

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

EDITH GOMEZ, *Applicant*

vs.

**GARFIELD BEACH CVS, LLC; INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
*Defendants***

**Adjudication Number: ADJ17808664
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL
AND DECISION
AFTER REMOVAL**

Defendant has filed a petition for removal from the Findings of Fact and Order issued on June 11, 2025, by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that the opinions of multiple evaluators did not constitute substantial medical evidence and ordered a discovery plan for obtaining further reporting.

Defendant contends that the discovery plan ordered by the WCJ violates Labor Code section 5502(e)(3) and that the reporting of the current evaluators constitutes substantial medical evidence.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we grant removal only to amend the F&O to indicate that the reporting of Dr. Edelman was substantial evidence, and thus no further development of the record is necessary in that regard, but otherwise deny removal on all other issues raised.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed in the WCJ's Report, we will grant removal and as our Decision After Removal, we will rescind the F&O and substitute a new F&O per the WCJ's Report and return this matter to the trial level.

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).) Here, the WCJ has acknowledged error and requested that the F&O be modified to correct for such error. Thus, removal is proper in this case to correct admitted error.

To the extent that defendant argues that it has been substantially prejudiced or irreparably harmed, we find no evidence in the record to support this. Applicant has presented multiple reports from multiple physicians providing opinions that applicant's injury is industrial. We would remind defendant of AD Rule 10109, which states, in pertinent part:

(a) To comply with the time requirements of the Labor Code and the Administrative Director's regulations, a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.

(b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.

(1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment. The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. **The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.**

(2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.

(Cal. Code Regs, tit. 8, § 10109.)

Here, multiple primary treater reports find industrial injury, yet we cannot find a single objection from defendant in the record to any of these opinions. It does not appear that defendant attempted compliance with Labor Code sections 4060 or 4062 and proceeded to obtain an qualified

medical evaluation (QME). If defendant disagrees with the conclusion of the primary treater, defendant must object and proceed by obtaining the opinion of a QME. Defendant appears to take the position that it need not investigate this claim at all, which does not appear to be presented in good faith. Defendant is not substantially prejudiced or irreparably harmed by proceeding in the manner required by the Labor Code when objecting to the opinion of a primary treater.

Accordingly, we grant removal and as our Decision After Removal, we rescind the F&O and substitute a new F&O per the WCJ's Report and return this matter to the trial.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Findings of Fact and Order issued on June 11, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on June 11, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The medical opinions from Renee Kohanim, D.C., and Dabney Blankenship, Ph.D., do not constitute substantial medical evidence upon which a decision can be made.
2. The studies of David Edelman, M.D., (Applicant's Exhibits 6, 7, 8, and 9) constitute substantial medical evidence.

ORDER

IT IS ORDERED that applicant shall send the records from Queens Care Health Care, as well as any and all relevant admitted Trial Exhibits herein, including Minutes of Hearing and Summaries of Evidence, and this Decision to Dr. Kohanim and Dr. Blankenship to obtain one supplemental medical report from each doctor. If defendants or the parties choose, defendants or the parties may utilize Panel Qualified Medical Evaluators (Panel QME's) or Agreed Medical Examiners (AME's) in the fields of chiropractic/orthopedics, psychiatry/psychology and/or neurology in lieu of Dr. Kohanim or Dr. Blankenship to address injury arising out of and in the course of employment of any and all alleged body parts, as well as all relevant issues herein. If there is no joint agreement for additional Panels, either party may petition this WCJ for an Order, which shall be granted pursuant to this Decision. If defendants or the parties utilize Panel QME's or AME's, besides medical-legal evaluations, defendants or the parties shall only send to the doctors admitted Trial Exhibits, Minutes of Hearing and Summaries of Evidence, and this Decision for review. This is further development of the record Ordered by this WCJ

and not reopening discovery. As such, this is not an opportunity for a doctor or doctors to review additional evidence outside the scope of Trial. Any discovery beyond the scope of this Order, e.g., deposition(s), more than one report from each doctor, shall require leave of Court showing good cause.

IT IS FURTHER ORDERED that if the parties are unable to resolve the matter once all of the medical reports have been received, either party may file a Declaration of Readiness to Proceed in order to place the case back on calendar for determination of the issues, including whether the matter will be resubmitted for decision, or whether further development of the record is required with a regular physician or multiple regular physicians per Labor Code §5701.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2025

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

**EDITH GOMEZ
HINDEN & BRESLAVSKY
MICHAEL SULLIVAN & ASSOCIATES
EMPLOYMENT DEVELOPMENT DEPARTMENT**

EDL/mt

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