

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

PAULETTE WOODS, *Applicant*

vs.

**LIV HOME, INC.; UNITED STATES FIRE INSURANCE COMPANY,
administered by CRUM & FORSTER, Defendants**

**Adjudication Numbers: ADJ10790108, ADJ11826873
San Luis Obispo District Office**

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

Applicant seeks removal¹ in response to a February 27, 2023 Order by a Workers' Compensation Administrative Law Judge (WCJ) that neither the reporting of the prior Qualified Medical Evaluator (QME) nor "the vocational reporting" may be submitted to the regular physician appointed pursuant to Labor Code section 5701.²

Applicants asserts she will suffer irreparable harm if the relevant medical and vocational reporting is not made available to the regular physician.

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

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

¹ Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been assigned in her place.

² Unless otherwise stated, all further statutory references are to the Labor Code.

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, applicant claimed injury to her neck, shoulders, back, left knee, and left hand, while employed by defendant as a personal care provider on October 1, 2014 (ADJ10790108). Applicant also claimed injury to her neck, shoulders, back, left knee, and left hand/thumb while employed by defendant as a personal care assistant during the period from July 1, 2000, through October 1, 2014 (ADJ11826873).

The parties have previously obtained medical-legal reporting in orthopedic medicine from QME Scott Graham, M.D. The parties have further obtained reporting from vocational experts Steve Ramirez and Everett O'Keefe.

On November 5, 2019, the parties proceeded to trial on issues including, in relevant part, permanent disability and apportionment.

On February 3, 2020, the WCJ issued a Findings and Award (F&A). Both parties sought reconsideration, and on November 8, 2022, we issued our "Opinion and Decision After Reconsideration" (Opinion), determining in relevant part that QME Dr. Graham's opinions *regarding apportionment* were inconsistent and appeared to be based on a misunderstanding of applicable law. (Opinion, dated November 8, 2022, at p. 7.) We further agreed with the WCJ's conclusions that the reporting of neither vocational expert successfully rebutted the applicable Permanent Disability Rating Schedule (PDRS), and that neither report was substantial vocational evidence. (*Id.* at p. 8.) We rescinded the F&A in its entirety and returned the matter to the trial level for further proceedings.

On February 2, 2023, the WCJ issued an order pursuant to section 5701 appointing Jeffrey Lundeen, M.D., as the regular physician.

On February 27, 2023, the WCJ conducted a status conference. The minutes indicate in pertinent part that the parties had discussed "what docs [illegible] to send to selected QME."

(Minutes of Hearing, dated February 27, 2023.) The WCJ issued a separate order the same day that “neither the reporting of Dr. Graham nor the vocational reporting be sent for review by the new Labor Code Section 5701 physician selected Dr. Jeffrey Lundeen with examination set in July.” (Order, dated February 27, 2023.)

Applicant’s Petition contends she will suffer undue prejudice because the Order precludes the regular physician from reviewing “relevant and important medical and vocational information.” (Petition, at p. 3:17.) Applicant contends that it is important for the QME understand the deficiencies in Dr. Graham’s reports and that “Dr. Graham’s history, diagnosis, prognosis and permanent disability are relevant in assisting the private (sic) physician in preparing a report that constitutes substantial evidence.” Applicant also asserts that the reports of the vocational experts are similarly relevant to the regular physician’s evaluation of applicant’s impairments as reflected by applicant’s ability to engage in gainful employment. (*Id.* at p. 3:24.)

Defendant’s Answer asserts that to the extent applicant seeks to challenge our determination of substantiality of the medical and vocational reporting, the determination is now final and not subject to appeal. (Answer, at p. 2:22.)

The WCJ’s Report reiterates his determination that while “portions of the reporting of Dr. Graham were inconsistent, such defects were not so flagrant as to destroy its entire credibility or its substance on the issues that needed to be determined.” (Report, at p. 2.) However, given the WCAB determination that the QME and vocational reports were not substantial evidence, “the reports should be omitted in the medical record to be provided to [regular physician] Dr. Lundeen.” (*Ibid.*)

It is well established that decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc) (*Hamilton*). Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 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]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a

minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.)

Here, the record does not adequately set forth the arguments advanced by the parties, or the evidence relied upon by the WCJ in determining that the reporting of Dr. Graham and both vocational experts could not be submitted to the regular physician for review. (Minutes of Hearing, dated February 27, 2023; Order, dated February 27, 2023.) Following our review of the record occasioned by applicant’s Petition, we are persuaded that a full and complete record pursuant to *Hamilton, supra*, 66 Cal.Comp.Cases 473, is essential to the proper evaluation of whether the existing QME and vocational expert reporting may be submitted to and reviewed by the regular physician. Accordingly, we will grant removal and return this matter to the trial level for the creation of an adequate evidentiary record including a proper identification of the issues, the corresponding arguments advanced by the parties, the evidence relied upon by the WCJ, and the WCJ’s analysis of the applicable legal authority and admitted evidence.

We observe that even if the WCJ or the Appeals Board thoroughly discusses an issue in an opinion, statements in the opinion are not legally binding as only a findings, an order, or an award is legally enforceable. (See Lab. Code, §§ 5806, 5807 [setting forth the procedure for enforcement].) Moreover, when the Appeals Board issues an order rescinding a decision in its entirety without issuing any other orders, the order rescinding is a non-final order. Instead, the matter is returned to the WCJ to consider how best to proceed given the guidance provided in the opinion. Thus, while we agreed in our Opinion that the reporting was not substantial evidence to support the decision, we made no order as to how the case should proceed, including as to whether the reporting should or should not be reviewed by a subsequent evaluator.

Upon return of this matter for further proceedings, we offer the following nonbinding observations. Generally, the Appeals Board is broadly authorized to consider the reports of attending or examining physicians. (Lab. Code, § 5703(a)(1); *Valdez v. Workers’ Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [78 Cal.Comp.Cases 1209] (*Valdez*).) The weight accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) All parties and lien claimants shall meet the

evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. (Lab. Code, § 3202.5.)

Even in instances where a WCJ or the Appeals Board has determined that a report has limited or no evidentiary weight with respect to the medical-legal conclusions reached by the evaluating physician, or because of other procedural or substantive deficiencies, the report may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of relevant information may include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations.

Allowing deficient medical-legal reporting to remain in evidence while assigning it the appropriate evidentiary weight is consonant with well-established principles favoring the broad admissibility of evidence in workers' compensation proceedings. Indeed, "the Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence." (*Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Similarly, the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (§ 5703, subd. (a); *Valdez, supra*, at p. 1239.) Section 4064(d) provides the no party is prohibited from obtaining *any* medical evaluation or consultation at the party's own expense, and that *all* comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in specified statutes. (Lab. Code, § 4064(d); *Valdez, supra*, at p. 1239.) Section 4062.3(a) further provides that any party may provide to the QME, subject to the restrictions set forth in the statute, any records prepared or maintained by the employee's treating physician or physicians and medical and nonmedical records relevant to determination of the medical issue. (Lab. Code, § 4062.3(a).) Taken together, these case law and statutory prescriptions underscore the importance of allowing for the full consideration of the entire evidentiary record, in furtherance of the substantial justice required in workers' compensation proceedings. Accordingly, even in those instances where a report does not meet minimum standards, it should generally remain in evidence and be accorded its appropriate evidentiary weight. (See also Cal. Code Regs., tit. 8, § 10682(c).)

In addition to considering relevant medical and medical-legal evidence, evaluating physicians may further consider relevant vocational evidence. As we have noted in *Nunes v. State*

of California, Dept. of Motor Vehicles (2023) 88 Cal.Comp.Cases 894 [2023 Cal. Wrk. Comp. P.D. LEXIS 46] (Appeals Board en banc) (*Nunes II*), the Labor Code and our Rules repeatedly provide that evaluating physicians must address all relevant issues as comprehensively as possible. (See Lab. Code, §§ 139.2, 4061, 4062.3(j), 4064(a), 4628(c), 4663(b); see also Cal. Code Regs., tit. 8, § 10683.) For example, WCAB Rule 10682 requires that physicians include in their reporting a history of the alleged industrial injury, the patient’s complaints, and an opinion “as to the nature, extent and duration of disability and work limitations, if any,” (Cal. Code Regs., tit. 8, § 10682(b)(8)). Moreover, section 4061.5 states in relevant part that “[t]he treating physician ... shall ... render opinions on all medical issues necessary to determine eligibility for compensation....” Accordingly, we observed:

In addition to the required consideration of vocational evidence in the preparation of a report, an evaluating physician may also utilize vocational evidence in the assessment of both impairment and permanent disability. The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides) observes that, “[p]hysicians with the appropriate skills, training and knowledge may address some of the implications of the medical impairment toward work disability and future employment.” (AMA Guides, 5th Ed., § 1.9, at pp. 13-14.) With respect to the broader question of whether a seriously injured worker is able to reenter the labor market, the AMA Guides observe, “[a] decision of this scope usually requires input from medical and nonmedical experts, such as vocational specialists, and the evaluation of both stable and changing factors, such as the person’s education, skills, and motivation, the state of the job market, and local economic consideration.” (*Id.* at p. 14.) Additionally, where an evaluating physician is tasked with describing impairment pursuant to the AMA Guides, vocational evidence may assist the physician in determining which of the chapters, tables, or methods from within the four corners of the AMA Guides will provide the most accurate assessment of the injured worker’s impairment. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc), as affirmed by *Milpitas Unified School District v. Workers’ Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

(*Nunes II, supra*, at p. 902.)

It is for these reasons that, “treating and evaluating physicians regularly review, assess, and opine on vocational issues, from the gathering of vocational information relevant to the determination of causation, to the final assessment of permanent disability and work restrictions.” (*Ibid.*) Accordingly, medical, medical-legal, and vocational reporting are *all* potential sources of relevant evidence to be considered by the evaluating physician, the WCJ and the Appeals Board in the assessment of the nature and extent of a claimed injury. (Lab. Code, §§ 139.2, 4061, 4062.3(j), 4064(a), 4628(c), 4663(b).)

Bearing these principles in mind, we will return this matter to the trial level for the creation of an appropriate evidentiary record responsive to the issues raised. (*Hamilton, supra*, 66 Cal.Comp.Cases 473.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of February 27, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of February 27, 2023 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 8, 2025

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

**PAULETTE WOODS
WILLIAM A. HERRERAS, ESQ.
COLEMAN, CHAVEZ & ASSOCIATES**

SAR/abs

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