJ issued a Report and Recommendation on defendant's Petition for Reconsideration (Report) recommending that the Petition be denied. Applicant's attorney filed an Answer.

We have considered the allegations of defendant's Petition for Reconsideration, applicant's Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated below and in the WCJ's report, which we adopt and incorporate as follows, we will deny the Petition as one seeking reconsideration. We do not adopt and incorporate the first paragraph in Part III, on page three, of the Report.

#### **DISCUSSION**

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.

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, the WCJ's decision includes a finding regarding a threshold issue as to jurisdiction, since it found that the petition to reopen was timely filed. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, it appears that petitioner is challenging interlocutory findings/orders in the decision. Defendant is arguing the merits of applicant's "new and further disability" claim, although no determination has yet been made on that claim. Therefore, we will apply the removal standard to our review of the discovery orders. (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, for the reasons stated in the WCJ's report, 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.

Here, applicant's date of injury was July 16, 2016, and her case was resolved by a stipulated settlement and award, and an order approving issued on July 21, 2020. Applicant filed a Petition to Reopen for New and Further Disability on May 28, 2021. In the Opinion, the WCJ included a description of the evidence supporting the findings and orders mandating further discovery. (Opinion, at pp. 4-5.) We agree with the WCJ's decision to deny defendant's request to proceed on applicant's Petition to Reopen at the time of trial. As noted by the WCJ, "further discovery is needed to obtain complete and substantial evidence before the Petition to Reopen is ripe for hearing." (Opinion, at pp. 5-6.) Thus, defendant's contentions regarding the lack of evidence to support new and further disability are premature.

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**August 1, 2024**

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

**YOLANDA RANGEL  
DILLES LAW GROUP, PC  
LAW OFFICES OF SCHLOSSBERG & UMHOLTZ**

**MB/ara**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**  
**INTRODUCTION**

Defendants, by and through their attorney of record, Law Offices of Schlossberg & Umholtz, has filed a timely, verified, Petition for Reconsideration disputing this judge’s Findings and Order issued May 15, 2024. Defendants assert they are aggrieved by the Findings and Order, as the Appeals Board acted without or in excess of its powers, the evidence does not justify the findings of fact, and the findings of fact do not support the order, decision or award.

**II**  
**FACTS**

The Applicant, Yolanda Rangel, while employed as a teacher’s assistant at Mexican American Opportunity Foundation in Salinas, California, insured by Everest National Insurance Company, administered by Sedgwick CMS, sustained injuries arising out of and in the course of employment to the lumbar spine, both knees and right arm on July 19, 2016. The applicant filed an Application on May 1, 2017, and subsequently the parties agreed on a stipulated settlement which resulted in an Award issuing on July 21, 2020. Thereafter, on May 28, 2021, the Applicant filed a Petition to Reopen for New and Further Disability, indicating that the “Applicant’s medical condition has worsened, resulting in additional permanent disability and ongoing need for medical treatment”. The Applicant was re-evaluated by the originally selected Qualified Medical Evaluator, Robert Stone, DC, and Dr. Stone has provided six reports subsequent to the filing of the Petition to Reopen. Applicant has requested additional medical discovery, which is disputed by Defendants.

The Applicant filed a DOR in order to have specific discovery disputes resolved and the case was scheduled for hearing on the issues of (1) Whether Applicant was entitled to further discovery including further supplemental reporting from QME Dr. Stone, and an MRI of the right shoulder (2) Whether the Petition to Reopen was ripe for decision, if it was determined no further discovery was appropriate, per Labor code 5410 and 5804. The case proceeded to trial and was submitted for decision on March 15, 2024. On May 15, 2024 Findings and Order issued in which it was found that based on the determination provided in the report of PQME Dr. Stone dated August 8, 2023, an MRI of the right shoulder is necessary to determine if new and further disability to the right shoulder is warranted and that it is also necessary that Dr. Stone opine definitively regarding whether there is new and further disability to the knees. It was also found that Applicant’s injury would be allowed to include a claim of psychological injury, as psychological symptoms are included in the reporting of Dr. Stone on August 20, 2021, and thereafter. As there is a dispute regarding the allegation of psychological injury, it was found that the parties should obtain medical-legal evidence to address the date of onset, causation and need for treatment associated with the Applicant’s claim of psychological injury. The parties were ordered to proceed to obtain an MRI of the shoulder and either an Agreed Medical Evaluator of Qualified Medical Evaluator Panel to evaluate the psychological symptoms. It is from these findings and order that Defendants seek reconsideration.

### **III** **DISCUSSION**

[...]

The Findings and Orders in the decision issued on May 15, 2024, relate to (1) a finding allowing the Applicant to include psychological injury in the claim for new and further disability associated with the petition to reopen, and obtain medical-legal evidence to evaluate causation and need for treatment, as this claim is disputed; (2) a finding allowing the Applicant to obtain an MRI of the right shoulder and subsequently be re-evaluated with the current QME, Dr. Stone, to complete his findings as to the existence, if any, of new and further disability or need for treatment to the right shoulder and both knees. No finding regarding new and further disability has yet been determined, as additional evidence was found to be necessary in order to determine whether there is a basis to grant the Petition to Reopen, or whether it should be denied as without basis.

As the Defendants' Petition for Review of the Findings and Order involves the interlocutory findings and orders stemming from those findings, the standard of review for Removal is utilized for this Report & Recommendation. Removal is an extraordinary remedy, rarely exercised and the facts and circumstances in this case do not support that the Defendants will be significantly prejudiced or irreparably harmed due to the findings and order which issued on May 15, 2024. Defendants are correct that Dr. Stone repeatedly indicates that the Applicant remains permanent and stationary and he does not change his opinions regarding the level of permanent impairment regarding the applicant's injuries in multiple reports provided after the filing of the Petition to Reopen on May 28, 2021. However, these statements by Dr. Stone when compared with other statements in his reporting create inconsistencies which need to be clarified in order for the reports of Dr. Stone to be considered substantial medical evidence. For example, in the first report provided by Dr. Stone subsequent to the filing of the Petition to Re-open, dated August 20, 2021 (Exhibit J6, EAMS DOC ID 50429116), Dr. Stone states on page 21, regarding the AMA Impairment Rating, "My opinions are unchanged and not in dispute at this time." This statement of Dr. Stone is somewhat inaccurate, as the Petition to Reopen is premised, at least in part, on the Applicant's belief that the level of impairment has increased. On page 22, Dr. Stone goes on to say, "These subjective complaints are consistent with what I have observed in my examination and warrant further examination; specifically, the EMG/NCV of the lower extremity to determine the cause of the numbness in the left foot. With the worsening complaints of pain and increasing limitations due to a lack of treatment it is plausible and medically reasonable that her condition has worsened to include peripheral neuropathy as a compensable consequence of her specific injury." This statement from Dr. Stone is an indication that an additional diagnostic is needed before his earlier statements can be considered finalized, regarding the level of permanent impairment and need for treatment. The parties proceeded to get the requested EMG/NCV as requested by Dr. Stone at that time.

In a subsequent report of July 5, 2022 (Exhibit J3, EAMS DOC ID 50429113) Dr. Stone notes that he has reviewed the EMG/NCG and it has not changed his opinions regarding the rating of permanent impairment, but he also indicates that his opinion regarding the Applicant's level of impairment is based on the medical record up to 5/07/2021. He indicates that updated treatment records "might demonstrate a more permanent change in her physical ability or objective

findings.” He states that without new evidence of a permanent change in her condition he cannot opine that there is any new and further disability, and that they may more appropriately be considered flare-ups. He states, if the parties or party are claiming that there may be a more consistent and more permanent increase in Ms. Rangel’s disability/functional ability, she might warrant an updated impairment rating, which would require an in-person evaluation. He also requests to review updated records. Again, his report provides inconsistent determinations, on the one hand indicating that the Applicant has no change in impairment based on review of a diagnostic, while at the same time indicating she may have additional impairment, but that he would need to conduct further evaluation and review in order to make that determination.

In the more current report of August 8, 2023, Dr. Stone indicates that the Applicant’s injury to the right shoulder is a compensable consequence of the July 19, 2016 injury. He indicates he is unsure of the presence of any underlying pathology to the shoulder joint and that he requires an MRI of the right shoulder to rule in/out underlying pathology. Therefore, despite repeated indications that his opinion regarding impairment has remained unchanged, he also consistently notes that there may be a change, which requires additional evidence, in order to make a final determination. It is because of this lack of consistency that the additional diagnostic and reevaluation is needed, in order to develop the reporting of Dr. Stone, to achieve substantial medical evidence, which supports either that there is in fact, no additional impairment, or that establishes additional impairment, based on the review of relevant diagnostic testing.

With regard to the Applicant’s psychological complaints. These are noted as present in the January 28, 2019 report of the QME, Dr. Stone, prior to the stipulated settlement agreement having been completed. However, psychological injury is not included in that settlement agreement. Defendants indicated at the time of trial that there was no need to include the psychological component because there would be no additional impairment warranted, but this does not consider the entitlement to treatment. At the time of the January 28, 2019 report (Exhibit A4, EAMS DOC ID 50429120), on page 11, it is indicated that the Applicant has noted symptoms of depression and anxiety and has been evaluated for these symptoms, but she never received any counseling. *Title 8, California Code of Regulations §10109* requires the claims administrator to investigate any claim of injury upon receiving knowledge of the injury. It does not appear that such investigation was previously done. In subsequent reporting by Dr. Stone subsequent to the filing of the Petition to Reopen, Dr. Stone indicates continuing psychological symptoms and a need to be evaluated by a QME to address these symptoms. Although there may be no need to assess impairment, there is certainly a need to address causation and need for treatment, in order to ascertain if the psychological symptoms are indicative of new and further disability. Defendants argued at trial that the Applicant did not include psychological injury as a body part, but the Petition to Reopen does not indicate any specific parts of body and the psychological symptoms have been present and known to the Defendants through the reporting of Dr. Stone since his reporting on July 11, 2017, believed to be his first report as the QME in this case, where at page 9, he notes that since the injury the applicant has noted symptoms of depression and anxiety and has been evaluated for these symptoms. She has been advised she requires counseling to treat these symptoms.

Applicant may very well be correct that some aspects of the claimed new and further disability did not occur until after the statute of limitations had lapsed, and therefore there is no compensability for any additional impairment or need for treatment, but in order to make that determination, there

must be thorough review of the medical evidence by the QME, to obtain reporting that constitutes substantial medical evidence. *Labor Code §4620* provides for obtaining medical-legal evidence and diagnostic testing to prove or disprove a contested claim. The evidence is needed to prove Defendants' position as well as Applicant's, and resolve the dispute regarding whether there is additional permanent impairment or need for treatment. Defendants' attempt to thwart the completion of obtaining reporting that constitutes substantial medical evidence prevents a determination in their favor, as well as the potential for a finding that may be adverse to them, in the underlying Petition to Reopen.

As it is necessary for the Applicant to be seen for a medical-legal evaluation to address the issue of psychological injury in order to determine whether there is or is not new and further disability or need for treatment based on psychological symptoms, and for the Applicant to have an MRI of the right shoulder to address whether there is or isn't new and further disability to the right shoulder, and evidence is needed in order to establish when any new or further disability or additional need for treatment may have occurred, the Findings and Order which issued on May 15, 2024 was necessary to complete the needed discovery, so that a determination of the Petition to Reopen can be finalized with substantial and complete medical evidence.

#### **IV** **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied for the reasons stated above.

Respectfully submitted,

**LORI ALISON HOLMES**  
Workers' Compensation Administrative Law Judge