WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARISA MARTINEZ, ***Applicant***

vs.

AMAZON.COM SERVICES, LLC;
LIBERTY MUTUAL INSURANCE COMPANY, administered by SEDGWICK CONCORD, ***Defendants***

Adjudication Number: ADJ19266826
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 13, 2025, wherein the WCJ found, in relevant part, that while working for defendant on March 15, 2024, applicant sustained injury arising out of and in the course of employment (AOE/COE) to her back; that applicant's objections to the report of Saeed T. Nick, M.D., pursuant to Labor Code sections 4061 and 4062 were invalid; that the Qualified Medical Evaluator (QME) panel was thus improperly issued; and, the WCJ ordered that QME Panel number 7799762 be vacated.

Applicant contends that the WCJ's order vacating the QME panel is inconsistent with the statutory requirements of Labor Code sections 4061 and 4062, and requests that an order reinstating the QME panel be entered.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be dismissed on procedural grounds, that the F&O be affirmed, and that the matter be returned to the trial level for further discovery. We have not received an answer from defendant.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration,

and applying the removal standard, rescind the F&O, and substitute a new F&O that finds that QME Panel number 7799762 is valid.

BACKGROUND

Applicant filed an Application for Adjudication of Claim (Application) on May 14, 2024, claiming a specific injury on March 15, 2024 to her back and lower extremities, due to a fall while employed as a warehouse worker by defendant.

After examining applicant on October 18, 2024, primary treating physician (PTP) Saeed T. Nick, M.D. issued a Progress Report, which included diagnoses, an order for applicant to remain off work until December 3, 2024, and a plan for treatment. (Joint Exh. 1 – PTP's 10/18/25 Report, at pp. 1-3.)

On March 12, 2025, applicant filed an objection letter to the PTP's October 18, 2024 report, pursuant to Labor Code sections 4061 and 4062[1], and indicated that she would be seeking a Panel QME in Orthopedics. (Joint Exh. 2 - PTP Objection Letter, dated 3/12/25.) Nothing in the record indicates that defendant objected to this letter.

On April 4, 2025, applicant obtained a QME panel in Orthopedic Surgery. (Joint Exh. 3 - Panel 7799762 with QME Form 106, dated 4/4/25.) Nothing in the record indicates that defendant objected to the panel when it issued.

Almost three months later, on July 2, 2025, defendant sent a letter to applicant's counsel, objecting to QME panel 7799762 as "procedurally void." (Joint Exh. 4 - Defendant's 7/2/25 objection to the QME Panel.)

Defendant filed a Declaration of Readiness to Proceed to Expedited Hearing (DOR) on July 9, 2025, requesting the matter to be set for hearing on the issue of entitlement to medical treatment under section 4600, and to address its concern that the QME panel "is procedurally deficient." (7/9/25 DOR.)

The matter proceeded to an expedited hearing on August 4, 2025. The parties stipulated, in pertinent part: to employment; that applicant's March 15, 2024 back injury was AOE/COE; and that applicant claimed injury on the same date to her lower extremities. (4/4/25 MOH, at p. 2.) Framed for trial were three issues: 1) whether applicant's objection to the PTP's report was timely

[1] All section references are to the Labor Code, unless otherwise indicated.

per section 4062; 2) whether applicant's request for a QME panel under section 4061 was invalid as the report was not an MMI report; and 3) whether defendant waived its right to object to issuance of the panel when it failed to object within 20 days of the service of the panel. (*Ibid.*) There were no witnesses. (*Id*. at p. 1.)

In the October 13, 2025 F&O, the WCJ found, regarding section 4061, that applicant's objection to Dr. Nick's October 18, 2024 report "was invalid as that report did not make any findings regarding disability or need for future medical care, and therefore Applicant's request for a QME Panel pursuant to that section was invalid." (F&O, finding 2, at pp. 1-2.)

Regarding compliance with section 4062, the WCJ also found applicant's objection to Dr. Nick's October 18, 2024 report invalid, because "it did not identify any specific issue that could be covered by that section as the basis for the objection and also as the objection was made long after the 20-day time limit had passed without any showing of good cause for the delay and without mutual agreement to extend the time for objection." (F&O, finding 3, at p. 2.)

Lastly, the WCJ found that "because there was no valid objection as a necessary foundation for issuance of a QME Panel at the time Applicant requested it, Panel # 7799762 was improperly issued." (F&O, finding 4, at p. 2.) The WCJ did not address the third trial issue as to whether defendant had "waived its right to object to issuance of the panel when it failed to object within 20 days of the service of the panel."

The WCJ ordered that QME Panel number 7799762 is vacated. (F&O, at p. 2.)

I.

Former 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 November 10, 2025, and 60 days from the date of transmission is January 9, 2026. This decision is issued by or on January 9, 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 10, 2025, and the case was transmitted to the Appeals Board on November 10, 2025. 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 November 10, 2025.

II.

If a decision includes a 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 a 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 October 13, 2025 F&O includes findings of injury AOE/COE and employment. Injury AOE/COE and employment are threshold issues fundamental to the claim for benefits. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.[2]

Although the decision contains a finding that is final, applicant is only challenging an interlocutory finding/order in the decision regarding the WCJ's order invalidating the QME panel, which is an interlocutory finding/order in the decision. (Lab. Code, §§ 4061, 4062.) 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).)

[2] We note that in determining whether reconsideration is the appropriate remedy, we look to the entire F&O, not solely at the specific finding(s) challenged in the Petition. Since the F&O here contains findings regarding threshold issues, we will disregard the WCJ's concern that applicant's Petition must be dismissed because it challenges only a non-final discovery order. (Report, at pp. 1, 3.)

Here, as discussed below, we conclude that the order invalidating the QME panel, thereby denying applicant's access to the QME process, resulted in significant prejudice or irreparable harm to applicant and that reconsideration will not be an adequate remedy. We will therefore grant the Petition as one seeking reconsideration.

III.

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 p. 158.) As stated by the Supreme Court of California 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.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

"When there are disputes about the appropriate medical treatment, temporary or permanent disability, vocational rehabilitation, the disability rating, or the need for continuing medical care, Labor Code section 4061 or 4062 applies. [Citations.] Sections 4061 and 4062 of the Labor Code establish the procedures for resolving such disagreements." (*Tenet/Centinela Hospital Medical Center v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 1041, 1048, citing *Keulen v. Workers' Comp. Appeals Bd*. (1998) 66 Cal.App.4th 1089, 1096.)

Section 4061, subdivision (b), provides:

> (b) If either the employee or employer objects to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for future medical care, and the employee is represented by an attorney, a medical evaluation to determine permanent disability shall be obtained as provided in Section 4062.2.

(Lab. Code, § 4061(b).)

Section 4062, subdivision (a), provides, in pertinent 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. If the employee is represented by an attorney, a medical evaluation to determine the disputed medical issue shall be obtained as provided in Section 4062.2, and no other medical evaluation shall be obtained.

(Lab. Code, § 4062(a).)

To obtain a QME panel in a represented case, section 4062.2, subdivision (a), provides:

> (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.

(Lab. Code, § 4062.2(a).)

Here, applicant's letter objecting to the PTP's October 18, 2024 report and indicating that she would request a QME panel, stated clearly that her objection was made pursuant to both section 4061 and section 4062. (Joint Exh. 2 - PTP Objection Letter dated 3/12/25.) As discussed below, we conclude that applicant's letter objecting to the PTP's medical determination met the requirements in section 4061, and thus she was entitled to obtain a QME panel pursuant to section 4062.2. There was no statutory basis for the finding and order here, invalidating the QME panel obtained by applicant.

In her discussion of section 4061 in the Opinion on Decision, the WCJ correctly noted that "Section 4062.2 establishes the Panel QME process for represented cases, which the applicant's attorney followed." (OOD, at p. 2.) But, the WCJ then mischaracterized the requirements of section 4061, subdivision (b), and the facts of this case, writing:

> However, this subsection makes it clear that what is needed to trigger that process is "a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for continuing medical care," none of which was addressed in the report in question (see Ex. 1). There could be no meaningful objection to this report under Section 4061, and nothing for a QME to address under that section in response to the treating doctor.

(OOD, at p. 2.)

The WCJ's analysis is incorrect because there is no such "trigger" language in section 4061, subdivision (b). Rather, that subdivision states clearly that the need for a medical evaluation under 4062.2 is triggered by "either the employee or employer object[ing] to a medical determination made by the treating physician" concerning one or more of the listed topics. (Lab. Code, § 4061(b).) That is to say, it is the objection to the medical determination by the PTP that the foremost concern, not the contents of the PTP's report. (*Ibid*; Cal. Code Regs., tit. 8, § 9785(b)(3); See also, *Tenet/Centinela Hospital Medical Center v. Workers' Comp. Appeals Bd., supra,* 80 Cal.App.4th at p. 1048.)

Moreover, section 4061 lists multiple topics that can serve as the basis for an employee's challenge to a PTP's medical evaluation, including "a medical determination… concerning…the need for future medical care." (Lab. Code, § 4061(b).) Here, that requirement was met. The PTP's October 10, 2024 report addressed applicant's need for future medical care, by providing a specific plan for applicant's treatment, including medications, a referral to acupuncture, a referral for a home TENS Unit, and an appointment for a follow-up assessment in two months. (Joint Exh. 1, at p. 3.) Thus, there is no factual basis for the WCJ's conclusion that "none of" the required topics "was addressed in the report in question." We conclude that applicant's objection complied with section 4061, and that section 4061 does not support the WCJ's finding that applicant's objection to the PTP's October 18, 2024 report was invalid, nor the order invalidating the QME panel. We observe that nothing in the statutory language can be interpreted as requiring that applicant's burden includes proof of why they were dissatisfied with the doctor's specific recommendations. Instead, the statute only specifies that an objection be made.

Regarding compliance with the requirements of section 4062, we agree with the WCJ's finding regarding timeliness: that "Applicant's objection to the October 18, 2024, report of Dr. Saeed Nick under Labor Code Section 4062 was invalid… as the objection was made long after the 20-day time limit had passed without any showing of good cause for the delay and without mutual agreement to extend the time for objection." (F&O, finding 3; Lab. Code, § 4062(a).) Since applicant's objection was not made within twenty days of receipt of Dr. Nick's report, as required in a represented case, there was no valid objection to the PTP's medical determination under section 4062. While we note that defendant's failure to object could be characterized as a basis for good cause, we need not consider that interpretation because applicant's objection under 4061, subdivision (b), was properly made, as previously discussed.

Lastly, we note that even if we were not rescinding the F&O on the statutory grounds indicated above, we would do so on due process grounds. Applicant had a due process right to access the QME process on the issue of permanent disability. This right stems from the fundamental right to a fair hearing under both the California and United States Constitutions that is accorded to all parties in workers' compensations cases. (*Rucker v. Workers' Comp. Appeals Bd., supra,* 82 Cal.App.4th at 157-158.) As noted above, a fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and to offer evidence in rebuttal. (*Gangwish, supra,* 89 Cal.App.4th at 1295.) "…[I]mproper restrictions on the right to present evidence in rebuttal is a deprivation of the constitutional guaranty of due process of law." (*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].) Applicant's March 12, 2025 objection letter followed the appropriate procedure to object to the PTP's report, and to provide all parties with notice of her intent to access the QME process. Due process requires that she be permitted to access a QME evaluation, in order to obtain the necessary evidence to move forward with her claim expeditiously. The order here, invalidating the QME panel requested by applicant, was therefore a violation of applicant's due process rights.

Finally, although we need not reach the third trial issue of whether defendant "waived its right to object to issuance of the panel when it failed to object within 20 days of the service of the panel," we note that the following language in our en banc decision in *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, is instructive by way of analogy here:

> Although section 4062.3(b) does not give a specific timeline for the opposing party to object to the QME's consideration of medical records, the opposing party must object to the provision of medical records to the QME within a reasonable time in order to preserve that objection. The failure to object at the first opportunity may be construed as an implicit agreement by the opposing party to provision of the information to the QME. (See e.g., *U.S. Auto Stores v. Workmen's Comp. Appeals Bd.* (Brenner) (1971) 4 Cal. 3d 469, 476–477 [93 Cal. Rptr. 575, 482 P.2d 199, 36 Cal. Comp. Cases 173]; *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal. 4th 1, 31 [44 Cal. Rptr. 2d 370, 900 P.2d 619].) Additionally, the failure to object at the first opportunity may improperly permit the opposing party to learn the effect of the information on the QME's opinions before lodging an objection. (See *Fajardo v. Workers' Comp. Appeals Bd.* (2007) 72 Cal. Comp. Cases 1158 (writ den.) [a party cannot wait until after receipt of an untimely report to make an objection based on timeliness and request a replacement QME panel].)

* * *

> Conduct by the aggrieved party that is inconsistent with an election to terminate the evaluation may be construed as forgoing its right to terminate the evaluation and seek a new QME. (See *Fajardo*, *supra*, 72 Cal. Comp. Cases 1158.) Inaction by the aggrieved party following discovery of the ex parte communication is in effect an election to proceed with the QME.

(*Id.* at pp. 1812, 1815.)

Here, defendant's only objection was made almost three months *after* defendant received the QME panel, so that it appears that defendant did not actually object to proceeding to an orthopedic QME panel. Instead, it is more likely that defendant's objection was in fact to the three physicians identified on the QME panel, and we reiterate once again that objections that are solely tendered as a litigation tactic are discouraged.

Accordingly, and applying the removal standard, we are persuaded that the decision of the WCJ to invalidate QME Panel number 7799762 will result in significant prejudice or irreparable harm. We will therefore grant reconsideration, rescind the F&O, and substitute a new F&O that finds that QME Panel number 7799762 is valid.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of October 13, 2025 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 October 13, 2025 is **RESCINDED** in its entirety and the following is **SUBSTITUTED** in its place.

FINDINGS OF FACT

1. MARISA MARTINEZ born on [ ], while employed on March 15, 2024, at 3388 South Cactus Avenue in Bloomington, California, by AMAZON.COM SERVICES, LLC, whose workers' compensation insurance carrier was LIBERTY MUTUAL INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, sustained injury arising out of and occurring in the course of employment to her back.

2. Panel # 7799762 was properly issued.

ORDER

IT IS ORDERED that QME Panel # 7799762 is not vacated.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 9, 2026

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

MARISA MARTINEZ
SOLOV & TEITELL LAW
EMPLOYER DEFENSE GROUP

MB/*pm*

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