WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AURA RODRIGUEZ, *Applicant*

vs.

MONTEBELLO UNIFIED SCHOOL DISTRICT, permissibly self-insured administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ17842228, ADJ17842767, ADJ17842277, ADJ17842738
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks removal of the "Findings and Order and Opinion on Decision" (F&O) issued on October 8, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was not entitled to a replacement medical evaluator because no ex parte communication occurred with the current agreed medical evaluator (AME).

Applicant contends that the WCJ erred in finding no ex parte communication occurred because the defendant failed to properly serve a supplemental report request upon applicant counsel's address of record.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

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 we will grant applicant's petition as one seeking reconsideration as the October 8, 2025 F&O included findings of employment, which constitutes a final order. As our Decision After Reconsideration, we will apply the removal standard, rescind the October 8, 2025 F&O and issue a new finding that defendant engaged in ex-parte communication. However, we do not award costs or sanctions as applicant failed to prove that defendant acted frivolously or in bad faith.

FACTS

Per the WCJ's Report:

> Aura Rodriguez, claims to have sustained four separate injuries while working for the Montebello School District.
>
> In the first case, ADJ17842277, the applicant claims to have sustained injury arising out of and in the scope of employment on 3-24-2022 to the cervical spine and the right shoulder. In the second case, ADJ17842228, applicant claims to have sustained injury arising out of and in the scope of employment on 5-17-2023 to her right knee. In the third case, ADJ17842738, applicant claims to have sustained injury arising out of and in the scope of employment on 9-26-2022 to the cervical spine, lumbar spine, the bilateral shoulders, and right knee. In the fourth case, ADJ17842767, the applicant claims to have sustained injury arising out of and in the scope of employment on 9-26-2022 to the cervical spine, lumbar spine, and the bilateral shoulders.
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> The parties utilized Dr. Wakim as the AME in this case. He issued four reports and had his deposition taken on one occasion. On October 15, 2024, the Defendant wrote to the AME, Dr. Watkin (AME), requesting information regarding the applicants left knee and work restrictions (Joint Exhibit A). In their letter, they asked for the MMI status as to the left knee, whether there are work restrictions as a result of the four dates of injury. If so, what are the restrictions; and if the applicant has the residual capacity to return to her usual and customary occupation. There was no information sent to the doctor, just a request for clarification regarding the applicants medical status. . .
>
> The Defendants mailed the proposed letter to the Applicant's counsel on October 15, 2024. (Defendants Exhibit A) It was addressed to the Applicant's counsel on 700 Bart Earle Way, Suite 201, Palos Verdes Peninsula, CA 90274.

(WCJ's Report, pp. 2-3.)

While applicant's counsel uses the Palos Verdes Peninsula address on pleadings, applicant also notes a different mailing address. In particular, applicant's mailing address in EAMS and on the Official Address Record is not the Bart Earle Way address.

DISCUSSION

I.

Former Labor Code[1] 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.
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> (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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

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 November 12, 2025, and 60 days from the date of transmission is Sunday, January 11, 2026, which by operation of law means this decision is due by Monday, January 12, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on January 12, 2026, 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

[1] All future references are to the Labor Code unless noted.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on November 12, 2025, and the case was transmitted to the Appeals Board on November 12, 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 November 12, 2025.

II.

As stated in our en banc decision:

> A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1180, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd*. (*Pointer*) (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 45 Cal. Comp. Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal. App. 3d 39, 45 [43 Cal. Comp. Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd*. (2000) 81 Cal. App. 4th 1068, 1070, 1075 [97 Cal. Rptr. 2d 418, 65 Cal. Comp. Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id.* at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

(*Ledezma v. Kareem Cart Commissary and Mfg*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc).)

Here, the order issued by the WCJ is a hybrid decision that included final findings on the issue of employment. While these findings were not challenged, the inclusion of final findings renders the decision a final order for purposes of reconsideration, and thus we treat the petition as one seeking reconsideration.

Although we treat the petition as one seeking reconsideration, the petition only challenges the non-final portion of the decision. In this case, we apply the standard for removal. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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*.) A petitioner must also 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).)

For the reasons discussed below, the decision of the WCJ found that no ex parte communication occurred. Impermissible ex parte communication implicates a party's right to due process. As we find that impermissible ex parte communication occurred in this case, we find that the decision rises to the level of substantial prejudice, which warrants a grant of removal.

III.

As noted in the en banc decision *Suon v. California Dairies* (2018) 83 Cal. Comp. Cases 1803:

> In *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal. Comp. Cases 136 (Appeals Board en banc), the Appeals Board analyzed what constitutes an ex parte communication. Specifically, it was noted that:
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> > Black's Law Dictionary defines 'ex parte' as, 'On or from one party only, usually without notice to or argument from the adverse party.' (Black's Law Dict. (7th ed. 1999) p. 597, col. 2.) Black's further states that an 'ex parte communication' is, 'A generally prohibited communication between counsel and the court *when opposing counsel is not present*.' (*Id.*, [emphasis added].)
>
> (*Maxham, supra*, 82 Cal. Comp. Cases at p. 142.)
>
> In *Maxham*, the Appeals Board found that "[b]ecause defendants' counsel was copied on all communications with the AMEs, those communications cannot be said to be 'ex parte'." (*Id.*)
>
> Whether a party properly served a written communication with the QME to the opposing party is a question of fact the determination of which must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 274 [113 Cal. Rptr. 162, 520 P.2d

978, 39 Cal. Comp. Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal. 3d 312 [90 Cal. Rptr. 355, 475 P.2d 451, 35 Cal. Comp. Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal. Comp. Cases 16].)

(*Id*. at 1809-1810.)

Here the sole question to answer is whether defendant properly served applicant a supplemental report request to the AME.

Section 4062.3 requires service upon an AME as follows:

> (f) Communications with an agreed medical evaluator shall be in writing, and shall be served on the opposing party when sent to the agreed medical evaluator. Oral or written communications with physician staff or, as applicable, with the agreed medical evaluator, relative to nonsubstantial matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, do not constitute ex parte communication in violation of this section unless the appeals board has made a specific finding of an impermissible ex parte communication.

(§ 4062.3(f).)

Proper service upon a party occurs by following WCAB Rule 10625, which states, in pertinent part:

> (a) Service shall be made on the attorney or agent of record of each affected party unless that party is unrepresented, in which event service shall be made directly on the party, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.
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> (b) A document may be served using the following methods:
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> (1) Personal service;
> (2) Electronic service;
> (3) First class mail; or
> (4) An alternative method that will effect service that is equivalent to or more expeditious than first class mail; or
> (5) Another method if the serving and receiving parties have agreed.

Here, defendant chose to serve applicant by mail.[2] However, defendant did not use applicant's correct mailing address. Instead, defendant used a business address at which applicant expressly rejected service by mail. More importantly, **this was not applicant's address listed on**

[2] Applicant's correspondence noted that service would be accepted electronically via email, but defendant did not serve the supplemental report via email.

the Official Address Record. (Cal. Code Regs., tit. 8, § 10205.5.) When serving a party by mail, and absent agreement otherwise, you must serve that party according to the Official Address Record in EAMS. This did not happen and applicant timely objected upon receiving notice of the ex parte communication. Accordingly, applicant is entitled to a new evaluator.

Applicant also seeks reconsideration of the order denying sanctions and costs, however, upon review, applicant only established a technical violation of the rules by defendant. It appears that defendant's error was inadvertent. Applicant failed to establish that this violation was done in bad faith or constituted frivolous conduct. Thus, we agree with the WCJ that sanctions are not warranted in this instance. Notwithstanding the fact that the violation was inadvertent, it would appear that section 4062.3(h) would provide for costs in the form of attorney's fees for such a violation. However, at this time we will defer the issue of costs to the parties to adjust in the first instance with jurisdiction reserved at the trial level in the event of a dispute.

Accordingly, we grant applicant's petition for reconsideration and as our Decision After Reconsideration, we rescind the October 8, 2025 F&O and issue a new finding that defendant engaged in ex-parte communication, but deny applicant's petition for sanctions and/or costs.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for reconsideration of the Findings and Order issued on October 8, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on October 8, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefore:

FINDINGS OF FACT

In ADJ17842277 (MF):

1. Applicant, who was employed on March 24, 2022, as a teacher, at Montebello, California by Montebello School District, claims to have sustained injury arising out of and in the scope of employment to the cervical spine and the right shoulder.

2. Parties stipulated they used Dr. Wakim as the AME in all cases. Dr. Wakim issued a total of 4 reports and had his deposition taken on one occasion.

In ADJ17842228:

1. Applicant, who was employed on May 17, 2023, as a teacher, at Montebello, California by Montebello School District, claims to have claims to have sustained injury arising out of and in the scope of employment to her right knee.

In ADJ17842738:

1. Applicant, who was employed on September 26, 2022, as a teacher, at Montebello, California by Montebello School District, claims to have sustained injury arising out of and in the scope of employment to the cervical spine, lumbar spine and the bilateral shoulders and right knee.

In ADJ17842767:

1. Applicant who was employed on September 26, 2022, as a teacher, at Montebello, California by Montebello School district, claims to have sustained injury arising out of and in the scope of employment to the cervical spine, lumbar spine and the bilateral shoulders.

JOINT FINDINGS OF FACT

1. Defendant engaged in ex parte communication by failing to properly serve a request for supplemental report upon applicant.

ORDER

IT IS ORDERED that a replacement evaluator is warranted and that the parties shall meet and confer as to whether a replacement AME may be agreed upon and absent an AME agreement, the parties shall meet and confer as to how to proceed in obtaining a QME panel. Absent an agreement, the parties may seek an order of the WCJ as to a replacement panel QME.

IT IS FURTHER ORDERED that applicant's request for sanctions is **DENIED** and any issue of costs pursuant to Labor Code section 4062.3(h) is **DEFERRED** to the parties to adjust with jurisdiction reserved at the trial level in the event of a dispute.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 12, 2026

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

AURA RODRIGUEZ
EMILIA MIKAELIAN ROLLING HILLS ESTATES
DABBAH HADDAD MONTROSE

EDL/mt

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