

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

ALLISON MACLEOD, *Applicant*

vs.

**KAWEAH DELTA HEALTHCARE DISTRICT, permissibly self-insured,
administered by TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Number: ADJ21245209
Fresno District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of May 12, 2026, wherein it was found that while employed on November 29, 2021 as a registered nurse, applicant sustained admitted industrial injury to her shoulders and claims industrial injury to her left arm. As relevant to the instant proceedings, it was

found that Dr. William Roach "was not, in fact, the Primary Treating Physician" that qualified medical evaluator (QME) panel 349235 which was issued in July of 2024 was "invalid," and that

the reporting of qualified medical evaluator orthopedist William Bolling, M.D. who has issued two reports in this matter "is excluded from all proceedings, whether legal or medical" and that "The

parties are free to proceed with the usual medical legal process, with a QME or AME."

Defendant contends that the WCJ erred in removing Dr. Bolling as QME and striking his reports. We have received an Answer from the applicant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and reverse the WCJ's findings removing Dr. Bolling as QME.

I.

Preliminarily, we note that 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, Labor Code 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 Labor Code 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 15, 2026 and 60 days from the date of transmission is August 14, 2026. This decision is issued by or on August 14, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 15, 2026, and the case was

transmitted to the Appeals Board on June 15, 2026. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 15, 2026.

II.

We further note that defendant captioned its Petition as one for removal pursuant to Labor Code section 5310. 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. Here, because the WCJ's decision found industrial injury, even though this was a stipulated finding, it contained a final order. Even though applicant only challenges the non-final order regarding the validity of Dr. Bolling as QME, because review is sought of a "hybrid" decision, we treat applicant's Petition as one for reconsideration despite it being captioned as one for removal. However, since only interlocutory orders are being challenged, we evaluate these issues under the removal standard. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].)

III.

Turning to the merits, applicant sustained industrial injury and began receiving treatment from nurse practitioner Barbara Uichanco of Kawea Health Medical Group. Applicant was not represented by an attorney at this time. Applicant began receiving care by Nurse Uichanco in early 2022 and continued receiving care from Nurse Uichanco until at least August of 2024. (October 10, 2024 report of Dr. Bolling at pp. 8-25.) Applicant was also seen by Bruce Le, D.O. of Orthopedic Associates who issued reports entitled "consultation reports" and by Vincent Gomez, M.D. of Sierra Pacific Orthopedics who she was referred to by Kawea Health. (October 10, 2024 report of Dr. Bolling at pp. 8-25; Minutes of Hearing and Summary of Evidence of February 19, 2026 trial at p. 4.)

Nurse Uichanco issued a report on May 29, 2024. Nurse Uichanco checked off that applicant should remain off-work and wrote in the report that applicant should have "the QME

process begin.” Nurse Uichanco’s report notes at the bottom that it was reviewed by William Roach, M.D. Defendant issued a letter stating that it was objecting to the report pursuant to Labor Code section 4062, and provided applicant with a form to request a QME panel pursuant to Labor Code section 4062(a) and Labor Code section 4062.1(a). Applicant selected Dr. Bolling from the panel and was evaluated by him without objection on October 10, 2024. Dr. Bolling issued a report on October 10, 2024 and issued a supplemental report on May 12, 2025.

Applicant then became represented by an attorney who objected to proceeding with Dr. Bolling as QME.

IV.

The WCJ found that the QME process was not correctly initiated apparently because the QME process is triggered by an objection to a “primary treating physician” and that neither Nurse Uichanco, nor Dr. Roach was a “primary treating physician.” However, Labor Code section 3209.10(a) plainly states:

Medical treatment of a work-related injury required to cure or relieve the effects of the injury may be provided by a state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice. The reviewing or supervising physician and surgeon of the physician assistant or nurse practitioner shall be deemed to be the treating physician. For the purposes of this section, “medical treatment” includes the authority of the nurse practitioner or physician assistant to authorize the patient to receive time off from work for a period not to exceed three calendar days if that authority is included in a standardized procedure or protocol approved by the supervising physician. The nurse practitioner or physician assistant may cosign the Doctor’s First Report of Occupational Injury or Illness. The treating physician shall make any determination of temporary disability and shall sign the report.

Here, it appears that Nurse Uichanco was performing her work as authorized by section 3209.10 with Dr. Roach as the primary treating physician. Both the applicant and the WCJ make much over the fact that Administrative Director Rule 9785(a)(1) states, “The ‘primary treating physician’ is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter.” (Cal. Code Regs., tit. 8, § 9785, subd. (a)(1).) However, the rule must be interpreted in harmony with section 3209.10 and does not

require that an applicant be personally be seen by the physician. Rather, evaluation by a nurse practitioner or physician assistant pursuant to section 3209.10 satisfies Rule 9785. If a regulation cannot be read in manner consistent with a statute, it is invalid. (Gov. Code, § 11342.2; *Navarro v. City of Montebello* (2014) 79 Cal.Comp.Cases 418, 426-427 [Appeals Bd. en banc].)

Accordingly, the WCJ erred in finding that Dr. Roach was not applicant's primary treating physician when the May 29, 2024 report and the ensuing objection letter were issued.

In any case, by proceeding with the QME process including selecting the QME and attending the evaluation, applicant waived any irregularities. (*Fajardo v. Workers' Comp. Appeals Bd.* (2007) 72 Cal.Comp.Cases 1158 [writ den.]; *County of Sonoma v. Workers' Comp. Appeals Bd. (Smith)* (2008) 73 Cal.Comp.Cases 268 [writ den.]; *Salcedo v. Aluminum Roofing Specialists* (2009) 2009 Cal. Wrk. Comp. P.D. LEXIS 436 [Appeals Bd. panel].)

We find that the parties would be significantly prejudiced by having to proceed with a new medical evaluator when there is no legal reason to do so. Dr. Bolling has been involved in this case for almost two years and has issued two reports. "If an employee has received a comprehensive medical-legal evaluation under this section, and he or she later becomes represented by an attorney, he or she shall not be entitled to an additional evaluation." (Lab. Code sec. 4062.1, subd. (e).) We therefore grant reconsideration, rescind the WCJ's decision, and issue a new decision finding that Dr. Roach was the primary treating physician and that Dr. Bolling should remain as QME.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Order of May 12, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of May 12, 2026 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

The STIPULATIONS of the parties are accepted as the Court's FINDING OF FACT.

1. Allison MacLeod, age 44 on the date of injury, while employed on November 29, 2021, as a registered nurse, in Visalia California by Kaweah Delta Healthcare, sustained an injury to her bilateral shoulders and claims to have sustained an injury to her left arm.

2. At the time of injury the employer was self insured.
3. The primary treating physician at the time of the request for a QME panel was Dr. William Roach.
4. Dr. Bolling should continue as QME in this matter.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 14, 2026

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

**ALLISON MACLEOD
BRYAN K. LEISER
BRADFORD & BARTHEL**

DW/oo

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