WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTOPHER DUNNE, ***Applicant***

vs.

CITY AND COUNTY OF SAN FRANCISCO, ***Defendants***

Adjudication Number: ADJ22209281
San Francisco District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION AND GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Applicant seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) on January 8, 2026 wherein the WCA found that applicant was not entitled to an evaluation with Robert Noriega, M.D. for the cumulative injury claim of March 26, 2007 through June 23, 2025 because applicant had already been evaluated by Independent Medical Examiner (IME), David Teicheira, M.D., who was selected by applicant to address his September 21, 2023 and January 17, 2024 injury claims.

Applicant asserts that he is entitled to select Dr. Noriega as the IME for his cumulative injury claim because defendant contended that Dr. Teicheira was not qualified to address varicose vein injuries and specifically requested removal of all information pertaining to the cumulative injury to be provided to Dr. Teicheira in preparation for a July 2, 2025 examination.

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

We have considered the contents of the Petition, Answer, and Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons discussed below, we will dismiss the Petition to the extent that it seeks reconsideration and grant it as one

seeking removal. We will also rescind the F&O and substitute it with a new F&O which finds that applicant is entitled to an evaluation with Dr. Noriega as the IME for the cumulative injury claim.

FACTS

Applicant claimed while employed by defendant as a police officer/sergeant, he sustained an injury arising out of and occurring in the course of employment (AOE/COE) during the period from March 26, 2007 through June 23, 2025 to his bilateral lower extremities and circulatory system, resulting in varicose veins. As a member of the City and County of San Francisco police department, the claim was subject to the alternate dispute resolution process (ADR) pursuant to the collective bargaining agreement of Labor Code[1] section 3201.7.

Applicant previously alleged three other injuries, including May 16, 2022 and September 21, 2023 injuries to the right knee and a January 17, 2024 injury to the lumbar spine while employed by defendant as a police officer/sergeant. Applicant designated Dr. Teicheira as the IME for these claims. Both the September 21, 2023 and January 17, 2024 claims were accepted as industrial.

In a letter dated June 30, 2025, defendant notified applicant that benefits were delayed for the cumulative injury claim due to lack of "medical substantiation." (Exhibit H.)

Thereafter, in a letter dated June 4, 2025, defendant notified applicant of a July 2, 2025 appointment with Dr. Teicheira. (Exhibit 1.) The letter listed the September 21, 2023 and January 17, 2024 injury dates of injury but not the cumulative injury.

On June 30, 2025, applicant's attorney's office provided defendant with a proposed cover letter to Dr. Teicheira (Exhibit I) and on July 1, 2025 defendant responded via email (Exhibits J and K) objecting to portions of the cover letter referencing the cumulative injury and use of Dr. Teicheira as the IME for the new claim. Defendant alleged that Dr. Teicheira was "not [a] qualified internist in the field of varicose vein[s]." (Exhibit J.) Applicant's attorney's office responded via email on the same date with a revised cover letter removing the requested portions and noting that Dr. Teicheira was in fact a "certified QME internist" but if defendant wished to proceed with another exam at a later date, applicant would be willing to acquiesce. (Exhibit L.)

In a letter to applicant dated July 28, 2025 defendant accepted applicant's cumulative injury to the varicose veins. (Exhibit N.)

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

Thereafter, Dr. Teicheira issued a report dated July 30, 2025 wherein he concluded, in relevant part, that he could not find "any substantial medical evidence that [applicant's] employment caused the varicose veins[.]" (Exhibit X, p. 25.)

In a letter dated August 13, 2025, defendant denied applicant's cumulative injury claim based upon Dr. Teicheira's findings. (Exhibit O.) The letter indicated that per an agreement between applicant's labor organization and defendant, the parties would proceed with the ADR process. (*Ibid*.; See Exhibit Q.)

Following receipt of defendant's denial, applicant attempted to retain Dr. Noriega as the IME for the cumulative injury claim. An appointment letter dated August 22, 2025 was issued by Dr. Noriega's office notifying the parties of an October 28, 2025 internal medicine examination. (Exhibit 4.)

On August 25, 2025, defendant issued a letter to applicant objecting to the IME with Dr. Noriega on the basis that applicant had been examined by Dr. Teicheira for the cumulative injury claim and was not entitled to a second IME opinion. (Exhibit R.)

On December 18, 2025, an arbitration hearing was held with WCA Saul Allweiss on the sole issue of applicant's entitlement to an IME appointment with Dr. Noriega for the cumulative injury claim.

On January 8, 2026, the WCA issued an F&O which held that applicant was not entitled to an IME examination with Dr. Noriega for the cumulative injury claim on the basis that applicant was already evaluated by Dr. Teicheira for the claim and not entitled to a second IME opinion.

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former 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 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 March 16, 2026, and 60 days from the date of transmission is May 15, 2026. This decision was issued by or on May 15, 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 act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, it is unclear when and if the Report and Recommendation by the WCA was served on the parties as there is no proof of service. No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on March 16, 2026.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a

"final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 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, and other similar issues.

Here, the WCJ's decision pertains to an intermediate procedural or evidentiary issue and does not determine any substantive right or liability or a threshold issue. Accordingly, it is not a "final" decision, and the Petition will be dismissed to the extent it seeks reconsideration. We will, however, consider the Petition as one 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, 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 can show that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a). The petitioner must also demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (*Ibid.*)

In the instant case, we are persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to applicant.

III.

Turning now to the merits of the Petition, applicant contends that he is entitled to select Dr. Noriega as the IME for the cumulative injury claim because defendant previously objected to the use of Dr. Teicheira on the basis that he was not qualified to address varicose vein injury and specifically requested removal of any information pertaining to the cumulative injury from applicant's cover letter, thereby prejudicing applicant.

We note that although there are no specific rules addressing the selection of IMEs in a multiple claim situation, we find guidance from cases addressing the use of panel Qualified Medical Evaluators (PQMEs) in cases involving two or more claims. In *Navarro v. City of Montebello* (2014) 79 Cal.Comp.Cases 418, 420 (Appeals Bd. en banc), we held that the "Labor Code does not require an employee to return to the same PQME for an evaluation of a subsequent claim of injury." Accordingly, an applicant need not return to the same IME for evaluation of a subsequent claim of injury. However, sections 4062.3(j) and 4064(a) taken together state that a medical evaluation shall address "all medical issues arising from all injuries reported on one or more claim forms." In keeping with requirements set forth under sections 4062.3(j) and 4064(a), *Navarro* clarified that at the time of evaluation, the evaluator shall consider all issues arising out of any claims reported before the evaluation, and if several subsequent claims of injury are filed before the evaluation takes place, the evaluator shall also consider those claims. (*Id.* at p. 425.)

Here, Dr. Teicheira had not yet examined applicant prior to the filing of applicant's cumulative injury claim. For this reason, defendant argues that Dr. Teicheira should serve as the IME for all claims. The caveat, however, is that in response to applicant's proposed cover letter to Dr. Teicheira (Exhibit I), defendant objected to the portions of applicant's cover letter which specifically referenced the cumulative injury (Exhibits J and K). Further, defendant contended that Dr. Teicheira was "not [a] qualified internist in the field of varicose vein[s]." (Exhibit J.) As a result, applicant's attorney's removed the requested information and acquiesced to an examination with another IME at a later date. (Exhibit L.)

As the parties are well aware, the Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805][all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd.* (*Von Ritzhoff*) (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["essence of due process is…notice and the opportunity to be heard"]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff*, *supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

Here, there was no stipulation to allow Dr. Teicheira to act as IME on all of applicant's claimed injuries. Further, applicant agreed to withhold information pertaining to the cumulative injury in anticipation of another evaluation with a different IME. This was prejudicial to applicant in that he was unable to provide his position on the cumulative injury or pose any specific questions to Dr. Teicheira on compensability and other relevant issues with respect to the cumulative injury. Given that applicant was unable to provide information or raise inquiries to which he is otherwise entitled under Administrative Director (A.D.) Rules 35(a)(3) and 35.5(c)(1) (Cal. Code Regs., tit. 8, §§ 35(a)(3), 35.5(c)(1)), denying a separate IME with Dr. Noriega would violate the applicant's due process rights.

Accordingly, we dismiss applicant's Petition to the extent it seeks reconsideration and grant it as one for removal, and as our Decision After Removal, we rescind the January 8, 2026 F&O, and substitute it with a new F&O which finds that applicant is entitled designate Dr. Noriega as the IME for the cumulative injury claim.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued by the WCA on January 8, 2026, is **DISMISSED.**

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Findings and Order issued by the WCA on January 8, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCA on January 8, 2026, is **RESCINDED** and **SUBSTITUTED** with new Findings and Order, as provided below.

FINDINGS OF FACT

Applicant is entitled to designate Robert Noriega, M.D. as the IME for the cumulative injury claim during the period March 26, 2007 through June 23, 2025.

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 15, 2026

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

CHRISTOPHER DUNNE
RAINS LUCIA STERN ST. PHALLE & SILVER
OFFICE OF THE CITY ATTORNEY, SAN FRANCISCO
SAUL ALLWEISS, ARBITRATOR

RL/*cs*

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