

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

SHEILA MILTON, *Applicant*

vs.

**EAST BAY INNOVATIONS;
NATIONAL CASUALTY COMPANY, administered by
ILLINOIS MIDWEST INSURANCE AGENCY, LLC, *Defendants***

**Adjudication Number: ADJ21458754
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks removal of the December 2, 2025 Findings of Fact issued by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that applicant sustained an injury arising out of and in the course of employment to her cervical spine, lumbar spine, right knee, and left wrist while employed by defendant on May 25, 2025. By the Findings of Fact, as relevant here, the WCJ also found that applicant's Qualified Medical Evaluator (QME) panel request was valid.

Defendant contends the WCJ erred by failing to invalidate applicant's QME panel because it contained an incorrect date of injury.

We did not receive an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will treat the Petition as one seeking reconsideration and deny the Petition as one seeking reconsideration.

FACTS

The WCJ's Report detailed the following relevant facts:

On May 25, 2025, applicant sustained injury arising out of an in the course of her employment for defendant to her cervical spine, lumbar spine, right knee, and left wrist. Applicant also claims an injury to her head.

On September 11, 2025, applicant sent defendant a letter objecting to the primary treating physician's determinations. (Joint Exhibit 101, Applicant's Objection Letter, September 11, 2025.) The letter described applicant's date of injury as May 25, 2025[sic]

On October 2, 2025, the medical unit issued a panel of qualified medical evaluators (QME). Applicant's panel reflected that applicant's injury occurred on May 20, 2025 and that the claim number for her injury was 0310606-WCNCC. (Joint Exhibit 102, Applicant's Request for Panel of QMEs.)

On October 7, 2025, defendant requested a panel of QMEs. Defendant's request reflected that applicant's injury occurred on May 25, 2025 and that the claim number was 0310606-WCNCC. (Joint Exhibit 103, Defendant's Request for Panel of QMEs.)

On October 23, 2025, defendant filed a Declaration of Readiness to Proceed to Expedited Hearing and the proof of service described the claim number for this matter as 0310606-WCNCC. (Proof of Service, October 23, 2025.)

On December 1, 2025, the matter progressed to an expedited hearing on the issue of the validity of applicant's request for a panel of QMEs with defendant arguing that the panel request was invalid since it was based on an incorrect date of injury. The issue was submitted without testimony.

On December 2, 2025, Findings of Fact issued and in relevant part it was determined that applicant's panel was valid.

On December 22, 2025, Defendant filed its Petition for Removal.

(Report, January 5, 2026, pp. 1-2.)

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 January 5, 2026, and 60 days from the date of transmission is March 6, 2026. This decision is issued by or on March 6, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 January 5, 2026, and the case was transmitted to the Appeals Board on January 5, 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 Labor Code section 5909(b)(1) because

service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 5, 2026.

II.

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 findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant, and that applicant suffered injury to her cervical spine, lumbar spine, right knee, and left wrist arising out of and in the course of employment by defendant. Accordingly, the WCJ’s Findings of Fact is a final decision subject to reconsideration rather than removal.

Although the decision contains findings that are final, petitioner is only challenging the interlocutory finding that the QME panel requested by applicant is valid. 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Defendant claims the WCJ erred by concluding that a date of injury error is immaterial, so long as the claim number is correct. We disagree with defendant and find the WCJ properly upheld applicant's QME panel request. In addition to the WCJ's Report and the analysis set forth in the Opinion on Decision, which provides the rationale for the Findings of Fact, we observe the following.

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. XX, § 21; § 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, 512]; *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.

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 (Cal. Code Regs., tit. 8, §10517) specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. 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.

With these principles in mind, we observe that the process by which a party may seek the issuance of a panel of QMEs is addressed in Rule 30 (Cal. Code Regs., tit. 8, § 30). Rule 30 requires that represented parties submit a request for a panel of QMEs electronically to the DWC Medical Unit, and that they identify the following elements:

1. Panel Request Information Section

- i. Date of Injury
- ii. Claim Number
- iii. Requesting Party
- iv. Reason QME Panel is being Requested
- v. Dispute type
- vi. Name of primary treating physician
- vii. Date of report being objected to
- viii. Date of objection communication
- ix. Specialty of treating physician
- x. QME Specialty Requested
- xi. Opposing Party's QME Specialty Preferred (if known)

(Cal. Code Regs., tit. 8, § 30(b)(1)(A)(1).)

Our prior decisions emphasize that a correct claim number is the primary method of identifying a claim in connection with a QME panel request, and that the correct identification of the pending claim is necessary to properly apprise all interested parties of the status of the QME dispute resolution process. (Lab. Code, §§ 4060, 4061, 4062.2; Cal. Code Regs., tit. 8, § 30.) Thus, parties must “strictly comply with the requirement in Rule 30 to provide a complete and correct claim number in making a request, rather than weighing and adjudging the individual facts and equity surrounding each incorrectly listed claim number in a QME panel dispute.” (*Silveira v. FedEx Ground Package Sys., Inc.* (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 243, *13, emphasis in original [QME panel request invalidated even where omission of single digit of claim number appeared inadvertent in QME panel request]; see also, *Sidahmed v. Alameda County Counsel, PSI* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 103 [QME panel request invalidated where party inadvertently listed incorrect claim number].)¹ “The proper identification of a claim number

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However,

provides notice to the parties of the injury for which a party is seeking the issuance of a panel. . . Thus, a party requesting the issuance of a panel of QMEs must provide accurate information to comply with Rule 30, and also because the parties' ability to correlate a request for the issuance of a panel with the correct claimed injury is essential to due process." (*Sidahmed, supra*, at *13.)

However, consideration of such rationale does not compel a strict application of each and every element of Rule 30, particularly when the purpose of requiring a complete and correct claim number is to ensure that interested parties receive proper notice of a QME panel request for the correct claimed injury. Thus, a party's failure to include a date of injury consistent with the Application for Adjudication of Claim, in and of itself, does not invalidate a QME panel request where it otherwise contained a correct claim number. Specifically, we find that the facts here, where applicant's QME panel request contained a correct claim number but an incorrect date of injury, is not fatal to the validity of the QME panel request for several reasons. First, a date of injury is a question of fact that may ultimately differ from the date initially identified by an applicant. Second, the date of injury is not typically used to identify a claim in connection with a QME panel request, particularly *because* it may be subject change. Lastly, our liberal pleading rules permit amending pleadings to conform to proof. Accordingly, applicant's requested QME panel was properly deemed valid because it contained the correct claim number, and providing an incorrect date of injury did not invalidate the request.

In this case, based upon our review of the record and the WCJ's analysis of the merits of applicant's arguments in the Report, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Accordingly, we deny the Petition as one seeking reconsideration.

panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Silveira* and *Sidahmed* because they considered a similar issue.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 3, 2026

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

**SHEILA MILTON
LAW OFFICE OF ROBERT E. WOOD
D'ANDRE LAW LLP**

DC/cs

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