WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DEBRA SILVEIRA, ***Applicant***

vs.

FEDEX GROUND PACKAGE SYSTEM, INCORPORATED, permissibly self-insured, ***Defendants***

Adjudication Number: ADJ20165742
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the April 29, 2025 Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a package handler on October 30, 2023 claims to have sustained industrial injury to her back, shoulders, upper extremities, arms, wrists, hands, fingers, knees, legs, ankles, feet, toes, circulatory system, heart, high blood pressure, hypertension, and nervous system. The WCJ found in relevant part that Qualified Medical Evaluator (QME) panel number 7773036, requested by defendant using an incorrect claim number, was nonetheless valid.

Applicant contends the WCJ erred in finding panel number 7773036 valid because it does not comply with the intent of the law behind applicable Administrative Director (AD) rules governing requests for QME panels.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will treat the petition

as one seeking reconsideration, and applying the removal standard, grant applicant's petition, rescind the F&O, and substitute new findings of fact that panel 7773036 is invalid and that panel number 7775940 is valid.

FACTS

Applicant claims injury to her back, shoulders, upper extremities, arms, wrists, hands, fingers, knees, legs, ankles, feet, toes, circulatory system, heart, high blood pressure, hypertension, and nervous system while employed as a package handler by defendant FedEx Ground Package System on October 30, 2023.

On December 30, 2024, defendant issued a notice of delay in determining whether it would accept liability for applicant's claim and assigned claim number 4A2412DXQHT-0001. (Ex. AA, Defendant's Panel Request Packet, dated December 30, 2024, at p. 5.)

On January 22, 2025, defendant requested a panel of QMEs in orthopedic surgery, listing claim number 4A2412DXQHT-000. (*Id.* at p. 1.) The Division of Workers' Compensation (DWC) Medical Unit issued panel number 7773036 in response to the request.

On January 30, 2025, applicant requested a panel of QMEs in physical medicine and rehabilitation, listing claim number 4A2412DXQHT-0001. (Ex. CC, Applicant's Panel Request Packet, dated January 30, 2025, at p. 1.) The DWC Medical Unit issued panel number 7775940 in response to the request.

On April 1, 2025, the parties proceeded to expedited hearing on the sole issue of whether panel number 7773036, obtained by defendant on January 22, 2025, was valid. The parties submitted the matter for decision without testimony.

On April 29, 2025, the WCJ issued the F&O,[1] determining that panel number 7773036 was valid. (Finding of Fact No. 1.) The WCJ's Opinion on Decision observes that defendant's omission of a single digit from the claim form was not a sufficient basis upon which to invalidate the resulting panel. (Opinion on Decision, at p. 6.)

[1] The F&O contains a recitation of the "Stipulated Facts" as well as the "Findings of Fact." We observe, however, that it is generally unnecessary to bifurcate the facts as stipulated by the parties from the facts determined by the WCJ. Labor Code section 5702 provides that "[t]he parties to a controversy may stipulate the facts…" and that "[t]he appeals board may thereupon make its findings and award based upon such stipulation…." (Lab. Code, § 5702.) Accordingly, the factual determinations entered by the WCJ in the Findings of Fact are legally operative and binding whether based on the evidentiary record or the based on the stipulation of parties.

Applicant's Petition avers that the listing of an incorrect claim number is a material defect, because "[t]he claim number acts as a unique identifier for a case, allowing the system to link the QME request to one injury, one employee, and one carrier," and that "[u]sing the full correct claim number is not just to distinguish between cases, but to distinguish between panel requests on a same case with a same insurance carrier on a same date of injury." (Petition, at p. 4:7.)

The WCJ's Report responds that applicant failed to establish that undue prejudice or irreparable harm resulted from the Medical Unit providing two panels, or from the determination that panel number 7773036 is valid.

DISCUSSION

I.

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.

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 findings of employment and insurance coverage. These are final orders subject to reconsideration and not removal. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

Although the decision contains findings that are final, petitioner is only challenging an interlocutory finding/order relevant to the validity of a QME panel. Therefore, we will apply the removal standard to our review. (See *Capital Builders Hardware v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

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 substantial 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).)

II.

Former Labor Code[2] 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.

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

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 May 22, 2025, and 60 days from the date of transmission is July 21, 2025. This decision is issued by or on July 21, 2025, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 22, 2025, and the case was transmitted to the Appeals Board on May 22, 2025. 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 May 22, 2025.

III.

The process by which a party may seek the issuance of a panel of QMEs is addressed in AD Rule 30 (Cal. Code Regs., tit. 8, § 30). The Rule requires that represented parties submit a request for a panel of QMEs electronically to the DWC Medical Unit, and that they identify the following elements:

1. Panel Request Information Section
    i. Date of Injury
    ii. Claim Number
    iii. Requesting Party
    iv. Reason QME Panel is being Requested

v. Dispute type

vi. Name of primary treating physician

vii. Date of report being objected to

viii. Date of objection communication

ix. Specialty of treating physician

x. QME Specialty Requested

xi. Opposing Party's QME Specialty Preferred (if known)

(Cal. Code Regs., tit. 8, § 30(b)(1)(A)(1).)

The claim number corresponding to applicant's currently pending claim is 4A2412DXQHT-0001. (Ex. AA, Defendant's Panel Request Packet, dated December 30, 2024, at p. 5.) On January 22, 2025, defendant obtained panel number 7773036 using a claim number that omitted the last digit of applicant's claim number. (*Id.* at p. 1.) On January 30, 2025, applicant obtained panel number 7775940 using the correct claim number. (Ex. CC, Applicant's Panel Request Packet, dated January 30, 2025, at p. 1.)

The F&O determined the omission of a single digit from the claim number was not a sufficient basis upon which to invalidate defendant's panel request and resulting panel 7773036. (Finding of Fact No. 1.)

Applicant's Petition argues that the claim number is the means by which the DWC Medical Unit identifies potentially duplicate requests for panels corresponding to the same underlying workers' compensation claim. Applicant contends "the Medical Unit computing system does not rely on an employer name to distinguish between panel requests … [t]he claim number acts as a unique identifier for a case, allowing the system to link the QME request to one injury, one employee, and one carrier." (Petition, at p. 3:4.) Applicant asserts that using an incorrect claim number may result in multiple panels issuing on the same claim, in turn resulting in unreasonable expense and delay to the parties. Because the Medical Unit will be unable to prevent the issuance of successive panels requested on the same claim, applicant concludes defendant's January 22, 2025 request for a QME panel listing an incorrect claim number was improper and rendered the resulting panel invalid.

Both applicant's Petition and the WCJ's Report discuss our recent decision in *Sidahmed v. Alameda County Counsel* (March 18, 2024, ADJ17029088) [2024 Cal. Wrk. Comp. P.D. LEXIS 103] (*Sidahmed*). Therein, applicant claimed a specific injury but had previously filed other claims

of industrial injury with the same employer. Both applicant and defendant submitted QME panel requests relating to applicant's pending specific injury claim on the same day. Defendant's panel request, however, listed a claim number corresponding to a prior injury claim. Applicant's panel request listed the correct, currently pending claim number. The DWC Medical Unit issued a panel corresponding to both requests, and the parties mutually objected to the panel obtained by opposing counsel.

Our analysis in *Sidahmed* began by observing that "[b]ecause panel QME requests are available in litigated and non-litigated cases, a case number is not required to obtain a panel of QMEs … [r]ather, the issuance of a panel requires a claim number as a means for the parties and the Medical Unit to identify a claim and any prior panels that may have issued with respect to that claim." (*Id.* at pp. 12-13.) We further observed that:

> [T]he proper identification of a claim number provides notice to the parties of the injury for which a party is seeking the issuance of a panel, especially in cases such as this, where the injured worker may have previous or currently pending claims of industrial injury. Thus, a party requesting the issuance of a panel of QMEs must provide accurate information to comply with AD Rule 30, and also because the parties' ability to correlate a request for the issuance of a panel with the correct claimed injury is essential to due process.

(*Id.* at p. 14.)

Because defendant's panel in *Sidahmed* was obtained using an inadvertent but nonetheless incorrect claim number, we determined that the resulting panel was invalid.

The WCJ's Report observes that a significant source of potential confusion in *Sidahmed* arose out of applicant's multiple pending claims, and that the difference between the various claim numbers was much more than a single omitted digit. (Report, at p. 5.) In contrast, the present matter involves two requests for QME panels listing claim numbers differing by only a single digit, and as a result, "it would be difficult to conclude that the two claim numbers belonged to two separate Applicants or two separate claims." (*Ibid*.) However, as we observed in *Sidahmed*, the claim number is the primary basis upon which the resulting panel issues. Accordingly, the claim number must be correct to prevent the issuance of conflicting or overlapping panels, and to save all parties the time and expense necessary to resolve these conflicts.

We acknowledge that generally, both the Labor Code and our rules "[disfavor] application of formalistic rules of procedure that would defeat an employee's entitlement to [] benefits."

(*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Indeed, WCAB Rule 10517 (Cal. Code Regs., tit. 8, §10517) specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. This rule represents the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

However, our analysis must be grounded in principles of due process. "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].) Here, we are persuaded that due process requires that the initial mechanism by which a party obtains a QME evaluation must be accurate, transparent, and accessible to all parties. In contrast to the other identifiers listed in AD Rule 30, the claim number is the sole basis used by the Medical Unit to track whether a panel previously issued. Thus, the claim number underlying a panel request must be correctly identified to provide all parties with the opportunity to evaluate the validity of the request and to be heard on issues arising out of the request, as necessary.

In sum, we believe that the better course is to require that parties strictly comply with the requirement in AD Rule 30 to provide a *complete and correct claim number* in making a request, rather than weighing and adjudging the individual facts and equity surrounding each incorrectly listed claim number in a QME panel dispute. In so doing, we seek to avoid the dangers of inconsistent outcomes, provide clarity to parties with respect to applicable minimum standards in requesting a QME panel, and allow parties to more easily predict whether a particular panel is valid without the need to seek intervention at the WCAB.

Here, defendant's omission of the final number of the claim number resulted in conflicting panels issuing in response to the same claim. While we agree with the WCJ's conclusion that the omission appears to be inadvertent, we conclude that the need for a consistent standard in this regard, one grounded in principles of due process, requires a finding that defendant's panel obtained from an incorrect claim number is invalid. By articulating a bright line standard, we hope to minimize potential conflicts with respect to the validity of a QME panel because such disputes slow proceedings and absorb an inordinate amount of time at the trial level.

Accordingly, we will treat applicant's petition as one seeking reconsideration, and applying the removal standard, grant reconsideration, rescind the F&O, and substitute new findings of fact that panel 7773036 is invalid and that panel number 7775940 is valid.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the April 29, 2025 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 29, 2025 is **RESCINDED,** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Debra Silveira, while employed on October 30, 2023, as a package handler, Occupational Group Number deferred, in Los Banos, California, by FedEx Ground Package System, Incorporated, claims to have sustained injury arising out of and in the course of employment to her back, shoulders, upper extremities, arms, wrists, hands, fingers, knees, legs, ankles, feet, toes, circulatory system, heart, high blood pressure, hypertension, and nervous system.
2. At the time of injury, the employer was permissibly self-insured.

3. Panel No. 7773036, issued by the DWC Medical Unit on January 22, 2025, is invalid.
4. Panel No. 7775940, issued by the DWC Medical Unit on January 30, 2025, is valid.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 18, 2025

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

DEBRA SILVEIRA
NYMAN TURKISH
LAUGHLIN, FALBO, LEVY & MORESI

SAR/abs

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