

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

**LUIS MURILLO, Applicant**

**vs.**

**SNYDER INDUSTRIES,  
insured by STARR INDEMNITY & LIABILITY COMPANY,  
administered by GALLAGHER BASSETT SERVICES, INC.; et al.,  
Defendants**

**Adjudication Numbers: ADJ10598940; ADJ16413854  
Fresno District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant Starr Indemnity & Liability Company, administered by Gallagher Bassett, seeks reconsideration of the January 6, 2026 Joint Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ), which found that Qualified Medical Evaluator (QME) Panel number 7404253 is invalid, and ordered QME Scott Graham, M.D.'s reports excluded from both cases.

Petitioner contends that the WCJ erred in his F&O and that it validly obtained QME Panel number 7404253 for the purpose of enforcing a stipulated award more than five years after the date of injury. Petitioner further asserts that the WCAB has jurisdiction over this issue even without a petition for new and further disability, that the QME Panel was properly requested in compliance that with Rule 30(b) (Cal. Code Regs., tit. 8, § 30(b)), and that the reports of Dr. Graham constitute substantial medical evidence.

We have received an Answer on behalf of applicant, recommending the petition be denied.

We have considered the allegations of the Petition for Reconsideration, 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 stated in the WCJ's report, which we adopt and incorporate, and for the additional reasons given herein, we will deny reconsideration.

## FACTS

In Case Number ADJ10598940, applicant and petitioner, defendant Snyder Industries, obtained an Award on Amended Stipulations with Request for Award, issued on October 26, 2016. In the Amended Stipulations, petitioner and applicant stipulated that applicant sustained 11 percent permanent disability of the low back for a specific industrial injury of January 27, 2015 while employed by Snyder Industries, insured by Starr Indemnity & Liability Company, administered by Gallagher Bassett. Per the stipulation, applicant was awarded further medical treatment to cure or relieve the effects of the industrial injury. Applicant expressly agreed to waive the right to a QME in both paragraph 9 of the Amended Stipulations and in an attached addendum. Both the Amended Stipulations and the addendum waiving a QME were executed by both applicant and Alina Mazurenko of Gallagher Bassett on behalf of petitioner.

Neither applicant nor petitioner filed a petition to reopen the Award within five years of the date of injury, which was confirmed by email between the parties. (Exhibit 10.) More than six years after the date of injury, petitioner obtained QME panel number 7404253 by objecting to a PR-2 report of treating physician Dr. Doobay dated February 1, 2021. Petitioner's objection letter, dated March 9, 2021, objected to "disability status, need for further treatment and permanent disability." (Exhibit I-1, March 9, 2021, p. 1.)

Using the objection letter, petitioner obtained QME Panel number 7404253 in Case Number ADJ10598940. Applicant and petitioner each struck the name of one QME from the panel, leaving Dr. Scott Graham.

After Dr. Graham evaluated applicant and reported in Case Number ADJ10598940, petitioner filed an Application for Adjudication of Claim generating a new case, ADJ16413854 on behalf of applicant, for a cumulative trauma injury to the low back sustained during the period from July 30, 2017 to May 3, 2020, while applicant was employed by Innovative Rotational Moldings, insured by Ace American Insurance Company, administered by CorVel. Petitioner has alleged that its pleading of a cumulative trauma is based upon the QME report of Dr. Graham.

Defense Counsel for Ace American through its administrator CorVel filed a Notice of Representation on November 10, 2022, and case numbers ADJ10598940 and ADJ16413854 were consolidated according to the June 11, 2024 Minutes of Hearing. Both cases were tried to submission on December 1, 2025 on the sole issue of "[v]alidity of Panel No. 7404253, dated

4/9/21, in ADJ10598940.” (Minutes of Hearing and Summary of Evidence, dated December 1, 2025, page 2, lines 24-25.)

## DISCUSSION

### I

Former Labor Code section 5909<sup>1</sup> 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 9, 2026, and 60 days from the date of transmission is April 10, 2026. This decision is issued by or on April 10, 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 WCJ’s report and recommendation shall be notice of transmission.

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<sup>1</sup> All further references are to the Labor Code, unless otherwise stated.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on February 9, 2026, and the case was transmitted to the Appeals Board on February 9, 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 9, 2026.

## II

Preliminarily, we note that while the F&O addresses a discovery issue regarding the validity of a QME panel, it also addresses a threshold issue, one of jurisdiction. It furthermore sets forth and adopts stipulated facts that determine other threshold issues, as to which reconsideration and not removal would apply as the appropriate standard. We observe that 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, because the Petition clearly raises the threshold issue of the scope of WCAB jurisdiction, we apply the reconsideration standard and not the standard for removal of a non-final discovery order.

### III

We note that pursuant to paragraph 9 of the approved Amended Stipulations with Request for Award in ADJ10598940, petitioner appears to have expressly waived the right to a QME. While the waiver is described as applicant's waiver, both the Amended Stipulations and its addendum with QME waiver are jointly executed agreements between applicant and petitioner, with petitioner joining in applicant's agreement to forego a QME evaluation. Accordingly, both applicant and petitioner should be estopped from obtaining a QME to revisit the stipulated terms of their agreement, which is now final pursuant to Labor Code section 5804 because no timely petition to reopen has been filed.

California Labor Code Section 5804 states, in relevant part:

No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counterpetition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in addition to those raised by such original petition...

(Lab. Code., § 5804.)

Petitioner contends that it obtained QME Panel number 7404253 not for an impermissible modification of the stipulated award in Case Number ADJ10598940, but instead to address a dispute regarding applicant's ongoing right to medical care under the award. The petition argues that the WCAB has jurisdiction to address specific treatment requests, and whether they are reasonable and necessary pursuant to the award of future medical care.

Defendant's argument is correct regarding the WCAB's ability to enforce an award, but it is outdated in its assumption that a QME controls the scope of medical treatment on an award that can no longer be rescinded, altered, or amended. Although it is true that the WCAB can issue orders enforcing the right to medical treatment more than five years after the date of injury without rescinding, altering, or amending the award in violation of section 5804, the resolution of any dispute over what medical treatment is appropriate is currently decided by utilization review (UR) pursuant to section 4610, and not by WCJs using the opinions of QMEs.

Since January 1, 2004, UR pursuant to section 4610 is the exclusive means of resolving any dispute regarding a specific request for medical treatment. The WCAB does not have jurisdiction to decide disputes over specific treatment requests unless there is no timely utilization review. As we explained previously in 2014:

The legislative scheme for reviewing employee treatment requests has changed over time. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 237 [73 Cal.Comp.Cases 981].) As discussed more extensively in *Sandhagen*, prior to SB 228, the employee's treating physician would make a treatment recommendation and, if a dispute arose, the parties would either obtain an AME or they would each separately obtain a qualified medical evaluator (QME). (*Sandhagen*, supra, 44 Cal.4th at p. 238.) Thereafter, the issue of medical necessity would be determined by the WCAB based on the medical evidence presented.

In 2003, SB 228 was enacted. (Stats. 2003, ch. 639; *Sandhagen*, supra, 44 Cal.4th at pp. 239- 241.) Among other things, SB 228 added section 4610. It requires that "[e]very employer shall establish a utilization review process in compliance with this section." (§ 4610(b).) Under this process, when a defendant disputes a treating physician's request for authorization of treatment (RFA), a UR physician must determine, based on "medical necessity," whether to approve, modify, or deny the requested treatment. (§ 4610(a), (c), (e), (g)(4).) In addition, section 4610 requires that "[e]ach utilization review process shall be governed by written policies and procedures" and it mandates that certain procedural requirements "shall be met." (§ 4610(c), (g).)

In 2004, SB 899 was enacted. (Stats. 2004, ch. 34; *Sandhagen*, supra, 44 Cal.4th at p. 241.) "While [SB] 899 did not alter the section 4610 utilization review process, it made a number of changes to the dispute resolution process in section 4062." (*Sandhagen*, supra, 44 Cal.4th at p. 242.) Among other things, SB 899 amended section 4062 to allow an employee to object to a UR decision and obtain a comprehensive medical-legal report from an AME or a QME. (*Sandhagen*, supra, 44 Cal.4th at pp. 242- 245.)

In 2012, SB 863 was enacted. (Stats. 2012, ch. 363.) SB 863 did not change the procedural requirements of section 4610 for UR decisions, but it amended the procedures for resolving post-UR disputes over the "medical necessity" of treatment requests. In its statement of purpose, uncodified section 1(e) of SB 863 pronounced:

"The Legislature finds and declares all the following: ... (e) [t]hat having medical professionals ultimately determine the necessity of requested treatment furthers the social policy of this state in reference to using evidence-based medicine to provide injured workers with the highest quality of medical care and that the provision of the act establishing independent medical review are necessary to implement that policy."

(Stats. 2012, ch. 363, § 1(e); see also § 1(d), (f), (g).)

To effectuate this purpose, the Legislature amended sections 4062 and 4610 so that an injured employee could no longer use the AME/QME process to dispute a UR decision. Instead, sections 4610.5 and 4610.6 were adopted, introducing a new procedure whereby an injured worker who disputes a UR decision may request IMR. Under sections 4610.5 and 4610.6, an IMR physician evaluates

the “medical necessity” of the proposed treatment. (§§ 4610.5(c)(2), (c)(3), (k), 4610.6(a), (c), (e).)

(*Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298, 1304-1305 (Appeals Board en banc) (*Dubon II*)). In *Dubon II*, the Appeals Board held that while the WCAB may determine whether a UR decision was timely, it may not determine any dispute over whether a specific item of treatment is reasonable or necessary if there is a timely UR decision. (*Dubon II*, supra, 79 Cal.Comp.Cases 1298, 1309 ff.) Furthermore, section 4061, the Labor Code section pursuant to which petitioner requested QME Panel number 7404253, “shall not apply to the employee’s dispute of a utilization review decision under Section 4610, nor to the employee’s dispute of the medical provider network treating physician’s diagnosis or treatment recommendations under Sections 4616.3 and 4616.4.” (Lab. Code, § 4061.) Moreover, under section 4064, a QME is statutorily directed not to address “medical treatment recommendations, which are subject to utilization review as provided by Section 4610, and objections to utilization review determinations, which are subject to independent medical review as provided by Section 4610.5.” (Lab. Code, § 4064(a).)

We note that petitioner does not appear to be addressing a specific medical treatment issue, but rather the entirety of treatment under the stipulated award. This is not permitted under section 5804. Even before the 2004 amendments of SB899, section 5804 did not permit the WCAB to rescind, alter, or amend an “award of compensation” more than five years from the date of the injury except upon a petition by a party in interest filed within those five years. Under section 3207, “compensation” includes every benefit or payment conferred upon an injured employee by Division 4 of the Labor Code, sections 3200 through 6002, so the prohibition of section 5804 includes rescinding altering, or amending an award of benefits in the form of future medical care pursuant to section 4600. The California Supreme Court has unambiguously held that based on section 5804, an employer’s liability under an award of future medical care cannot be challenged more than five years from the date of the injury, even though each particular request for medical treatment from a treating physician may be addressed pursuant to the WCAB’s ongoing jurisdiction under section 5803. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 681 [65 Cal.Comp.Cases 780].)

Thus, section 5804 and *Barnes* prevent the use of a QME panel to modify the terms of the now final stipulated award with respect to both indemnity and general ongoing medical care, and even though section 5803 gives the WCAB ongoing jurisdiction over specific treatment requests,

those requests are currently subject to sections 4061 and 4064, as well as *Sandhagen* and *Dubon II*, supra, which prevent the use of a QME to address whether petitioner is required to provide any specific kind of treatment pursuant to the stipulated award.

Given these limitations, petitioner's arguments regarding compliance with Rule 30(b) regarding the manner of obtaining a QME panel, and the substantiality of the medical evidence obtained, are both moot. Based on the lack of jurisdiction to modify the stipulated award under section 5804, and the lack of any basis to find that the WCJ had jurisdiction to determine a specific medical treatment dispute using QME opinions instead of UR determinations, we conclude that the WCJ was correct in concluding that he had no jurisdiction to rescind or deny medical treatment under the award using a QME obtained from panel number 7404253.

We further concur with the WCJ's conclusion that QME Panel Number 7404253 is an invalid panel with respect to both ADJ10598940, the specific injury claim, as well as Case Number ADJ16413854, the cumulative trauma case filed by petitioner. As noted by the WCJ in his report, a QME panel cannot issue in a given case before the case exists, and the Application in ADJ16413854 was not filed until after QME Panel 7404253 was issued under Case Number ADJ10598940. As also noted by the WCJ, defendants Innovative Rotational Moldings, and its insurer Ace American Insurance Company, administered by CorVel, had no opportunity to participate in the QME selection process. For both of these reasons, we agree with the order that QME Dr. Graham's reports are excluded from both cases.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**KATHERINE WILLIAMS DODD, COMMISSIONER**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**APRIL 10, 2026**

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

**LUIS MURILLO  
KENNETH R. MACKIE, PC  
GOLDMAN MAGDALIN STRAATSMA, LLP (2)  
YRULEGUI & ROBERTS**

**CWF/cs**

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

**REPORT AND RECOMMENDATION**

**ON PETITION FOR RECONSIDERATION – TRANSMITTAL DATE:**

**FEBRUARY 9, 2026**

**I**

**INTRODUCTION**

- |  |  |
|--|--|
| 1. Applicant’s Occupation:   | FII Associate, OG# 330                                       |
| Ages at Injuries:  | 38, 40   |
| Dates of Injury:   | 1/27/15 – low back   |
| Parts of Body Alleged Injured:   | CT ending 10/17/16 - back                                    |
| Manner in Which Injury Alleged Occurred:   | Sp DOI unknown, CT – rep wrk                                 |
| 2. Identity of Petitioner:   | Defendant Snyder Industries,<br>Gallagher Bassett Sacramento |
| Timeliness:  | The Petition was timely filed on<br>1/30/26                  |
| Verification:  | The Petition was Verified.                                   |
| 3. Date of Award:  | 1/6/26   |
| 4. Petitioner contends:  |  |
| a. That by the Order, Decision, or Award made and filed by the Appeals Board or a Workers’ Compensation Judge, the Appeals Board acted without or in excess of its powers. |  |
| b. The Evidence does not justify the Findings of Fact.   |  |
| c. That the Findings of Fact do not support the Order, Decision, or Award.   |  |

**II**

**FACTS**

ADJ10598940 closed pursuant to an Award on Amended Stipulations with Request for Award dated 10/17/16 (EAMS Doc ID # 61836121). Defendant Gallagher Bassett obtained panel # 7404253 by objecting to a PR-2 report of Dr. Doobay dated 2/1/21. Defendant’s objection letter is dated 3/9/21 (Defendant Exhibit I 2, EAMS Doc ID # 60939397). There was no Petition for New and Further Disability filed in ADJ10598940 at the time panel # 7404253 was obtained by Defendant Gallagher Bassett. This is confirmed in Defense Counsel’s 5/24/22 email, Applicant Attorney’s Exhibit 12, EAMS Doc ID # 61287410.

Dr. Scott Graham was the remaining doctor after Gallagher Basset and Applicant Attorney exercised their strikes from panel # 7404253. Defendant Gallagher Bassett filed an Application for Adjudication of Claim generating EAMS case # ADJ16413854. The Application was filed on 7/12/22 (EAMS Doc ID # 42219316). The Application for Adjudication alleges a cumulative trauma from 7/30/17 to 5/3/20 pursuant to the 3/19/22 report of QME Dr. Graham. Defense Counsel for Corvel filed a Notice of Representation on 11/10/22 (EAMS Doc ID # 43854243). The cases were consolidated pursuant to the 6/11/24 MOH (EAMS Doc ID # 78056418).

These facts create the following timeline:

- a. ADJ10598940 closed pursuant to an Award on Amended Stipulations with Request for Award dated 10/17/16 (EAMS Doc ID # 61836121).
- b. Defendant Gallagher Bassett obtained panel # 7404253 by objecting to a PR-2 report of Dr. Doobay dated 2/1/21. Defendant's objection letter is dated 3/9/21 (Defendant Exhibit I 2, EAMS Doc ID # 60939397).
- c. Panel # 7404253 is dated 4/9/21.
- d. No Petition for New and Further Disability was filed in ADJ10598940 at the time panel # 7404253 was obtained by Defendant Gallagher Bassett. This is confirmed in Defense Counsel's 5/24/22 email, Applicant Attorney's Exhibit 12, EAMS Doc ID # 61287410
- e. Defendant Gallagher Bassett filed an Application for Adjudication of Claim generating EAMS case # ADJ16413854. The Application was filed on 7/12/22 (EAMS Doc ID # 42219316).
- f. Defense Counsel for Corvel filed a Notice of Representation on 11/10/22 in ADJ16413854 (EAMS Doc ID # 43854243).
- g. The cases were consolidated pursuant to the 6/11/24 MOH (EAMS Doc ID # 78056418).

Both Applicant Attorney and Defense Counsel for Corvel objected to the validity of Panel 7404253 in ADJ10598940. This issue was listed in the Joint Pre-Trial Conference Statement. After looking at all the trial issues, this Court bifurcated the issues. The only issue for trial was the validity of panel number 7404253 dated 4/9/21 in ADJ10598940. There was never any statement by this Court of the panel issue being a threshold issue.

### III

#### DISCUSSION

**I. The WCAB had no jurisdiction and therefore the Medical Unit had no jurisdiction for Gallagher Bassett to request panel # 7404253 on 4/9/21.**

The board has no jurisdiction over any aspect of a workers' compensation claim until an application for adjudication has been filed. This rule has been codified in Regulation 10450(b). The Medical Unit, which issues QME panels, operates under the authority of the WCAB. Since the WCAB has no jurisdiction until an application is filed, the Medical Unit cannot issue a QME panel without an underlying case that gives the WCAB jurisdiction.

In this case, as of 4/9/21 ADJ16413854 did not exist. There was no petition for new and further disability filed in ADJ10598940. No jurisdiction had been established on 4/9/21 to request panel # 7404253. (Labor Code Section 5500, nor Regulation 10450(b).) Therefore, panel # 7404253 is an invalid panel.

**a. There is no legal basis to argue Panel #7404253 dated 4/9/21 was requested to enforce a stipulated medical award.**

Future medical awards are enforced pursuant to LC § 4610. Treating physicians submit requests for authorization (RFAs) for medical treatment. The RFAs are then subject to utilization review (UR).

**b. Petitioner's compensable consequence argument is irrelevant because no board jurisdiction had been established as of 4/9/21 when Panel #7404253 was requested.**

Please see facts c, d and e in the Facts Section of this Pleading. Section I of this pleading is also incorporated by reference into this section of this Report and Recommendation.

**c. Regulation 30(b) is irrelevant to this case.**

Please see facts c, d and e. in the Facts Section of this Pleading. Section I of this pleading is also incorporated by reference into this section of this Report and Recommendation.

**d. Corvel is Prejudiced by Panel #7404253 because Corvel's Due Process Rights were violated**

No evidence was presented at trial to prove Applicant Attorney or Corvel waived the jurisdiction defect of Panel #7404253. Applicant Attorney may have objected to the panel but did participate in the strike process, Corvel did not. Corvel's Due Process rights were violated when Gallagher Bassett obtained Panel # 7404253 without Board jurisdiction. This Due Process

violation resulted in over three years of litigation up to the time of trial. Any violation of Due Process is serious. Therefore, Gallagher Bassett's Due Process violation justifies excluding QME Dr. Graham's reports from both cases.

#### IV

#### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

**William R McClelland**

Workers' Compensation Judge

Date: 2/9/26