WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LORRAINE GONSALVES, *Applicant*

vs.

CAMP FIRE USA SIERRA COUNCIL;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ3117080
Sacramento District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION AND GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant and defendant each seek reconsideration of the Findings of Fact, Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on June 30, 2026, wherein the WCJ found in pertinent part that applicant, while employed by defendant sustained injury arising out of and in the course of employment (AOE/COE) to her right ankle and defendant has accepted injury to applicant's low back as a compensable consequence of the industrial injury; there is no basis for setting aside the Award issued October 14, 1998; and Dr. Wieseltier from Panel #3686064 is appropriate for resolution of Labor Code section[1] 4062 issues.

Defendant contends that QME panel number 3686064 is invalid.

Applicant appears to contend that the WCJ erred when he did not set aside the October 14, 1998 Award.[2]

We have not received an answer from any party.

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[1] All statutory references are to the Labor Code unless otherwise stated.

[2] To the extent that applicant raises issues with respect to ADJ11896735 and whether the order of dismissal was proper, that issue is not before us. To the extent that applicant raises the issue of whether a petition to reopen was filed, that issue is not before us.

The WCJ issued a single Report and Recommendation on Petition for Reconsideration (Report) in response to both Petitions, recommending defendant's Petition be denied and applicant's Petition be denied as untimely and/or denied on the merits.

We have considered the allegations in the Petitions, and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, we will dismiss applicant's Petition as it was not timely filed. We will grant defendant's Petition, and we will affirm the WCJ's decision, except that we will amend it to add the date of injury of July 19, 1996 and that applicant also suffered injury including scar (Finding of Fact No. 1; Order 1); and that QME panel number 3686064 is invalid (Finding of Fact No. 4; Order 3).

BACKGROUND

On June 2, 2025, applicant filed a petition to set aside the dismissal in ADJ11896735 and a petition to set aside the October 14, 1998 Award in ADJ3117080.

The WCJ offered the following statement of facts:

> The case settled by Stipulations with Request for Award and the Award issued on October 14, 1998. Defendant has accepted injury to Applicant's low back [and scar] as a compensable consequence of the industrial injury.
>
> Defendant initially denied liability for Applicant's claim of injury to her low back as a compensable consequence of her industrial ankle injury. Applicant requested a panel to get a QME to resolve the nature and extent dispute. Panel# 3686064 was issued. Defendant disputed the need for a panel medical-legal evaluator.
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> An expedited hearing was set for August 5, 2025, and the parties entered into a Stipulation that Panel# 3686064 would be used if it was found valid. This issue along with others proceeded to trial on June 4, 2026. Defendant accepted liability for Applicant's low back as a compensable consequence on the day of trial.

(Report, at p. 2, citations omitted.)

Applicant obtained panel number 3686064 in physical medicine and rehab. (Exhibit J.) The request was received by the Medical Unit on July 3, 2025, the panel issued on July 14, 2025, and per internal date stamp defendant received it on July 16, 2025. (*Ibid.*)

On July 17, 2025, defendant objected to the panel. (Exhibit K.)

The matter proceeded to trial on the issues of vacating the Award of October 14, 1998 in ADJ3117080 and the appropriateness of panel number 3686064.[3]

It is from the corresponding F&O that defendant seek reconsideration on the panel issue.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, 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."

Here, according to Events, the case was transmitted to the Appeals Board on July 30, 2026, and 60 days from the date of transmission is September 28, 2026. This decision is issued by or on September 28, 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.

[3] Trial also proceeded in ADJ20667457. No party challenged the decision in ADJ20667457, and it is not before us.

Here, according to the proof of service for the Report, the Report was served on July 30, 2026 and the case was transmitted to the Appeals Board on July 30, 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 July 30, 2026.

II.

We first consider applicant's Petition.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California, and 30 days when one of the parties is out of state. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd*. (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. I.A.C.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the F&O was served on June 30, 2026 to the official addresses of record all located within California.[4] Applicant had 25 days, or until Sunday, July 26, 2026, to file a timely petition for reconsideration of the WCJ's F&O. The next business day that is 25 days from the F&O was Monday, July 27, 2026.(See Cal. Code Regs., tit. 8, § 10600(b).) The applicant's Petition was filed 28 days later, on July 29, 2026, rendering it untimely, and we will dismiss it.

[4] Defendant also served a copy of the F&O on July 7, 2026. However, pursuant to WCAB Rule 10628 (Cal. Code Regs., tit. 8, § 10628), final orders must be served by the WCAB, and as required, the WCJ served the F&O on June 30, 2026. Thus, the time to seek reconsideration commenced on June 30, 2026, based on the service of the F&O by the WCJ.

However, even if the applicant's Petition for Reconsideration had been timely and we were to decide the matter on the merits, we would have denied it based upon the WCJ's analysis contained in the Report.

III.

Turning now to the defendant's Petition, we address the contention that the QME panel requested by applicant is invalid.

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 denying applicant's petition to set aside the Award of October 14, 1998, which is 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 the order regarding the panel QME, which is 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, as explained 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.

Section 4062(a), provides in relevant part:

> (a) If either the employee or employer objects to a medical determination made by the treating physician concerning any medical issues not covered by Section 4060 or 4061 and not subject to Section 4610, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney. These time limits may be extended for good cause or by mutual agreement…

(Lab. Code, § 4062(a).)

To obtain a QME panel in an unrepresented case, section 4062.1 provides, in relevant part:

> (b) If either party requests a medical evaluation pursuant to Section 4060, 4061, or 4062, either party may submit the form prescribed by the administrative director requesting the medical director to assign a panel of three qualified medical evaluators in accordance with Section 139.2. However, the employer may not submit the form unless the employee has not submitted the form within 10 days after the employer has furnished the form to the employee and requested the employee to submit the form. The party submitting the request form shall designate the specialty of the physicians that will be assigned to the panel.
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> (c) Within 10 days of the issuance of a panel of qualified medical evaluators, the employee shall select a physician from the panel to prepare a medical evaluation, the employee shall schedule the appointment, and the employee shall inform the employer of the selection and the appointment. If the employee does not inform the employer of the selection within 10 days of the assignment of a panel of qualified medical evaluators, then the employer may select the physician from the panel to prepare a medical evaluation. If the employee informs the employer of the selection within 10 days of the assignment of the panel but has not made the appointment, or if the employer selects the physician pursuant to this subdivision, then the employer shall arrange the appointment. Upon receipt of written notice of the appointment arrangements from the employee, or upon giving the employee notice of an appointment arranged by the employer, the employer shall furnish payment of estimated travel expense.

(Lab. Code, § 4062.1(b) - (c).)

Here, the applicant's QME panel request failed to comply with the statutory requirements described above. It is unclear from the record how the panel was obtained. Specifically, although validity of QME panel number 3686064 was at issue for trial, there is no evidence that either party objected to a medical determination by a treating physician within 30 days, or any agreed upon time extension, from the receipt of any treating physician report in compliance with section 4062(a). (Lab. Code, § 4062(a).) Furthermore, there is no evidence in the record that the defendant provided a form to applicant to request a panel QME within 10 days per section 4062.1(b). (Lab. Code, § 4062.1(b).)

The WCJ found that QME panel number 3686064 was valid based on the August 5, 2025, Stipulation and Order that states:

> THE QME APPOINTMENT WITH DR. WIESELTIER SET FOR 8/14/25 WILL BE CANCELLED PENDING DETERMINATION BY THE WCAB ON WHETHER THE QME PANEL IS APPROPRIATE. IF THE PANEL IS DETERMINED APPROPRIATE A QME APPOINTMENT WILL BE RESCHEDULED AS APPROPRIATE. (All capitals in original.)

(Report, at p. 2.)

The logic of the stipulation is somewhat circular. Specifically, the plain meaning of the stipulation is that if the WCAB finds that the QME panel is "appropriate" or valid, the parties will proceed with it. Then, the WCJ relies on this very stipulation to find the QME panel number 3686064 is valid. However, the issue of whether the QME panel number 3686064 is valid must be based on an evidentiary record, and there is no evidence in this record that an appropriate objection letter was lodged before the panel was obtained nor did the defendant send applicant the panel request form prompting her to obtain the panel within 10 days. Thus, the panel is invalid.

Finally, we will correct a clerical error in the F&O. At trial, the parties stipulated that applicant sustained injury AOE/COE on July 19, 1996, to right ankle, including scar, and her low back. (Minutes of Hearing and Summary of Evidence, June 4, 2026, at p. 2:8-10.) The WCJ mentioned the industrial injury including scar in his Opinion on Decision, but failed to include it in his F&O in Finding of Fact No. 1. (Opinion on Decision, June 30, 2026, at p. 3.) He also failed to include the date of injury.

Accordingly, we dismiss applicant's Petition for Reconsideration as untimely, and we grant the defendant's Petition as one for reconsideration to amend the F&O to include the date of injury and the scar injury as stipulated by the parties and to find that QME panel number 3686064 invalid.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's 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 issued by the WCJ on June 30, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Lorraine Gonsalves (Applicant) was nineteen (19) years old and employed by Camp Fire Boys & Girls (Employer) on July 19, 1996 in California, sustained injury arising out of and in the course of employment to her right ankle, including scar, and low back.

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4. QME panel number 3686064 is invalid.

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ORDERS

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3. QME Panel Number 3686064 is invalid.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2026

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

LORRAINE GONSALVES
STATE COMPENSATION INSURANCE FUND

SL/abs

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