

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

KIM SIEP, Applicant

vs.

**O'REILLY AUTO ENTERPRISES, LLC;
AIU INSURANCE COMPANY administered by CORVEL, Defendants**

**Adjudication Number: ADJ17870859
Lodi District Office**

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

Applicant seeks removal and/or reconsideration of the Findings of Fact, Orders (F&O) issued on January 23, 2026 by the workers' compensation administrative law judge (WCJ). In that decision, the WCJ found, in pertinent part, that an additional panel in the specialty of neurology, shall not be issued.

Applicant contends that the WCJ erred in finding that applicant is not entitled to an additional panel qualified medical evaluator (PQME) in the specialty of neurology to address his post-concussion headaches, post-concussion syndrome, and closed head injury.

We did not receive an answer from defendant. The WCJ filed a Report and Recommendation on Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition and the contents of the WCJ' Report with respect thereto. Based on our review of the record, and as discussed below, we will dismiss applicant's Petition for Reconsideration, grant the Petition for Removal, rescind the decision of the WCJ, substitute it with a new Findings and Order finding and ordering that applicant is entitled to an additional panel in the specialty of neurology, as well as address a clerical error to list the correct case number for the orders, and otherwise restate and affirm the findings of the WCJ.

BACKGROUND

Applicant sustained admitted industrial injuries arising out of and in the course of employment (AOE/COE) on April 7, 2023 to the neck, low back, right shoulder, right knee and psyche while employed by defendant, and claims to have sustained industrial injury to numerous other parts of body and body systems. A dispute arose as to applicant's entitlement to additional panels in the fields of 1) psychiatry, 2) neurology, and 3) ophthalmology, for claimed injuries sustained in the form of psychiatric injury, post-concussion headaches, post-concussion syndrome, closed-head injury, other neurologic injury, as well as bilateral eye injuries and blurred vision.

On October 21, 2025, the matter proceeded to trial solely on discovery issues, including: "Should an additional panel in the specialty of neurology be issued to address Applicant's post-concussion headaches, post-concussion syndrome, closed-head injury, and other neurological injuries." (Minutes of Hearing and Summary of Evidence (Minutes), October 21, 2025, at p. 2:21-23.)

At trial, parties stipulated the following facts:

1. Applicant Kim S. Siep, born [...], while employed on 4-7-2023, as a stock clerk, Occupational Group No. 360, at Stockton, California, by O'Reilly Auto Enterprises, LLC., sustained injury arising out of and in the course of employment to the neck, low back, right shoulder, and right knee, psych; and Applicant claims to have sustained injury arising out of and in the course of employment to the nervous system, diabetes, elevated cholesterol, hypertension, bilateral eyes (blurred vision), and headaches, head and brain, TBI, upper extremity and left knee.
2. At the time of the injury, the employer's workers' compensation carrier was AIU Insurance Company.
3. The employer has furnished some medical treatment. The primary treating doctor is Eduardo Lin, M.D.
4. No attorneys' fees have been paid, and no attorney fee arrangements have been made, except Labor Code Section 5710, if it applies.
5. Defendant does agree that the treating reports of Dr. Lin do indicate blurred vision and headaches. Defendant does object to whether the cause was industrial or nonindustrial.

(Minutes, October 21, 2025, at p. 2:2-17.)

On January 23, 2026, the WCJ issued a Findings of Fact, Orders in which it was found that additional panels shall be issued to address applicant’s claimed psychiatric and ophthalmologic injuries, but that an additional panel in the specialty of neurology shall not be issued.

It is from the finding denying an additional PQME in the field of neurology that applicant seeks removal.

DISCUSSION

I.

Preliminarily, we note that former Labor Code¹ 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 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 February 23, 2026 and 60 days from the date of transmission is April 24, 2026. This decision was issued by or on April 24, 2026, so that we have timely acted on the petition as required by section 5909(a).

¹ All further references are to the Labor Code unless otherwise stated.

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 WCJ, the Report was served on February 23, 2026, and the case was transmitted to the Appeals Board on February 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 February 23, 2026.

II.

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; *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 [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 [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.

In this matter, the findings were all related to the issuance of additional PQME panels. As such, they are interlocutory procedural findings. While petitioner filed for both reconsideration and removal of the WCJ's findings, the findings did not determine any substantive right or liability nor determine a threshold issue. Reconsideration is therefore inappropriate here. Accordingly, it is not a "final" decision, and the Petition will be dismissed to the extent it seeks reconsideration, and we will review 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 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 facts of the case, 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.

III.

Turning to the merits, in his Opinion on Decision and Report, the WCJ noted some of the procedural history as follows:

Applicant has alleged in his amended Application for Adjudication of Claim that he sustained injuries to his head, neck (with radiating pain and numbness in upper extremities), bilateral eyes (i.e., blurred vision), right shoulder, bilateral knees, brain[,] back and nervous.

There are approximately three evaluators in this case at this time.

- David Chow, M.D. i[s] the QME in pain medicine,
- Claude S. Munday, Ph.D. is serving as the AME in neuropsychology[,]
- M.D. Richard Levy, served as the internal medicine QME[] in this case.

On November 20, 2024, QME Dr. Chow issued a supplemental report in which he recommended that Applicant have a "QME/AME in the specialty of Ophthalmology, to address the Applicant's blurred vision" and to have a "QME/AME in the specialty of Neurology to address the Applicant's Post-

Concussion Headaches, Post-Concussion Syndrome, and Close[d] Head Injury." (Joint Exhibit 101.)

On February 13, 2025, AME Dr. Munday issued his evaluation report with respect to his specialty of neuropsychology. Although Dr. Munday indicated that there "is insufficient evidence to firmly diagnose a neurocognitive disorder due to traumatic brain injury," there is [a] "possibility" that Applicant has a neurocognitive disorder as a result [of] the concussion."

D[r.] Munday then diagnosed Applicant with "Rule Out Mild Neurocognitive Disorder Due to Traumatic Brain Injury." Dr. Munday indicated that Applicant needed "aggressive mental health treatment and ultimately evaluation from a medical-legal perspective by a psychiatrist." (Joint Exhibit 104.)

(Opinion on Decision, January 23, 2026, at pp. 2-3; Report at p. 3.)

At issue is whether applicant is entitled to a panel in neurology (MPN) pursuant to Cal. Code Regs., tit. 8, § 31.7(b) in addition to the panel which yielded panel qualified medical evaluator (QME), Dr. Chow, in the specialty of pain medicine. When Dr. Chow first evaluated applicant on October 17, 2023, applicant's symptoms included head pain, headaches, dizziness, blurred vision, reduced balance, reduced memory and reduced concentration. (Joint Exhibit 103, at p. 2.) Dr. Chow's diagnoses included closed head injury/traumatic brain injury; post-concussion syndrome; and post-concussion headaches. (*Id.* at p. 10.) On August 5, 2024, Dr. Chow reviewed medical treatment records and issued a supplemental report. (Joint Exhibit 102.) Diagnostic testing reviewed included a CT head scan taken on April 11, 2023, and two MRI Brain scans on May 14, 2023 and June 28, 2023.

On November 20, 2024, Dr. Chow reevaluated applicant and he complained of ongoing left occipitoparietal headaches with dizziness, blurred vision and reduced short-term memory. (Joint Exhibit 100, at p. 14.) Dr. Chow's diagnoses for applicant of closed head injury/traumatic brain injury, post-concussion syndrome and post-concussion headaches remained unchanged. (*Id.* at p. 31.)

On July 21, 2025, Dr. Chow issued a supplemental report responding to additional questions posed to him by applicant's counsel, including the following specific question: "Please state whether you can address the Applicant's head/headaches or if the Applicant should have an additional QME/AME in the specialty of neurology, for the claimed head injury/headaches..." (Joint Exhibit 101, at p. 2.) In response to same, Dr. Chow requested the parties schedule a

QME/AME in the specialty of neurology to address applicant's post-concussion headaches, post-concussion syndrome and closed head injury. (*Id.* at p. 6.)

WCAB Rule 31.7 provides the specific procedure by which an additional panel in a different specialty may be obtained. (Cal. Code Regs., tit. 8, § 31.7). WCAB Rule 31.7 states, in relevant part:

(a) Once an Agreed Medical Evaluator, an Agreed Panel QME, or a panel Qualified Medical Evaluator has issued a comprehensive medical-legal report in a case and a new medical dispute arises, the parties, to the extent possible, shall obtain a follow-up evaluation or a supplemental evaluation from the same evaluator.

(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:

(1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

...

(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.

(Cal. Code Regs., tit. 8, § 31.7.)

As per Dr. Chow's July 21, 2025 report, there were unresolved issues in dispute for applicant's head injury/headaches. Dr. Chow indicated in his report that applicant should be scheduled for a QME/AME in the specialty of neurology to address applicant's post-concussion headaches, post-concussion syndrome, and closed head injury. (Joint Exhibit 101, p. 6.)

Thereafter, on August 13, 2025, applicant filed a petition for an order for additional panels in the field of neurology and ophthalmology, based upon the findings of Dr. Chow as set forth in his July 21, 2025 reporting. We note that on August 15, 2025, the WCJ issued a findings and order granting applicant's petition and finding the record needed further development in the specialties

of neurology (MPN) and ophthalmology (MOP) however the order further indicates that a timely objection to it renders the order null and void. (Findings and Order, August 15, 2025, pp. 2-3.)

Thus, while the WCJ found good cause for the issuance of such an order at that time, and we cannot locate a timely objection to the order, and the matter proceeded to trial on October 21, 2025 on the issue of the additional panels. The WCJ's subsequent F&O denying a panel in the field of neurology relied on the reporting of neuropsychologist agreed medical evaluator (AME), Claude S. Munday, Ph.D., as the basis upon which to deny applicant's request, noting that as an AME, Dr. Munday's opinions are given great weight, and that Dr. Munday never opined that an additional neurology panel is needed. While Dr. Munday was selected as an AME in the field of neuropsychology, neurology and neuropsychology are different specialties though they may treat the same body parts, head/brain.

For his part in this matter, Dr. Munday acknowledged applicant's headaches as follows:

Regarding headaches, applicant cites these as being "internal and external." It pulsates. He has a headache at least once a week and sometimes two or three times a week. If he is too hot or with cold weather, they occur more frequently... When he has a headache, his neck also hurts...Initially it appeared that this was a laceration to the head. He had headaches. The reader should recognize some technical jargon issues here. One can have an injury to the head with lacerations, muscle trauma, and resultant headaches even of serious magnitude, but that in and of itself is not a "concussion." By definition (per the Centers for Disease Control and Prevention and others) a concussion involves an alteration of consciousness as a consequence of forces imparted to the brain. It is very questionable whether we have a concussion or brain injury here per se. Once again, clearly there was an injury to his head, and it would not be at all unexpected that there were major issues with headache.

(Joint Exhibit 104, at pp. 7; 17.)

Per the diagnostic testing performed on applicant, along with the reporting of Dr. Chow, and the unrebutted testimony of the applicant, applicant is suffering from physical manifestations of a head injury including mild posterior superior scalp swelling/hematoma and mild edema at the left posterior superior scalp, as well as headaches. Further, at trial, the parties stipulated that primary treating physician, Eduardo Lin, M.D., reported applicant's headaches, although defendant objected as to whether the headaches were industrial in nature. (Minutes, October 21, 2025, at p. 2:15-17.)

Given the above, we find that a QME in the specialty of neurology (MPN) to address the applicant's post-concussion headaches, post-concussion syndrome and closed head injury, as well as any industrial causation of same, is appropriate.

Finally, we note an apparent clerical error in the F&O of the WCJ wherein the Orders list ADJ10300370, which is a case number that does not belong to applicant, and will amend such order accordingly to list ADJ17870859 as the proper case number. (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145] [Appeals Board may correct a clerical error at any time].)

Accordingly, we dismiss applicant's Petition as one for Reconsideration, grant applicant's Petition as one for Removal, rescind the WCJ's decision and substitute it with a Findings and Order that there is good cause for the issuance of a panel in neurology, amend the Orders to list the correct case number, and otherwise restate the findings of the WCJ.

For the foregoing reasons,

IT IS ORDERED that the applicant's Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of January 23, 2026, is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. An additional panel in the specialty of psychiatry, shall be issued to address Applicant's claimed psychiatric injuries.
2. An additional panel in ophthalmology shall be issued to address the Applicant's bilateral or both eye injury, (blurred vision).
3. There is good cause for an additional panel in the specialty of neurology (MPN).
4. Location zip code is 95207.

ORDERS - ADJ17870859

- (1) AD/Medical Unit is ordered to issue a panel in the specialty of psychiatry to address Applicant's claimed psychiatric injuries.
- (2) AD/Medical Unit is ordered to issue a panel in the specialty of neurology at this time to address Applicant's post-concussion headaches, post-concussion syndrome, closed-head injury, and other neurological injuries.
- (3) AD/Medical Unit is ordered to issue a panel in ophthalmology to address the Applicant's bilateral or both eye injury, (blurred vision).
- (4) Location for the examinations is zip code 95207.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 23, 2026

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

**KIM SIEP
CARTY LAW OFFICES
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

SL/abs

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