WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VIRGINIA GUTIERREZ ALVARADO, *Applicant*

vs.

ROSS STORES, INC.;
ARCH INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ12333976; ADJ12812012
Riverside District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration on our own motion in order to further study the factual and legal issues in these cases. This is our Opinion and Decision After Reconsideration.[1]

Applicant seeks reconsideration of the August 16, 2021 Findings and Order (F&O) issued by a workers compensation administrative law judge (WCJ) wherein the WCJ held that applicant, while employed by defendant as a tilt tray operator during the period from June 6, 2018 through June 6, 2019, did not sustain injury arising out of and in the course of employment (AOE/ COE) to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012); and during the period from June 6, 2018 through June 6, 2019, did not sustain injury AOE/COE to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976).

Applicant contends that the medical reports of both the orthopedic Panel Qualified Medical Evaluator (PQME) Keola Chun, M.D. and the neurological PQME Khaled Anees, M.D. are not substantial medical evidence with respect to the issue of the causal nexus between applicant's prediabetes and work-related stress and that the WCJ failed to fully develop the evidentiary record and violated applicant's right to due process when he denied applicant's request for an additional panel in internal medicine.

[1] Both Commissioners Sweeney and Lowe, who were on the panel granting reconsideration, no longer serve on the Appeals Board. Two other panelists have been appointed in their place.

An Answer was filed by defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations of the Petition and the Answer and the contents of the Report and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the August 16, 2021 F&O and substitute it with a new F&O which finds that applicant is entitled to an additional panel in internal medicine and defers all other issues. For the sake of clarity, we will include injury findings from the February 1, 2021 Findings of Fact and an additional finding which indicates, as previously stipulated by the parties, that at the time of the above injuries, the employer was insured by Arch Insurance Company.

FACTS

Applicant alleged that while employed by defendant as a tilt tray operator, she sustained injury AOE/COE from June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and from June 6, 2018 through June 6, 2019 to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976).

The parties proceeded with discovery and retained Dr. Chun as the orthopedic PQME and Dr. Anees as the neurological PQME.

On September 8, 2020, Dr. Anees was deposed by the parties regarding the causal nexus between applicant's prediabetes and work-related stress and whether applicant's prediabetes could have led to a 2016 transient ischemic attack (TIA)[2]. Dr. Anees testified, in relevant part, as follows:

> Q: Could stress, whether it is derived from work or nonwork-related activities, be a contributing factor for prediabetes?
>
> A: That would be outside of my area of expertise. Causation of diabetes or prediabetes, that's more for—an internal medicine-specialist type question.
>
> Q: I think you can tell where I am going with this. Would you defer to an internal medicine specialist to see if they could establish a causal nexus between work-

[2] While applicant's cumulative injury claim was only pled for the one-year period from June 6, 2018 through June 6, 2019, applicant testified at trial that she commenced employment with defendant on June 2003, and that in 2016, she had a stroke at work. (Minutes of Hearing and Summary of Evidence (MOH and SOE), May 4, 2012, pp. 5:5-6, 6:3-4.)

related stress, prediabetes, and then, ultimately if there is a causal nexus, then you could comment potentially on the prediabetes leading to the TIA?

A: Yes.

(Exhibit F, pp. 7:16-8:4.)

Notwithstanding the above testimony, defendant was not agreeable to an additional panel in internal medicine. A joint request for an additional panel was therefore not submitted by the parties.

On December 9, 2019, defendant filed a Declaration of Readiness to Proceed in ADJ12333976 on the issue of injury AOE/COE. A status conference was then held on March 12, 2020, and the two cases were ordered consolidated.

On January 7, 2021, the cases proceeded to trial on the issue of applicant's entitlement to an additional panel in internal medicine. Medical reports from multiple physicians, including Drs. Chun and Anees were offered and entered into evidence. The parties also stipulated that the employer's insurance carrier at the time of the injuries was Arch Insurance Company.

On February 1, 2021, the WCJ issued a Findings of Fact indicating that no good cause had been shown for an additional panel in internal medicine. The WCJ further held that applicant sustained injury AOE/COE while employed by defendant during the period June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and during the period June 6, 2018 through June 6, 2019 to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976).

Neither party sought reconsideration of the February 1, 2021 decision.

Thereafter, the parties proceeded to a further trial on May 4, 2021. Notwithstanding the February 1, 2021 decision, issues set for determination included injury AOE/COE; parts of body injured; temporary disability; permanent disability; apportionment; need for further medical treatment; attorney fees; post-termination filing; and the good faith personnel action defense. Applicant provided testimony but additional medical evidence was not offered or entered into evidence. The employer once again stipulated that its insurance carrier at the time of the injuries was Arch Insurance Company.

On August 16, 2021, the WCJ issued an F&O which held that applicant, while employed by defendant as a tilt tray operator during the period from June 6, 2018 through June 6, 2019, did *not* sustain injury AOE/COE in ADJ12812012 or ADJ12333976. The WCJ further held that applicant was not entitled to an additional panel in internal medicine.

DISCUSSION

I.

Turning now to the merits of the Petition, we remind the parties that 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. (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 considered timely, however, 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. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the F&O was issued and served on August 16, 2021, and the Petition was filed on September 24, 2021. As such, the Petition was filed in excess of 25 days after the service of the decision, and beyond whatever extension of time, if any, applicant might have been entitled to under WCAB Rule 10600.

Pursuant to subsection (b) of Labor Code[3] section 5900, "at any time within 60 days after the filing of an order, decision, or award made by a workers' compensation judge and the accompanying report, the appeals board may, on its own motion, grant reconsideration." Section 5911 further states that:

> Nothing contained in this article shall be construed to prevent the appeals board, on petition of an aggrieved party or on its own motion, from granting reconsideration

[3] All further statutory references will be to the Labor Code unless otherwise indicated.

of an original order, decision, or award made and filed by the appeals board within the same time specified for reconsideration of an original order, decision, or award.

Here, pursuant to our authority under section 5900, we granted reconsideration on our own motion on October 15, 2021.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether 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 Bd. en banc).) 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.

In the instant case, the February 1, 2021 decision resolved the threshold issue of injury AOE/COE in both claims. As such, those findings are considered "final." Per the WCJ, applicant sustained injury AOE/COE while employed by defendant during the period June 6, 2018 through June 6, 2019 to the various body parts outlined under ADJ12812012 and ADJ12333976. (F&O, February 1, 2021.) As set forth above, the remedy for challenging a final order of the WCJ or the Appeals Board is a petition for reconsideration, and the parties have 25 days within which to file a petition from a final decision served by mail upon an address in California. Given that the injury findings were not challenged by either party, they are now final and binding. The WCJ's subsequent August 16, 2021 F&O wherein he finds *no injury* AOE/COE is therefore void. Due to the potential confusion caused by the conflicting February 1, 2021 and August 16, 2021 decisions, we will reiterate the original injury findings in the new F&O outlined below.

Now that injury AOE/COE has been determined, the sole remaining issue is applicant's entitlement to an additional panel in internal medicine. This is an interlocutory or intermediate evidentiary issue. As such, we will apply the removal standard for 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*.) The petitioner must also 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, applicant contends that her due process rights have been violated by the WCJ's decision to withhold further discovery in the form of an additional panel in internal medicine. We agree. We are also persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

III.

We note that subsection (b) of Administrative Director (AD) Rule 31.7 provides, in relevant part, that an additional panel may be issued under the following circumstances:

> (b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:
>
> > (1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or
> >
> > …
> >
> > (3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators; or
> >
> > …

(Cal. Code Regs., tit. 8, § 31.7(b).)

The issue of whether there exists good cause for a panel in internal medicine was raised by applicant previously during the January 16, 2021 trial. The WCJ ultimately found no good cause for an additional panel and provided the following explanation in his February 1, 2021 Opinion on Decision (OOD):

> The parties have already obtained a QME Panel report in Orthopedics from Keola Chun, M.D. and a QME Panel report in Neurology from Khaled Anees, M.D. At the deposition on 9/8/2020, Dr. Anees stated that the applicant's diagnosis of "prediabetes" was outside his area of expertise. Dr. Anees did not request an opinion from an internist.
>
> Applicant contends that it is necessary to obtain a Panel QME in Internal Medicine in order to fully develop the record concerning possible aggravation to the applicant's internal systems.
>
> Defendant contends that the parties have already obtained two Panel QMEs that have not found a compensable injury and that applicant wants a third attempt to obtain a compensable report. In their Trial Brief, defendant contends that even if there were a causal nexus between the applicant's pre-diabetes and her 2016 TIA,

there would be no impairment or need for medical treatment. As a result, there is no good cause for an additional QME Panel in Internal Medicine.

It is found that the applicant has not shown good cause for appointment of a QME Panel in Internal Medicine.

(OOD, February 1, 2021, p. 5.)

On May 4, 2021, the parties returned for a further trial and the WCJ issued an additional decision which led to the filing of a second Petition by applicant. In response to this Petition, the WCJ stated the following in his October 8, 2021 Report:

The applicant contends that the WCJ failed to fully develop the record by ordering an internal medicine PQME. The applicant contends that another Panel QME is necessary based on a question that was given to Dr. Khaled Anees at a deposition.

The deposition of Khaled Anees, M.D, was taken on 9/8/2020 (Exhibit F). The applicant asked Dr. Anees about the applicant being diagnosed as "prediabetes" from a report dated 10/28/2016 (page 7:16-18). Dr. Anees stated that it would be outside her area of expertise (page 7:19-21). Dr. Anees confirmed that there was no neurological deficiencies arising out of the 2016 incident (page 9:22 to page 10:13).

In response to a question, Dr. Anees confirmed whether stress could be a contributing factor for prediabetes is outside his area of expertise. "Causation of diabetes or prediabetes, that's more for—an internal medicine specialist type question" (Exhibit F, page 7:16-25).

In a Trial Brief dated 1/25/2021, Defendant contended that proceeding to an Internal QME would be nothing more than an exercise in futility. While the applicant was diagnosed with pre-diabetes, if the prediabetes had a causal relationship to the TIA, there would still be no impairment and no need for future medical care.

According to Dr. Anees, in his QME report dated 6/2/2020, there was no evidence of neurological loss of function or fixed neurological deficits. Dr. Anees did not find industrial causation of a neurological injury.

The WCJ found that when a QME is asked a hypothetical question and defers to another specialist, it is not good cause to order another Panel QME. In the present case, there was no medical evidence to support a QME Panel in Internal Medicine. Dr. Anees did not find industrial causation of a neurological injury. Dr. Chun did not find industrial causation for an orthopedic injury. There is no good cause for the applicant to be evaluated by Qualified Medical Examiners until permanent disability is found.

(Report, pp. 3-4.)

In the explanations provided above, the WCJ appears to agree with defendant that obtaining yet another PQME "would be an exercise in futility" and likely result in "no impairment or need for medical treatment" since the orthopedic and neurological PQMEs have found no compensability. (Report, pp. 3-4.) This argument misses the point. Applicant has alleged an internal injury, and in the absence of an additional panel in internal medicine, applicant would be precluded from conducting the medical-legal discovery necessary to determine the nature and extent of her injury. (See *Hester v. Sloat Garden Center* (June 24, 2024, ADJ12396719) [2024 Cal. Wrk. Comp. P.D. LEXIS 227; 2024 LX 22043] [applicant will incur significant prejudice if not allowed QME on contested body parts].) Further, pursuant to *Espinoza v. Marborg Industries* (June 24, 2024, ADJ14300773, ADJ16390001) [2024 Cal. Wrk. Comp. P.D. LEXIS 229; 2024 LX 94175], sufficient notice to defendant of a claimed body part is enough to satisfy the good cause requirement for additional panels. As noted above, applicant previously filed an Application in ADJ12812012 alleging injury to numerous body parts, including the internal system.

Moreover, during his September 8, 2020 deposition, Dr. Anees testified as follows regarding the causal nexus between applicant's prediabetes, work-related stress, and the 2016 TIA:

> Q: On page 5 of your report, Dr. Anees, you indicated that there was no head trauma or specific neurological injury that directly preceded the applicant's onset of headaches; is that correct?
>
> A: Yes.
>
> Q: Would you agree that a TIA or ministroke qualifies as a specific neurological injury?
>
> A: When I was saying, "neurological injury," I meant like a physical injury, like a concussion, whiplash. Those kind of things.
>
> Q: And could a TIA or ministroke be a precipice for an onset of headaches? Is that possible?
>
> A: Possible, but it's not typical. With ischemic strokes and TIA, they are usually painless. When you have headaches with a stroke, it's typically a bleeding stroke because of the blood effect, the pressure from the blood. But a TIA and an ischemic stroke, you typically don't see headaches with them.
>
> Q: Speaking of the TIA, on page 17 of your report, you reviewed another report, dated 10/27/2016, wherein the applicant presented with numbness and weakness on the left side of her face and left leg. She was subsequently diagnosed with a transient cerebral ischemia; is that correct?

A: Yes.

Q: What are normally risk factors for a TIA?

A: There are many. Common ones are high blood pressure, high blood glucose, diabetes, prediabetes, high cholesterol, tobacco use. Things like that. Cardiac conditions.

Q: You said "prediabetes"; right? On the same page, actually, you reviewed a report dated 10/28/16 indicating the applicant had been diagnosed with prediabetes is that correct?

A: Yes.

Q: Could stress, whether it is derived from work or non work-related activities, be a contributing factor for prediabetes?

A: That would be outside of my area of expertise. Causation of diabetes or prediabetes, that's more for—an internal medicine-specialist type question.

Q: I think you can tell where I am going with this. Would you defer to an internal medicine specialist to see if they could establish a causal nexus between work-related stress, prediabetes, and then, ultimately, if there is causal nexus, then you could comment potentially on the prediabetes leading to the TIA?

A: Yes.

Q: Now, could stress also, in and of itself, be a contributing factor to a TIA?

A: Not typically. What we see is sometimes indirectly. So somebody who has excessive stress and then that drives up, for example, their blood pressure, and then as a result of uncontrolled blood pressure they can have an ischemic event. You don't typically see stress in itself causing a stroke or a TIA.

Q: So the causal chain I was trying to establish, that pretty much what I have to do on my end, and then you can comment further as to linking the prediabetes to the TIA, then?

A: Yes. The TIA is the injury in question. I thought it was the headaches. That's why I was going to more of the headaches in my report.

(Exhibit F, pp. 6:6-8:19.)

As outlined above, Dr. Anees defers to an internal medicine specialist on the issue of causation for applicant's prediabetes and its potential link to applicant's 2016 TIA.

Notwithstanding this testimony, the WCJ declined to further develop the medical record with respect to applicant's internal complaints.

We note also that although the employee carries the burden of proof in establishing industrial causation and must show that their employment was a contributing cause, the burden "manifestly does not require the applicant to prove causation by scientific certainty." (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; *Rosas v. Workers' Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) It is sufficient to show that work was a contributing cause of the injury. (See *Clark*, *supra*, at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*Guerra v. Workers' Comp. Appeals Bd*. (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemmons v. Workmen's Comp. Appeals Bd*. (1968) 261 Cal.App.2d 1, 8; § 3202.)

Further, AD Rule 31.7 does not require a finding of permanent disability for the issuance of an additional panel. This issue was specifically addressed in *Jover v. County of San Bernardino Dept. of Public Health* (May 8, 2025, ADJ18210611) [2025 Cal. Wrk. Comp. P.D. LEXIS 125; 2025 LX 142301]. In that case, the Appeals Board held that verification of medical causation of contested body parts is not a prerequisite to obtaining additional QME panels. We observe that appointment of the appropriate panel may serve to provide an applicant with the evidence required to meet the burden to prove permanent disability. (See Lab. Code, § 4061(i).)

Lastly, it is well established that the Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The Appeals Board also has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 9 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Under both the California and United States Constitutions, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing. (*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 California Supreme Court 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 offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, based upon the totality of the evidence, including the opinion of neurological PQME, Dr. Anees, we believe good cause exists for a panel in internal medicine and we exercise our discretionary authority to further develop the record by allowing the issuance of this additional panel.

Accordingly, we rescind the August 16, 2021 F&O and substitute it with a new F&O which finds that applicant is entitled to an additional panel in the specialty of internal medicine and defers all other issues. For the sake of clarity, we will include the injury findings from the February 1, 2021 decision as well as an additional finding which indicates, as previously stipulated by the parties, that the employer was insured by Arch Insurance Company at the time of the injuries.

For the foregoing reasons,

IT IS ORDERED that as the Decision After Reconsideration by the Workers' Compensation Appeals Board that the August 16, 2021 Findings and Order is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. In ADJ12812012, applicant, Virginia Gutierrez Alvarado, [DOB omitted] while employed during the period from June 6, 2018 to June 6, 2019, by Ross Stores, sustained injury arising out of and in the course of employment to her head, brain, eye, psyche, digestive system, and internal.

2. In ADJ12333976, applicant, Virginia Gutierrez Alvarado, [DOB omitted] while employed during the period from June 6, 2018 to June 6, 2019, by Ross Stores, sustained injury arising out of and in the course of employment to her cervical

spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system.

3. At the time of the injuries, the employer's workers' compensation insurance carrier was Arch Insurance Company.

4. There is good cause for an additional QME panel in the specialty of Internal Medicine.

ORDER

1. **IT IS ORDERED** that applicant is entitled to obtain from the Medical Director, Division of Workers' Compensation, an additional QME panel in the specialty of Internal Medicine.

2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 19, 2026

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

VIRGINIA GUTIERREZ ALVARADO
GLAUBER BERENSON VEGO
MULLEN & FILIPPI, LLP

RL/*cs*

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