WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MANUEL GURROLA MARTINEZ, *Applicant*

vs.

H & H WALLBOARD, INC.;
CANNON COCHRAN MANAGEMENT SERVICES, INC., administrators for
STARSTONE NATIONAL INSURANCE CO., *Defendants*

Adjudication Number: ADJ16350553
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks removal of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 30, 2025, wherein the WCJ found in pertinent part that the reporting of QME Dr. Lorenzo Hughes violated Labor Code section 4628[1]; that the reporting does not constitute substantial medical evidence; and, that it must be stricken from the record. The WCJ also granted defendant's petition for a replacement QME panel and ordered that a replacement panel in pain medicine be provided within 30 days.

Applicant contends that Dr. Hughes did not violate section 4628; that the delays associated with applicant having to be re-evaluated by a new QME will cause irreparable harm to applicant; and that defendant has failed to establish a valid basis for an order granting a replacement panel, pursuant to AD Rule 31.5 (Cal. Code Regs., tit. 8, § 31.5).

We received an Answer from defendant.

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

[1] All section references are to the Labor Code, unless otherwise indicated.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and as discussed below, we will treat applicant's Petition as one for reconsideration, grant applicant's Petition for Reconsideration, rescind the WCJ's May 30, 2025 decision, and return this matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

In the May 30, 2025 Opinion on Decision, the WCJ set forth the relevant factual background of this matter as follows:

> Applicant Manuel Gurrola Martinez sustained an admitted injury to the right wrist, right shoulder, and right forearm, and alleges injury to other body parts, when he was working for H & H Wallboard, adjusted by defendant CCMSI, on 03/30/2022. Dr. Lorenzo Hughes has evaluated Applicant and issued six reports dated 01/11/2023, [6/23/23,] 11/20/2023, 07/22/2024, 07/31/2024 and 09/19/2024. Dr. Hughes' deposition was taken on 02/25/2025.
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> After the deposition, Defendant CCMSI filed a Petition for Replacement QME panel dated 03-10-2025 to replace QME Dr. Lorenzo Hughes asserting that Dr. Hughes violated Labor Code Section 4628(a) by allowing a third-party (Doctus) to summarize the medical records submitted.
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> Defendant filed a Declaration of Readiness for Expedited Hearing on its petition, and after trial [on May 1, 2025], the issue was submitted for this decision on the record. Both parties filed post-trial briefs.

(Opinion on Decision, at p. 3.)

DISCUSSION

I.

Former Labor Code 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 June 24, 2025 and 60 days from the date of transmission is Saturday, August 23, 2025. The next business day that is 60 days from the date of transmission is Monday, August 25, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, August 25, 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 June 24, 2025, and the case was transmitted to the Appeals Board on June 24, 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 June 24, 2025.

[2] 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.

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.

Here, the May 30, 2025 F&O includes findings regarding threshold issues, including employment, insurance coverage and injury. The WCJ's decision is thus a final order subject to reconsideration rather than removal.

Petitioner challenges the orders that Dr. Hughes' report violated section 4628, that the report must be stricken, and that defendant's petition for a replacement QME panel is granted. Although these orders appear to be discovery orders, as we explain in this opinion, under section 4628(e), when a report is struck, defendant is no longer liable for payment, and under 4628 (f), (g), and (h), a physician may face imposition of other penalties. Thus, because of the consequences that are triggered by a finding that a report violated section 4628, a finding that a report is struck under section 4628 is actually a final threshold order.

III.

Section 4628 describes *mandatory* requirements for any physician signing a medical-legal report including requirements that the physician personally conduct the examination; that the date and location of the evaluation be disclosed; that the evaluation comply with applicable laws; that the evaluation disclose the name and qualifications of any person who performed services, other than clerical services, in connection with the report; that the report describe in detail any variances with these procedures; that the physician disclose any amount paid for other persons to perform evaluations, procedures or services; and that the physician sign the report with a declaration under penalty of perjury that the contents of the report are true and correct. (Lab. Code, § 4628(a), (b), (i), (j).) Section 4628 also requires that the taking of patient history and excerpting of medical

records must be completed by the physician, or if done by others, the physician must "disclose the name and qualification of each person who performed any services in connection with the report…," must review the history and excerpts of medical records prepared by those individuals, and "make additional inquires and examinations" as necessary to determine the relevant medical issues. (Lab. Code, § 4628(b), (c).)

Section 4628 also imposes penalties for non-compliance affecting the substantive rights of the reporting physician. Subdivision (e) states that failure to comply with the requirements of section 4628 shall make the report *inadmissible* and shall eliminate any liability for payment of any medical-legal expenses. (Lab. Code, § 4628(e), italics added.) Subdivisions (f), (g) and (h) address additional penalties for a physician's knowing failure to comply with these requirements, including civil penalties of up to $1000 per violation, being held in contempt, and the possibility that the physician will be terminated, suspended or placed on probation as a QME under section 139.2. (Lab. Code, §§ 4628(f), (g), (h); 139.2.) Thus, a finding that a physician has not met the minimum report preparation and disclosure standards described in section 4628 may result in significant consequences for the reporting physician.

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (Cal. Const., art. XIV, § 4 ["[T]he administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character(.)"]; *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In addition to this constitutional mandate, we are governed by the legislative mandate of section 3202 and the repeated admonitions of the California Supreme Court to construe workers' compensation laws liberally in favor of affording substantial justice to injured workers. (Lab. Code, § 3202; see also, e.g., *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234, 241 [48 Cal.Comp.Cases 587]; *Webb v. Workers' Comp. Appeals Bd.* (1980) 28 Cal.3d 621, 626 [45 Cal.Comp.Cases 1282]; *Veilleux v. Workers' Comp. Appeals Bd.* (1985) 175 Cal.App.3d 235, 241 [50 Cal.Comp.Cases 698].) It is for this reason that claims brought before the Appeals Board are "entitled to adjudication upon substance rather than upon formality of statement." (*Beveridge v. Industrial Acci. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274].)

All parties to a workers' compensation proceeding retain the fundamental right to due process, including notice and an opportunity to be heard, 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]; *Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) A fair hearing includes the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and 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 Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin, supra,* 5 Cal.App.4th at p. 710.)

Our rules require that if a medical-legal report does not appear to comply with the requirements in section 4628, notice must be provided to the parties and to the reporting physician of the deficiencies in the reporting, before the WCJ may decline to receive that report in evidence. (Cal. Code Regs., tit. 8, § 10670(b)(4).) After notice, the WCJ has discretion to allow the physician to address those deficiencies within a "reasonable" time period. (*Ibid*.) Deficiencies in the medical-legal reporting may be curable by the reporting physician, under certain circumstances. (See, e.g., *City of Los Angeles v. Workers' Comp. Appeals Bd.* (*Webster*) (1998) 63 Cal.Comp.Cases 190 [writ denied] [subsequent reporting of the source of the actuarial data in the report sufficient to cure the section 4628 defect]; *Canteen Corp. v. Workers' Comp. Appeals Bd.* (*Love*) (1997) 62 Cal.Comp.Cases 730 [writ denied] [physician's error in failing to include declaration under penalty of perjury in report was cured by filing amended report]; *Albertson's v. Workers' Comp. Appeals Bd.* (*Thompson*) (2003) 68 Cal.Comp.Cases 1369 [writ denied] [physician's report that omitted summary of the medical records was cured by filing supplemental report].) Other deficiencies in the medical-legal reporting have been found to be incurable, rendering the reports inadmissible. (See, e.g., *Scheffield Medical Group v. Workers' Comp. Appeals Bd*. (1999) 70 Cal.App.4th 868 [69 Cal.Comp.Cases 138] [Court of Appeal affirmed WCAB decision finding that medical-legal reports that relied on the images taken by an unlicensed x-ray technician in violation of section 4628 were inadmissible in consolidated lien proceedings]; *Sonnier v. L.A. Unified Sch. Dist.* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 197 [When QME failed to disclose that individuals other than himself summarized the medical records, the WCAB found the medical-legal reports inadmissible, explaining, "section 4628 is a strict liability statute. If the physician who prepared the report did not comply with the statute's requirements, there is no balancing of whether the failure to comply with its provisions affected the report's reliability…"].)

Principles of due process require notice to the reporting physician that their report may be deemed inadmissible because of the significant financial and legal consequences for the physician that may result from a finding of inadmissibility under section 4628, as described above. (Lab. Code, §§ 139.2(d)(2), (k)(5), (l), 4628(e)-(h); Cal. Code Regs., tit. 8, § 10683.) In addition, a medical lien holder is a "party in interest," and as such, is entitled to "full due process rights," including notice and an opportunity to be heard prior to a claim being disallowed. (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811 [65 Cal.Comp.Cases 1402]; Cal. Code Regs., tit. 8, § 10702.) Thus, a reporting physician, as a potential lien claimant, is entitled to notice and an opportunity to address the contention that their reporting failed to comply with section 4628. (Cal. Code Regs., tit. 8, §§ 10670(b)(4), 10682(c), 10683, 10702.)

Here, the due process rights of Dr. Hughes were implicated by the WCJ's findings that section 4628 was violated and that Dr. Hughes' medical-legal reporting does not constitute substantial medical evidence. Notably, if there is ultimately an order that Dr. Hughes' reporting will be stricken,[3] Dr. Hughes will not be compensated for his work on this matter, including the preparation of six medical-legal reports. (Lab. Code, § 4628(e); Defendant's Exhs. A - F.) Dr. Hughes, as both a "party in interest" and a potential lien claimant, is entitled to notice and an opportunity to be heard before his medical-legal reporting is stricken. (*Vacanti, supra,* 24 Cal.4th at 811; Cal. Code Regs., tit. 8, §§ 10670(b) (4), 10702.) Yet, there is no evidence in the record that he was provided with notice that a determination under section 4628 would be made, nor was he provided with an opportunity to be heard on that issue prior to the WCJ's findings. Neither Dr. Hughes's name, nor that of his medical group, appears on the proof of service (POS) for any of the documents discussing section 4628 compliance or setting the matter for trial on that issue. (3/10/25 Petition for Replacement Panel and POS; 3/10/25 DOR and POS; 3/19/25 Objection to DOR and POS; 3/20/25 Objection to Replacement Panel and POS; 4/16/25 Notice to Appear at Trail; 5/1/25 MOH and POS.) Thus, Dr. Hughes did not have an opportunity to show "good cause…for failure to comply" with section 4628, as required. (Cal. Code Regs., tit. 8, § 10670(b)(4).)

After reviewing the available evidentiary record in this matter, and for the reasons the WCJ indicated in the Opinion and in the Report, we believe that it is very likely that the WCJ correctly

[3] We note that the current F&O includes a finding that "the QME reporting must be stricken from the record," but does not include a corresponding order striking the QME's reporting.

determined that Dr. Hughes' medical-legal reporting violates section 4628 and that the reporting should be stricken. (5/30/25 Opinion on Decision; 6/24/25 Report.) Despite this, we cannot affirm the F&O because due process requires that the QME be provided with notice and an opportunity to be heard before his reporting may be deemed inadmissible.

Accordingly, we grant applicant's Petition, rescind the WCJ's May 30, 2025 F&O, and return the matter to the WCJ for further development of the record. Upon return, the WCJ should provide the parties and Dr. Hughes with notice and an opportunity to be heard regarding defendant's pending Petition for a Replacement QME panel, including notice regarding the specific, alleged deficiencies in Dr. Hughes' reporting under section 4628.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the decision of May 30, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of May 30, 2025 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2025

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

MANUEL GURROLA MARTINEZ
LAW OFFICE OF MANUEL REYNOSO
WITKOP LAW
LORENZO HUGHES, M.D.

MB/*ara*

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