WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JENNY QUINTERO, *Applicant*

vs.

ROCK HOLDINGS, INC.; SENTRY CASUALTY COMPANY administered by SENTRY CLAIMS SERVICES, *Defendants*

Adjudication Number: ADJ20612739
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued on August 14, 2026. The workers' compensation administrative law judge (WCJ) found in relevant part that applicant, while employed during the period of December 2, 2023 through December 2, 2024, as a senior banker, occupational group 211, claims to have sustained injury arising out of and in the course of employment (AOE/COE) to various body parts; and that applicant was not entitled to a replacement Qualified Medical Evaluator (QME) panel in orthopedic surgery.

Applicant contends that the QME's failure to make himself available for deposition within 120 days of the first request pursuant to AD Rule 35.5(f) (Cal. Code Regs., tit. 8, § 35.5(f)) is grounds for a replacement panel; and that the WCJ erred in admitting the deposition transcript of the QME.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending the Petition be treated as one for removal and denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the F&O and return the matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant alleged injury during the period of December 2, 2023 through December 2, 2024 to her low back, neck, elbows, right shoulder, wrists, fingers, legs, feet, headaches, gastrointestinal system, lower extremities, and right upper extremity.

According to applicant's petition to replace the QME, a QME evaluation took place with John Steinman, M.D., on July 10, 2025, and a report dated July 10, 2025 issued. No evidence was offered to confirm when the report was served or received by any party.

On November 17, 2025, defendant filed a Declaration of Readiness to Proceed (DOR) requesting a Mandatory Settlement Conference (MSC), which was set for April 8, 2026. Applicant timely objected to the DOR indicating that they were making ongoing efforts to set the deposition of the QME. The objection alleged that the initial attempt to set the deposition of the QME had been made on August 13, 2025, with follow up on September 22, 2025, and on October 29, 2025. The objection indicated that applicant would file a petition to replace the QME.

On March 26, 2026, applicant filed the petition to replace the QME, alleging a violation of AD Rule 35.5(f) (Cal. Code Regs., tit. 8, § 35.5(f)) for failure to schedule a timely deposition. Applicant attached a document that applicant alleged demonstrated multiple attempts to schedule a deposition.

On April 7, 2026, defendant's attorney emailed applicant's attorney, stating that the deposition of the QME was set for May 26, 2026. (Defendant's Exhibit B.)

On April 8, 2026, the parties appeared at the MSC. The Minutes state "Matter will be Set for Trial."

On April 13, 2026, by way of a letter, applicant's attorney objected to the deposition of the QME due to the pending petition to replace the QME. (Applicant's Exhibit 2.)

The deposition took place on May 26, 2026. (Defendant's Exhibit A.) Applicant's attorney reiterated his objection to the deposition given the pending trial on the issue of the replacement panel. (*Id*. at 11:3-19.) He asked questions regarding the setting of the deposition. The QME testified that he was unaware of any attempts by applicant's attorney to set the deposition. (*Id*. at 15:5-22.) Applicant's attorney confirmed the name of the person at Arrowhead Evaluations to contact for deposition dates. (*Id*. at 19:21-20:2.) The QME indicated that his office does not give preferential treatment in obtaining deposition dates to defendants. (*Id*. at 27:22-25.) He learns of a

deposition the week prior to the deposition when the file is prepared for his review. (*Id*. at 28:16-24.)

On June 15, 2026, a PTCS was completed that limited the issue for trial to applicant's petition to replace the QME. The deposition transcript of the QME dated May 26, 2026 is listed. Applicant includes two proposed exhibits as well. The PTCS is not signed by the WCJ.

On July 8, 2026, the matter proceeded to trial. The sole issue was "Whether applicant is entitled to a replacement QME panel in orthopedic surgery because her QME Dr. John Steinman, was unable to provide Applicant with a deposition within 120 days from the initial request of August 13, 2025." No testimony was taken. Applicant objected to Defendant's Exhibit A, deposition transcript of Dr. Steinman, "on the grounds that the deposition transcript of Dr. John Steinmann was obtained post MSC on the replacement issue." (MOH, 3:17-18.) Applicant's Exhibit 1 is listed as "Petition for replacement QME panel, dated March 26, 2026."

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909,[1] which states 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 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."

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

Here, according to Events, the case was transmitted to the Appeals Board on September 2, 2026 and 60 days from the date of transmission is Sunday, November 1, 2026. The next business day that is 60 days from the date of transmission, is Monday, November 2, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, November 2, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 2, 2026, and the case was transmitted to the Appeals Board on September 2, 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 September 2, 2026.

II.

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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 included findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant and occupational codes.

Although the decision contains finding that are final, petitioner is only challenging the interlocutory finding that applicant is not entitled to a replacement QME panel. 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).)

In this case, based upon our review of the record, and for the reasons discussed below, 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 if the matter ultimately proceeds to a final decision adverse to petitioner. The record here is incomplete to sustain a proper finding as discussed below. As a result, we will rescind the F&O and return the matter to the WCJ for further proceedings.

III.

Applicant argues that AD Rule 35.5(f) requires replacement of a QME when the QME does not make himself available for deposition within 120 days of the first request regardless of whether

the QME's unavailability would delay the case. Applicant argues that the unavailability of the QME would not cause delay in this matter as the applicant requires additional medical legal evaluations. (Petition, 3:16-19.)

Two provisions in the Labor Code expressly grant parties the *statutory* right to replace a QME. In other words, when a violation described in the statute occurs, a party may promptly seek replacement of the QME. The first is ex parte communication. (Lab. Code, § 4062.3(f), (g); *Alvarez v. Workers' Comp. Appeals Bd*. (2010) 187 Cal.App.4th 575; see also *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc); *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136 (Appeals Board en banc).) The second is a failure to timely complete a formal medical evaluation, specifically to issue a timely report following a medical evaluation, under sections 4062.5 and 139.2(j)(1). (*Vazquez v. Inocensio Renteria* (2025) 90 Cal. Comp. Cases 514, 525 (Appeals Board en banc).)

AD Rule 31.5(a) enumerates 16 circumstances under which a party may request a replacement QME panel. (Cal. Code Regs., tit. 8, § 31.5(a).)

As applicable here, AD Rule 35.5(f) states that:

> Unless the Appeals Board or a Workers' Compensation Administrative Law Judge orders otherwise or the parties agree otherwise, whenever a party is legally entitled to depose the evaluator, the evaluator shall make himself or herself available for deposition within at least one hundred twenty (120) days of the notice of deposition...

(Cal. Code Regs., tit. 8, § 35.5(f).)

Although AD Rule 35.5(f) requires the QME to make himself available for deposition within 120 days of the notice of deposition, the failure to do so is not one of the enumerated circumstances for obtaining a replacement panel pursuant to Rule 31.5(a).

Absent a statute compelling such a result, whether a QME should be replaced due to unavailability falls within the Appeals Board's broad equitable powers. (Lab. Code, § 111; see §§ 52, 5300, 5301, 5302; see also *McHugh v. Santa Monica Rent Control Bd*. (1989) 49 Cal.3d 348, 355–356 [the Appeals Board "been legislatively endowed with judicial powers pursuant to a specific constitutional authorization"]; *Bankers Indemnity Ins. Co. v. Industrial Acc. Com*. (*Merzoian*) (1935) 4 Cal.2d 89, 98 ["[T]he Industrial Accident Commission of this state has been invested with the power and authority to hear and determine equitable issues."].)

We note that the determination of whether good cause exists to replace an existing QME is

within the sound discretion of a WCJ or the Appeals Board. (*Vazquez*, *supra*, 90 Cal.Comp.Cases at 528.) Pursuant to *Vazquez* the WCJ may consider the following factors:

> a. The length of delay caused by the QME's unavailability.
> b. The amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the QME process.
> c. What efforts, if any, have been made to remedy the QME's availability.
> d. Case specific factual reasons that justify replacing or keeping the current QME, including whether a party may have waived its objection.
> e. The Appeals Board's constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.)

(*Id*. at 517.)

Here, the WCJ correctly determined that application of factors outlined in *Vazquez*, *supra*, was appropriate in considering whether to order a replacement panel.

A decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). A decision "must be based on admitted evidence in the record," and "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 475, 478 (Appeals Board en banc).) Minutes of hearing and a summary of evidence must be prepared at the conclusion of each hearing and must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10566; see *Hamilton*, *supra*, at p. 476.)

WCAB Rule 10759 (b)(1) states in pertinent part that:

> Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., "the July 1, 2008 medical report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit. . .

(Cal. Code Regs., tit. 8, § 10759(b)(1).)

Here, the petition to replace the QME was admitted as Applicant's Exhibit 1. A petition is part of the record of proceedings and need not be admitted as evidence. At the same time, evidence to be admitted must be separately identified and marked on the record and is not admitted by way of an attachment to a pleading.

WCAB Rule 10803(a)(2) defines the record of proceedings as:

> . . . the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

Applicant carries the burden of proof that a replacement panel is necessary. Here, applicant has not offered evidence to show when first contact was made or their attempts thereafter. While we may consider the allegations made in the pleadings, a decision must be based on the admitted evidence. No witness testimony was offered to corroborate that contact was made, when it was made, or the response from the QME. Further, the admitted evidence is not sufficient because a complete factual picture is necessary for the WCJ to balance the factors in *Vazquez*. As such, we will return the matter to the WCJ to admit the appropriate evidence and/or develop the record.

IV.

Applicant challenges the admissibility of Defendant's Exhibit A because the deposition was obtained after conclusion of the initial MSC. Since we are rescinding the decision, the issue of whether the transcript is admissible is moot, but we offer the following observations.

In determining whether to admit evidence, we are governed by the principles of section 5908, which states that the appeals board "shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." The right to present evidence implicates the right to due process. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102]; *Pence v. Industrial Acci. Com*. (1965) 63 Cal.2d 48, 51 [30 Cal.Comp.Cases 207, 209].)

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. (*Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is ". . . one of 'the rudiments of fair play' assured to every litigant . . ." (*Id*. at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.)

Section 5502 requires the WCJ to frame the issues and stipulations for trial at the MSC. The parties are required to disclose all their evidence at the MSC on the PTCS and submit the PTCS to the WCJ for a substantive review *on the day of the hearing*, *with the parties present*. The primary purpose of the statute is to avoid trial by surprise. Failure to follow section 5502 at the trial level not only violates the statute but invites a host of errors that are easily avoidable. While it has long been understood that workers' compensation proceedings are handled with a degree of informality, such informality cannot justify violating the parties' right to due process to be notified of the issues upon which a trial is set and to be notified of the witnesses and exhibits that will be produced at trial.

To be clear, it is within the WCJ's discretion to order development of the record in cases where the record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) The terms of section 5502 do not restrict the WCJ's discretion in such matters.

Here, the issue for trial was whether the panel QME should be replaced. We do not see any error by the WCJ in admitting the deposition because the issue of whether it was taken after the close of discovery does not change the outcome here. At some level, Dr. Steinman's testimony may have been relevant to show that he was unaware of the scheduling process. This could have been accomplished by way of a stipulation between the parties that the deposition occurred and that Dr. Steinman was not aware of the scheduling process, nonetheless, the deposition is admissible to the extent it is relevant to the issue ultimately tried.

It appears that the parties' relationship is contentious. Applicant attorney's objection to

proceeding with the deposition was based on his reading of AD Rule 35.5 that he could replace the QME, but it was applicant who initially sought the deposition, and the deposition is relevant to a determination of the merits of the case. Defendant's choice to proceed with the deposition appears to have been for the purpose of showing that Dr. Steinman was in fact available, thereby rendering the issue of a replacement panel moot, and not actually as to any urgency with respect to the merits of the case.

The Workers' Compensation Appeals Board has limited resources, and when the parties engage in petty disputes, they waste judicial resources and further contribute to delay. The parties are encouraged to stipulate to discovery issues, including whether additional panels are necessary, and to focus on the ultimate issues of whether applicant's injury is AOE/COE and whether applicant is entitled to compensation as a result.

Accordingly, we grant the Petition for Reconsideration, and as our Decision After Reconsideration, we rescind the August 14, 2026 F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of August 14, 2026 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 2, 2026

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

JENNY QUINTERO
LAW FIRM OF ROWEN, GURVEY & WIN
THOMAS KINSEY, LLP

TF/md

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