WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DIANNE LOPEZ, *Applicant*

vs.

AAA NORTHERN CALIFORNIA,
OLD REPUBLIC INSURANCE COMPANY, administered by ESIS, *Defendants*

Adjudication Number: ADJ17103616
Sacramento District Office

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

Applicant seeks reconsideration of the Findings of Fact, Award, and Order issued by the workers' compensation administrative law judge (WCJ) on March 10, 2026. Therein the WCJ found that, while employed as a battery tech and roadside assistant on June 13, 2022, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the cervical spine, thoracic spine, and left shoulder. The WCJ further found that "[t]he record needs further development, with a neurologist, as to whether Applicant sustained a compensable injury to the head (characterized as headaches) because of the June 13, 2022, incident." Based on these findings, the WCJ issued the following order:

> The parties are ordered to adjust benefits according to the findings of fact and award referenced above. Additionally, since the record is deficient as it relates to the claimed headaches and the Chiropractic [qualified medical evaluator (QME)] cannot render competent opinions related to the claimed headaches, return to the Chiropractor is not required. Therefore, the parties are ordered to obtain a QME under Labor Code, Sections 4061 and 4062. In the alternative, the parties can utilize an agreed medical examiner (AME). Absent an agreement by the parties regarding either an AME or obtaining a neurological PQME, then the WCJ will issue an order appointing a regular physician under Labor Code, Section 5701 to evaluate the headache claim.
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> (Findings of Fact, Award, and Order, 3/10/26.)

Applicant contends that the WCJ erred in ordering that the chiropractic QME Edward Jennings, D.C., cannot render competent opinions related to the claimed headaches.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny applicant's Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny the Petition as one seeking reconsideration, and we will grant it as one for removal, affirm the Findings of Fact and Award, and amend the Order to omit the statement that a chiropractic QME cannot render a competent opinion related to the claimed headaches.

I.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

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. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a finding regarding a threshold issue with respect to employment and injury. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

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 significant 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, we are persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Therefore, we will deny the Petition as one seeking reconsideration and we will grant it as one for removal.

II.

Former Labor Code section 5909[1] 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.

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

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

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 23, 2026, and 60 days from the date of transmission is May 22, 2026. This decision is issued by or on May 22, 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 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 March 23, 2026, and the case was transmitted to the Appeals Board on March 23, 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 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 March 23, 2026.

III.

As relevant here, Administrative Director (AD) Rule 31.7(b) provides for an additional QME panel in another specialty as follows:

> (b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:
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> …
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> (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;
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> (Cal. Code Regs. tit. 8, §31.7(b)(3).)

In this case, the WCJ stated:

> [T]he QME Chiropractor makes the statement that "mild uncontrolled facial neuralgia pain that "may" interfere with the activities of daily living." (See Exhibit E, Page 9)
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> The QME' s statement that the applicant's "pain may impact activities of daily living," without identifying any specific functional limitations or clinical findings to support that assertion, is speculative and does not constitute substantial medical evidence. The term "may" reflects mere possibility rather than reasonable medical probability. Medical-legal opinions in workers' compensation proceedings must be framed in terms of reasonable medical probability and must clearly set forth the reasoning and factual basis supporting the conclusions reached. An unsupported statement that a condition may affect daily activities provides no measurable functional analysis, no examples of limitation (such as restrictions in lifting, bending, concentrating, or self-care), and no explanation of causation. As such, it amounts to conjecture rather than a medically reasoned opinion.
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> (Report, at p. 4.)

Decisions of the Appeals Board "***must be based on admitted evidence in the record.***" (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), emphasis added.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, ***and the evidence relied on***," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ ***must refer with specificity to an adequate and completely developed record***." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]), emphasis added.) Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's

findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

We agree with the WCJ that Dr. Jennings' reporting in this case on the issue of causation of headaches is not substantial medical evidence and that, therefore, good cause exists for the WCJ to order a neurological panel. However, broad statements based on "common knowledge" about the qualification of chiropractors in general or the scope of their expertise are not based on any evidence in this record and unnecessary to the proper analysis. Therefore, we will amend the order to remove the unnecessary language.

Accordingly, for the reasons stated herein, we deny applicant's petition to the extent it seeks reconsideration and grant it as a Petition for Removal to amend the Order.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the March 10, 2026 Findings of Fact, Award, and Order is **AFFIRMED** except that it is **AMENDED** as follows:

…

ORDER

The parties are ordered to adjust benefits according to the Findings of Fact and Award referenced above. Additionally, since the record is deficient as it relates to the claimed headaches, the parties are ordered to obtain a QME under Labor Code, Sections 4061 and 4062. In the alternative, the parties can utilize an agreed medical examiner (AME). Absent an agreement by the parties regarding either an AME or obtaining a neurological PQME, then the WCJ will issue an order appointing a regular physician under Labor Code, Section 5701 to evaluate the headache claim.

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

MAY 22, 2026

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

DIANNE LOPEZ
METZINGER & ASSOCIATES
DUNCAN, CASSIO, LUCCHESI, BINKLEY & VAN DOREN

PAG/bp

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