WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MICHAEL SEABROOKS, *Applicant,*

vs.

QUANEX BUILDING PRODUCTS; ANA XL SPECIALTY INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INC., *Defendants*

Adjudication Number: ADJ17915469
Oakland District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

Applicant, representing himself, has filed a Petition for Reconsideration (Petition) of the Order Denying Petition for Change of Venue (Order) issued by the presiding workers' compensation administrative law judge (PWCJ) on August 5, 2026. The Order denied applicant's petition for change of venue from the Oakland District Office to the Sacramento District Office.

The Petition contends that applicant has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at hearing. Specifically, applicant has written on the Petition, "I have a new discovery in my paperwork from three doctors diagnosis saying I have edema and th[at] I was diagnosed with edema."

We have not received an Answer from defendant. The PWCJ has filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the petition.

We have considered the allegations of the Petition and the contents of the Report, and we have reviewed the record. For the reasons set forth below, we will dismiss the Petition as one for Reconsideration and deny the Petition as one for Removal.

At the same time, we observe that to the extent that the Petition alleges a new and different injury than the one that was previously adjudicated, applicant may wish to consult with the

Information and Assistance (I&A) Officer at the Sacramento District Office to assist applicant with any questions regarding how to complete and file the necessary forms to claim a new injury.

FACTS

Applicant's former counsel of record filed an Application for Adjudication of Claim (Application) on July 6, 2023, alleging that on January 20, 2022, applicant sustained a specific injury to his leg while working as an installer.

A trial was held on October 21, 2025, where the parties submitted issues that included whether applicant had sustained injury arising out of and in the course of employment to his right leg on January 20, 2022. (Minutes of Hearing and Summary of Evidence dated October 21, 2025, p. 2.) Following trial, a WCJ issued a Findings and Order (F&O), finding that applicant did not sustain an injury to his right leg on January 20, 2022.

The WCJ's decision that applicant did not sustain an injury to his right leg on January 20, 2022 was based on the medical expert opinions of Roger Rogalski, M.D., an orthopedic surgeon. The Opinion on Decision explains as follows:

> This case presents a threshold issue of whether or not applicant sustained an injury arising out of and in the course of employment to his right leg as alleged on January 20, 2022. The employee has the initial burden of proving that the injury arose out of and in the course of the employment (Labor Code section 3202.5; *LaTourette v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 253).
>
> Applicant was evaluated by Dr. Roger Rogalski as the Panel QME in this case. Dr. Rogalski's first report was on May 8, 2024 (Exh. 101), wherein he stated at p. 3, "The onset of his bleeding occurred at work, but I have no medical records indicating that. Although his symptoms occurred at work, that work itself was not causative of his injury." No further discussion or rational regarding causation was provided in this report. In his final report of April 28, 2025 (Exh. 102), Dr. Rogalski stated regarding causation:
>
> > Causation is secondary to pre-existing venous stasis ulcers and perhaps ruptured at work. [*sic*] However, I have no documentation that the applicant bumped or cut his leg at work. There is no documentation as alleged that there was an arterial artery that "popped." This appears to have been a venous stasis ulcer that was pre-existing. His claim opened up at work. Presently, I have no documentation of the specific injury to his lower leg. Simply standing, in my opinion, does not account for sufficient toleration to allow this to be a Workers' Compensation injury.
>
> The opinion of Dr. Rogalski is the only medical evidence which addresses causation of applicant's claim of industrial injury to his right leg. Applicant

> provided compelling testimony of his belief that his right leg condition was worsened by standing at work, but no medical evidence was offered to support applicant's contention. Entries of August 31, 2022 and June 1, 2023 in the records of Riverbend Medical Associates (Exh. 103) contain statements that applicant believes his right leg condition is caused by his employment, but there are no medical opinions of statements in those records which indicate that a physician has reached to same conclusion. In order to support my decision on causation of the injury, I cannot rely on witness testimony alone. Because there is no medical support for applicant's claim of injury to his right leg as being caused by his employment, I am compelled to find that applicant take nothing by way of his application.

(Opinion on Decision dated December 19, 2025, pp. 2-3.)

There was no timely petition for reconsideration of the WCJ's decision that applicant did not sustain an injury to his right leg on January 20, 2022.

On June 23, 2025, applicant filed a notice of dismissal of his attorney.

On July 22, 2026, he filed a petition to change venue. The petition to change venue was unverified and did not state any grounds for the request to change venue.

DISCUSSION

I

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[1] 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.
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> (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

[1] All further section references are to the Labor Code unless otherwise specified.

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 September 1, 2026 and 60 days from the date of transmission is October 31, 2026. The next business day that is 60 days from the date of transmission is November 2, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on November 2, 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.

Here, according to the proof of service for the Report, the Report was served on September 1, 2026, and the case was transmitted to the Appeals Board on September 1, 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 September 1, 2026.

II

Reconsideration may only be sought from a "final" order, decision, or award. (Lab. Code, § 5900(a).) Final decisions include determinations of threshold issues such as 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].) Reconsideration must be sought within 20 days after the service of any final decision. (Lab. Code, § 5903.) Failure to timely

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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.)

In this case, there is an F&O of December 19, 2025 that determined the threshold issue of whether applicant sustained a specific injury to his leg on January 20, 2022. The time to file a petition for reconsideration of that decision expired after January 13, 2026, which was 20 days after the date the decision was served, extended by another five days for service on parties who are all in California. (See Cal. Code Regs., tit. 8, § 10605(a)(1).) Accordingly, the Petition cannot be considered a timely petition for reconsideration of the December 19, 2025 F&O.

With respect to the PWCJ's Order denying change of venue, which is the stated object of the Petition, the Petition is timely. However, orders denying a petition for change of venue are not "final" or "threshold" decisions for purposes of section 5900, so they are not subject to reconsideration. (See *California Cas. Indem. Exch. v. Workers' Comp. Appeals Bd.* (1979) 44 Cal.Comp.Cases 1112, 1114 (writ denied).) Thus, we will dismiss the Petition as one for Reconsideration.

As a non-final order, the PWCJ's decision is instead subject to removal under section 5310, which provides that the Appeals Board "may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim." (Lab. Code, § 5310.) Therefore, we will treat the Petition as one for Removal, and we will apply the removal standard to our review of the Petition.

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*.) Furthermore, 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).)

In this case, based upon our review of the record, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied, or that future reconsideration will not be an adequate remedy. The petition for change of venue was defective because it failed to

state any grounds showing good cause as required by section 5501.6, but that petition was not denied with prejudice.

Much more importantly, as we shall explain below, there is a much simpler way for applicant to do precisely what he seeks to do in his Petition: i.e., to adjudicate, at the Sacramento District Office, the issue of whether or not he has sustained a cumulative injury in the form of causation or aggravation of edema.

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; cf. Cal. Const., art. XIV, § 4; Lab. Code, § 3201.) Generally, workers' compensation proceedings have informal pleading requirements. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 328–334 [35 Cal.Comp.Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 490 [67 Cal. Comp. Cases 1273].) In short, unless otherwise compelled by the law, the Appeals Board will not elevate form over substance. Moreover, when interpreting what is compelled by the law, all statutory provisions in Divisions 4 and 5 of the Labor Code must be liberally construed with the purpose of extending their benefits for the protection of persons injured in the course of their employment. (Lab. Code, § 3202.)

We also acknowledge that generally, both the Labor Code and our rules "[disfavor] application of formalistic rules of procedure that would defeat an employee's entitlement to [] benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Indeed, WCAB Rule 10517 permits the Appeals Board to amend pleadings to conform to proof. (Cal. Code Regs., tit. 8, § 10517.) This rule represents the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. As we held in our recent en banc decision in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 836 (Appeals Board en banc): "Parties have a due process right to a fair hearing and a determination based on the merits." Further, "[i]n workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof." (*Id*. at p. 838.)

Section 3208.1 dictates the following:

> An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.

(Lab. Code, § 3208.1.)

These two kinds of injury cannot be merged, but must be adjudicated separately:

> When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(Lab. Code, § 3208.2.)

In the present case, the WCJ's F&O determined that there is no specific injury of January 20, 2022, based on orthopedic surgeon Dr. Rogalski's observation that there is no evidence that applicant "bumped" or "cut" his leg at work., or that anything in his leg "popped." Dr. Rogalski was clearly focused on whether there was a specific event on a specific day, without any analysis of a cumulative mechanism of injury. This is likely because applicant did not plead a cumulative mechanism, nor did he plead his circulatory system as an affected part of his body. Applicant was apparently not told by either his attorneys or his physicians that he may have sustained a compensable cumulative injury arising out of and in the course of his employment. Thus, the "date of injury" of any cumulative injury claimed by applicant may not even have occurred yet under section 5412, which provides as follows:

> The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

(Lab. Code, § 5412.)

This lack of actual or constructive notice might explain why applicant has not yet filed a claim form or application alleging cumulative injury, despite the fact that the Petition clearly makes precisely this claim. Edema is swelling caused by a buildup of fluid, and therefore its mechanism is necessarily cumulative in nature. It is equally apparent that it is not caused by an orthopedic mechanism, that it involves internal parts of the body such as the circulatory system,

and that therefore its etiology requires expertise in internal medicine, not orthopedics. In sum, it appears that applicant's intention in filing the Petition is to amend his prior pleading of a specific injury to his leg to a pleading of a cumulative injury to his circulatory system, based on recently obtained medical evidence that may or may not provide a basis for a new "date of injury" under section 5412.

Because the combination or conflation of specific and cumulative injuries is statutorily prohibited, and because applicant's pleading of a specific injury has already been fully adjudicated, *we instead recommend that applicant consult with the I&A Officer at the Sacramento District Office if he wishes to pursue a claim for injury to his circulatory system (edema) as expressed in the Petition.*

We express no opinion as to whether applicant in fact sustained a cumulative industrial injury to his circulatory system in the form of edema as that claim is not presently pending before us.

Accordingly, we dismiss the Petition as one for Reconsideration and deny the Petition as one for Removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Denying Petition to Change Venue served August 5, 2026 is **DISMISSED** and applicant's Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 2, 2026

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

MICHAEL SEABROOKS
GOLDBERG SEGALLA LLP

CWF/*cs*

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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