

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

SILVIA GALLEGOS RODRIGUEZ, *Applicant*

vs.

GL MEZZETTA, INC.; UNITED STATES FIRE INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ11150106
San Francisco District Office**

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

Applicant seeks reconsideration of the April 21, 2025 Findings, Order and Award (FO&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed by defendant as a machine feeder, occupational group number 360, on December 8, 2016, sustained injury arising out of and in the course of employment (AOE/COE) to the cervical spine, thoracic spine, lumbar spine, bilateral arms, and bilateral shoulders, but did not meet her burden in establishing injury AOE/COE to the bilateral hands, bilateral legs, stomach, eyes, head, psyche, or cognitive function and did not meet her burden in establishing entitlement to temporary total disability, replacement of current orthopedic panel Qualified Medical Evaluator (QME), Dr. Daniel D'Amico, or the issuance of an additional panel in the specialty of neurology.

Applicant contends that Dr. D'Amico should be replaced due to his "overt bias and disrespect and lack of ethics[.]" (Petition, p. 4.) Applicant further contends that "Findings of Fact 3, 4, 8, 11, 12" pertaining to failure to prove injury AOE/COE to the bilateral hands, legs, stomach, eyes, head, psyche and cognitive function; entitlement to temporary total disability; permanent and stationary date; denial of applicant's replacement panel request; and denial of applicant's request for an additional panel in neurology, should be rescinded. (Petition, p. 13.)

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

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the April 21, 2025 FO&A, and substitute it with a new F&O which affirms the WCJ's denial of a replacement panel, finds good cause for an additional panel in the specialty of neurology, and defers all other issues.

FACTS

Applicant claimed that, while employed by defendant as a machine feeder on December 8, 2016, she sustained injury AOE/COE to the bilateral hands, bilateral arms, cervical spine, thoracic spine, lumbar spine, head (headaches/migraines), vision, and stomach (due to medication usage).

The parties proceeded with discovery and retained orthopedic PQME, Dr. Howard Sturtz. Dr. Sturtz evaluated applicant on January 15, 2020 and issued two reports: an initial report and a May 5, 2020 supplemental report.

Dr. Sturtz subsequently became unavailable, and on April 27, 2022, the matter proceeded to trial on the issue of whether applicant was entitled to a replacement orthopedic panel. At trial, the parties stipulated to injury AOE/COE to the bilateral arms.

On July 15, 2022, the WCJ issued a Findings and Orders (F&O) indicating that applicant was entitled to a replacement orthopedic panel. The WCJ also found that applicant sustained injury AOE/COE to her arms.

Upon issuance of the replacement panel, Dr. Daniel D'Amico was selected as the new PQME. He completed an initial evaluation on December 12, 2022¹ and a reevaluation on September 11, 2023. He also issued supplemental reports dated June 26, 2023 and February 13, 2024.

In his September 11, 2023 report, Dr. D'Amico opined, in relevant part, that applicant's neurological issues may have been "an exacerbation at most." (Defense Exhibit A, p. 23.) Although he did not believe the neurological issues were "caused or aggravated" by the industrial injury, he conceded that he did not have a specific diagnosis. (*Ibid.*) Ultimately, he recommended

¹ Erroneously listed as November 12, 2022 in paragraph 1 of the reporting.

a “repeat EMG/nerve velocity study of both upper and lower extremities” as well as a “neurologic consultation.” (*Id.* at p. 24.)

On February 11, 2025, the matter proceeded to trial on the issues of body parts injured; temporary disability; permanent disability; permanent and stationary date; need for further medical treatment; the EDD lien; disqualification of QME Dr. D’Amico; entitlement to an additional panel in neurology; and attorney’s fees. The parties stipulated to injury AOE/COE and need for further medical treatment to the bilateral shoulders as well as an average weekly wage (AWW) of \$355.19 and a corresponding temporary and permanent disability indemnity rate of \$236.79 weekly.

On April 21, 2025, the WCJ issued a FO&A which held, in relevant part, that applicant, while employed as a machine feeder, occupational group number 360, by defendant on December 8, 2016, sustained injury AOE/COE to the cervical spine, thoracic spine, lumbar spine, bilateral arms, and bilateral shoulders but did not meet her burden in proving injury AOE/COE to the bilateral hands, bilateral legs, stomach, eyes, head, psyche, or cognitive function. The WCJ also held that applicant did not meet her burden in establishing entitlement to temporary total disability, a replacement QME panel for Dr. D’Amico, or an additional panel in the specialty of neurology. The WCJ awarded applicant 10% permanent disability.

DISCUSSION

I.

Preliminarily, former Labor Code² 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 All further statutory references will be to the Labor Code unless otherwise indicated.

- (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 under the Events tab 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 16, 2025, and 60 days from the date of transmission is July 15, 2025. This decision was issued by or on July 15, 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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on May 16, 2025, and the case was transmitted to the Appeals Board on May 16, 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 16, 2025.

II.

Turning now to the merits of the Petition, applicant contends that PQME, Dr. D’Amico, should be disqualified due to “overt bias and disrespect and lack of ethics” and alleges that Dr. D’Amico misrepresented the time spent face-to-face with applicant and showed disrespect and contempt towards applicant by “engaging in a social visit in Italian with the interpreter” and inferring that applicant was a liar. (Petition, pp. 5-7.) Applicant further alleges the QME should be disqualified because she felt “discriminated against” due to her language and illness. (Petition, p.

5.) Applicant refers to Administrative Director (AD) rule 41(a)(5) in support of her arguments. (*Ibid.*)

AD Rule 41 lays out ethical requirements of All QMEs. It states, in pertinent part, that “[a]ll QMEs, regardless of whether the injured worker is represented by an attorney, shall...[c]ommunicate with the injured worker in a respectful, courteous and professional manner.” (Cal. Code Regs., tit. 8, § 41(a)(5).)

As the petitioning party, applicant carries the burden of proof. (Lab. Code, § 5705.) Based upon our review of the current evidentiary record, we do not find sufficient evidence to support a violation of ethical requirements under AD Rule 41 which would warrant a disqualification of Dr. D’Amico. As such, we discern no reason to disturb the WCJ’s finding on the issue of a replacement orthopedic panel.

III.

Applicant further contends that additional panels in various specialties are warranted and failure to provide the requested panels are a denial of applicant’s due process rights. (Petition, p. 12.)

Pursuant to AD Rule 31.7, when a new medical dispute arises after the Agreed Medical Evaluator (AME), agreed PQME, or selected PQME has issued a comprehensive medical-legal report, the parties are to obtain a follow-up evaluation or supplemental report from the same evaluator. (Cal. Code Regs., tit. 8, § 31.7(a).) If a PQME in a different specialty is needed, pursuant to subsection (b), the Medical Director shall issue an additional panel upon a showing of good cause. For purposes of subsection (b), good cause includes:

- (1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or
- (2) Where an acupuncturist has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter; or
- (3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators; or
- (4) In an unrepresented case, that the parties have conferred with an Information and Assistance Officer, have explained the need for an additional QME evaluator in

another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of and with the assistance of the Officer on the specialty requested for the additional QME panel. The parties may confer with the Information and Assistance Officer in person or by conference call.

(Cal. Code Regs., tit. 8, § 31.7(b).)

Here, in a report dated September 11, 2023, orthopedic PQME, Dr. D’Amico, indicated that with respect to applicant’s alleged neurological issues, he could not provide a specific diagnosis. (Defense Exhibit A, p. 23.) As such, he recommended a “repeat EMG/nerve velocity study of both upper and lower extremities” as well as a “neurologic consultation.” (*Id.* at p. 24.) Thereafter, a timely petition requesting additional panels in various specialties, including neurology, was submitted by applicant on August 23, 2024.

Based upon the foregoing, we believe that good cause exists for an additional panel in the specialty of neurology. However, we do not find good cause for the numerous additional panels requested.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the April 21, 2025 Findings, Order and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the April 21, 2025 Findings, Order and Award is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below, and the matter **RETURNED** to the trial level for further proceedings consistent with this decision.

FINDINGS OF FACT

1. Applicant, Silvia Gallegos Rodriguez, born [], while employed on December 8, 2016 as a machine feeder, occupational group number 360, in American Canyon, California, by GL Mezzetta, Inc., sustained injury arising out of and in the course of employment to the cervical spine, thoracic spine, lumbar spine, bilateral arms, and bilateral shoulders.
2. At all relevant times herein, defendant GL Mezzetta, Inc. was insured by United States Fire Insurance Company for purposes of workers’ compensation liability.
3. Applicant is not entitled to a replacement orthopedic panel.

4. There is good cause for an additional panel in the specialty of neurology.

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 15, 2025

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

**SILVIA GALLEGOS RODRIGUEZ
LAW OFFICE OF KENNETH MARTINSON
ALBERT AND MACKENZIE**

RL/cs

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