

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JULIA BERING, *Applicant*

vs.

**HEALTH LINK; MARKEL INSURANCE COMPANY,
administered by MARKEL INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ17258260
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration and/or removal of the “Findings of Fact and Orders” (F&O) issued on March 18, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that additional qualified medical evaluator (QME) panels in psychology and internal medicine were warranted and ordered the Medical Unit to issue additional panels accordingly.

Defendant contends that good cause was not presented to order additional panels.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration and/or Removal (Report) recommending that we deny both petitions.

We have considered the allegations of the Petition for Reconsideration and/or Removal and the contents of the WCJ’s Report. Based on our review of the record we will treat the Petition as seeking reconsideration of the F&O, as the F&O contains both final and non-final orders and deny reconsideration.

FACTS

Per the WCJ’s Report:

1. Procedural background.

Applicant has an admitted industrial injury: an August 2, 2022, specific injury to her neck and head. Applicant claims to have sustained injury arising out of the

course of employment to her brain, psyche, dental, and in the form of fibromyalgia; defendant has denied liability for these body parts. The dispute at this trial was regarding applicant's assertion that she is entitled to two additional panels in the specialties of psychology and rheumatology¹. Defendant contends that applicant is not entitled to these additional panels.

The matter proceeded to trial on February 10, 2026. There were fifteen exhibits offered into evidence. Additionally, applicant testified at trial.

2. *Evidence at trial and decision.*

a. *Medical Reports*

i. Reports of QME Wayne Anderson, D.O.

Joint Exhibits 1 through 5 are reports of QME Dr. Anderson. In his April 6, 2024, report, Dr. Anderson took a history of injury from applicant. He stated the injury occurred when applicant was driving for work and “[a]nother vehicle struck the driver’s door region, causing airbags to deploy.” Following the incident, she felt: ringing in the ears, pain all over the whole body, dizziness and off balance. (Joint Exhibit 5, p. 11.) He conducted an examination of applicant and reviewed medical records. He noted that applicant had a vascular condition of occlusion of blood vessels prior to this industrial injury. (pp 14-15.) Dr. Anderson diagnosed applicant with: postconcussion syndrome, post-traumatic headache disorder, headache disorder, dizziness/disequilibrium, cognitive symptoms, and emotional symptoms. (p. 20.) He then discussed the difficulty with diagnosing a concussion in this instance. He recommended a “brain trauma protocol MRI”. (p. 37.)

In his April 3, 2025, report, Dr. Anderson reviewed *sub rosa* video. He stated that in order to make a conclusion following viewing the video, he would need to receive commentary from the applicant explaining the video. He also stated one cannot “see” a headache from watching a video. He stated:

I cannot infer that the applicant has headaches but I cannot exclude them.

I can state that the applicant has objectively demonstrated excellent equilibrium.

I cannot make a commentary about cognition.

And, if I put on my pain medicine QME hat, I can comment that the applicant does not appear to have orthopedic issues overtly demonstrated in the videos.

¹ The QME in neurology is Wayne Anderson, D.O.

I remain puzzled by these discrepancies but do hope that the applicant offers an explanation that can reconcile the obvious complexities that are present here.

(Joint Exhibit 2, pp. 10-11.)

In his May, 26, 2025, report, Dr. Anderson stated that, because there is no neurologic evidence of a cognitive problem or equilibrium problem, “that leaves us with the subjective headache syndrome alone.” He went on to assign a 3% WPI for headache. He further stated: “I think there may be significant depression here that may be impactful in the way things are perceived, reported, and experienced, and if there is support for the idea that any are potentially industrial, I think a psychiatry QME would be the next step.” (Joint Exhibit 1, pp. 6-7.)

ii. Reports of Melvin Britton, M.D.,

Applicant’s Exhibit 1 consists of two reports of Dr. Britton. The July 9, 2024, report is entitled “Medical-Legal Rheumatology Consultation/Evaluation”. In his report, Dr. Britton gave a history of present illness, conducted a medical record review, reviewed various histories, reviewed symptoms, and conducted a physical examination. He diagnosed her with “probable fibromyalgia” and “history of vascular brain condition”. (p. 17.) He recommended further diagnostic studies. He stated, “although it is clear the patient had a variety of medical problems and appointments antecedent to the accident with the car and consequent injuries, I feel with medical probability that this accident formed an initiating condition of the fibromyalgia.” (pp. 17-18.)

In his report dated September 11, 2024, Dr. Britton reviewed laboratory results. He stated, “I think that she is presently suffering from fibromyalgia related to PTSD.” He recommended further treatment. (pp. 1-2.)

iii. Report of Dale Helman, M.D.

Applicant’s Exhibit 2 is a report of Dr. Helman dated February 27, 2024. In his report, Dr. Helman stated in relevant part, “it is my impression that in addition to her severe postconcussion syndrome and traumatic brain injury, [applicant] clearly has other issues as well including musculoskeletal issues, chronic pain, and even psychological and psychiatric issues...” (p. 1.)

b. Decision

I found good cause for additional panels in the specialties of psychology and rheumatology, and issued an Order that the Medical Unit issue QME panels in those specialties. All other issues were deferred, with WCAB jurisdiction reserved.

(WCJ's Report, pp. 1-4.)

DISCUSSION

I.

Former Labor Code² 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.

(§ 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 April 22, 2026, and 60 days from the date of transmission is Sunday, June 21, 2026, which by operation of law means this decision is due by Monday, June 22, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on June 22, 2026, so that we have timely acted on the Petition as required by section 5909(a).

² All future references are to the Labor Code unless noted.

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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on April 22, 2026, and the case was transmitted to the Appeals Board on April 22, 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 April 22, 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 WCAB or court of appeal. (See § 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. 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not 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.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Orders issued on March 18, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 22, 2026

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

**JULIA BERING
LAW OFFICE OF SAAM AHMADINIA, APC
D'ANDRE LAW LLP**

EDL/mt

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

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