WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM RAMIREZ, ***Applicant***

vs.

BARNES AND NOBLE INC.;
ACE AMERICAN INSURANCE COMPANY,
administered by ESIS, INC., ***Defendants***

Adjudication Numbers: ADJ10412642; ADJ10412643
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on June 26, 2026, by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ found that applicant, while employed on November 13, 2014 as a cashier by defendant sustained injury arising out of and in course of employment (AOE/COE) to esophagus, hiatal hernia, psyche, GERD, urinary, headaches, neck, thoracic, back, sleep, head, brain; that defendant's injury biomechanical report prepared by Stephanie Bonin, Ph.D., PE, senior biomedical engineer (Exhibit A) and the report of treating physician Sanjay J. Chauhan, M.D. (Exhibit B) were admitted into evidence but that they were not substantial evidence and should not be sent to the Qualified Medical Evaluator (QME) for review and comment.

Defendant contends that the WCJ erred when she ordered that the reports of Dr. Bonin (Def. Exh. A) and Dr. Chauhan (Def. Exh. B) could not be sent to the QME.

We received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the Report of the WCJ with respect thereto. Based on our review of the record, for the reasons

stated in the WCJ's Report as quoted below, and for the reasons discussed below, we will grant the Petition, and, as our Decision After Reconsideration, we will rescind the WCJ's June 26, 2026 F&O, and substitute a new F&O that deletes the findings as to substantial medical evidence and deletes the reference to "substantial medical evidence" in the Order. We otherwise make no substantive changes to the F&O.

FACTUAL BACKGROUND

As summarized by the WCJ in the Opinion on Decision, the facts are as follows:

> Applicant, William Ramirez, while employed on November 13, 2014 by Barnes and Noble sustained injury to his esophagus, hiatal hernia, psych, GERD, urinary, headaches, neck, thoracic spine, back, sleep, head and brain.
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> The Applicant was evaluated by Dr. John Hill who served as the [QME]. The initial evaluation took place, and a report was authored on December 12, 2016. Thereafter, Dr. Hill authored several reports dated June 9, 2017, July 25, 2017, February 12, 2018, August 31, 2020, and February 17, 2025. Additional evaluations were performed by QMEs Dr. Parminder Bhatia dated June 16, 2021, and Dr. Abdo Faddoul dated July 7, 2021.
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> Defendants retained biomechanical engineer [Bonin] of MEA Forensic Engineers & Scientists, to evaluate the mechanism of injury alleged by the applicant arising out of the November 13, 2014 injury. Bonin's biomechanical report dated October 23, 2024, stated that Bonin reviewed deposition testimony, medical records, radiology studies, photographs of the locker area, and the opinions of Dr. Hill. The report uses biomechanical literature, published opinions, testing data and specifically critiques the biomechanical opinions of Dr. Hill for the cervical, thoracic, and lumbar spine.
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> Defendants served Bonin's report, via mail, on applicant's attorney on November 01, 2024, and notified them of their intent to serve the report on Dr. Hill and primary treating physician (PTP) Dr. Sanjay Chauhan.
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> On November 25, 2024, the applicant objected to Bonin's report going to Dr. Hill. Defendant's sent Bonin's report to applicant's PTP, Dr. Chauhan. Dr. Chauhan reviewed Bonin's report and issued a supplement [*sic*] report dated January 21, 2025.
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> Defendants contend that Dr. Bonin's report is "nonmedical" information bearing directly on disputed medical issues, specifically, whether the described mechanism of injury, hitting an open locker door, is capable of producing the axial compressive forces and multi-level spinal pathology being attributed to the industrial injury on November 13, 2014.

(Opinion on Decision, p. 3, ¶ 2-p. 4, ¶ 3.)

On May 26, 2026, the parties proceeded to trial. No witnesses testified. The parties stipulated that applicant, while employed on November 13, 2014, as a cashier by defendant sustained injury AOE/COE to esophagus, hiatal hernia, psyche, GERD, urinary, headaches, neck, thoracic, back, sleep, head and brain. The issue was identified as "[w]hether the Defendant's expert report can be reviewed by the QME." (*Id.* at lines 12-14.) Applicant objected to the admission of defendant's proposed Exhibit A, Dr. Bonin's report, and Exhibit B, Dr. Chauhan's supplemental report addressing Dr. Bonin's report, which were marked for identification only. (*Id.* at p. 3, lines 7-11.) The matter stood submitted.

On June 26, 2026, the WCJ issued the F&O. The F&O found in pertinent part that Dr. Bonin's report (Def. Exh. A) and Dr. Chauhan's report (Def. Exh. B) were admitted into evidence; Dr. Chauhan's report is not substantial medical evidence and should not be sent to the QME for review and comment; and Dr. Bonin's report is not substantial medical evidence and should not be sent to the QME for review and comment.

Thereafter, defendant sought reconsideration of the F&O.

DISCUSSION

I.

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

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

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 August 7, 2026, and 60 days from the date of transmission is October 6, 2026. This decision is issued by or on October 6, 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 August 7, 2026, and the case was transmitted to the Appeals Board on August 7, 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 August 7, 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 decisions include findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant, that applicant sustained injury arising out of and in the course of employment to the esophagus, hiatal hernia, psyche, GERD, urinary, headaches, neck, thoracic, back, sleep, head, brain on November 13, 2014, and at the time of injury, defendant employer was insured by Ace American Insurance Company. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, petitioner is only challenging the interlocutory order that Dr. Bonin's report (Def. Exh. A) and Dr. Chauhan's supplemental report (Def. Exh. B) shall not be sent to the QME for review and comment. 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 on the WCJ's analysis of the merits of petitioner's arguments in the Report, and as discussed below, we are not persuaded that substantial 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.

Section 4062.3 permits medical and non-medical records to be provided to the QME and lays out detailed requirements about the procedures that must be followed before such records may be provided. (Lab. Code, § 4062.3(a)- (l).) Specifically, Section 4062.3 states in relevant part:

(a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(b) Information that a party proposes to provide to the qualified medical evaluator selected from a panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(Lab. Code, § 4062.3(a)-(b).)

In *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136, 138 (Appeals Board en banc), the Appeals Board distinguished between "communications" and "information," clarifying that "'Information,' as that term is used in section 4062.3, "constitutes (1) records prepared or maintained by the employee's treating physician or physicians, and/or (2) medical and nonmedical records relevant to determination of the medical issues."

Further, AD Rule 35(d) provides in relevant part:

(d) If the opposing party objects within 10 days to any non-medical records or information proposed to be sent to an evaluator, those records and that information shall not be provided to the evaluator unless so ordered by a Workers' Compensation Administrative Law Judge.

(Cal. Code Regs., tit. 8, § 35.)

Based on our review of the record and the WCJ's analysis of the merits of defendant's arguments in the Report, we are not persuaded that it is appropriate to grant defendant's Petition. Here, it is questionable whether Dr. Bonin's report is relevant to the determination of a medical issue. Dr. Bonin at best, is providing an opinion on apportionment, which is a medical opinion and up to a physician, not a forensic engineer. Notably, the parties have stipulated to applicant's injuries. However, even assuming Dr. Bonin's report were considered a nonmedical record relevant to determination of the medical issues, and thus "information" under section 4062.3, we conclude that the WCJ's order that it should not be sent to QME Dr. Hill is appropriate.

In *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1811-1812 (Appeals Board en banc), we explained that parties must comply with the provisions of section 4062.3 before providing medical records to the QME. We held that WCJs "have the authority to address discovery disputes, which includes disputes regarding what information may be provided to the QME. If the parties cannot informally agree on what information to provide to the QME, the trier of fact is empowered to determine whether the information may be provided to the QME." (*Id*. at p. 1814.) Moreover, it is the trier of fact who has the authority to determine what information may be provided to the QME if the parties cannot informally agree on what information to provide to the QME. (*Ibid*.)

Thus, because there was no treating relationship between applicant and Dr. Bonin, the discretion rests with the WCJ whether to allow Dr. Bonin's report and Dr. Chauhan's supplemental report where he considered Dr. Bonin's report, to be provided to QME Dr. Hill. (Cal. Code Regs., tit. 8, § 35(d); *Maxham*, *supra*, 82 Cal.Comp.Cases at p. 138; see also *Cervantez v. Staffmark Transp.*, 2014 Cal.Wrk.Comp.P.D. LEXIS 707[2].)

Further, in *Batten v. Workers' Comp. Appeals Bd*. (2015) 241 Cal.App.4th 1009 [80 Cal.Comp.Cases 1256], the Court held:

> Section 4605 permits the admission of a report by a consulting or attending physician, and section 4061, subdivision (i) permits the admission of an evaluation prepared by a treating physician. *Neither section permits the admission of a report by an expert who is retained solely for the purpose of rebutting the opinion of the panel qualified medical expert's opinion.*

(*Id.* at p. 1016 (emphasis added).)

The *Batten* Court explained, that "[h]ad the Legislature intended to permit the admission of additional comprehensive medical reports, obtained at a parties' own expense for the sole purpose of rebutting the opinion of the qualified medical expert, it would have said so." (*Id*. at p. 1015.)

[2] 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, 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 the panel decision because it considered a similar issue.

In declining to permit Dr. Bonin's report or Dr. Chauhan's supplemental report to be sent to the QME, the WCJ explained in the Report as follows:

> Bonin's report was not a neutral factual record. It was a retained biomechanical opinion that directly critiqued QME Dr. Hill's causation analysis and extended into medical causation. (Defendant's Exhibits A and B.)
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> A biomechanical engineer may be qualified to discuss forces, movement, and accident dynamics, but is not thereby qualified to render medical opinions regarding diagnosis, tissue injury, medical causation in terms of reasonable medical probability, treatment need, disability, or apportionment. Here, Bonin's report moved beyond mechanics and effectively opined that applicant's head impact did not cause the claimed spinal pathology.
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> Bonin also did not examine or interview the applicant. She relied on generalized studies and assumptions. The report itself acknowledged that important variables were unknown, including the exact impact location, head and neck orientation, and rigidity of the locker door. Bonin extrapolated from cadaver studies and generalized data to infer whether the event could produce the claimed pathology. (Defendant's Exhibit A and B.) The undersigned found that this was insufficient foundation for the role defendant sought to assign the report in the QME process.
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> The issue submitted at trial was whether defendant's expert report could be reviewed by the QME, and that issue was adjudicated on the merits.
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> Dr. Chauhan's supplemental report independently supported the ruling. A medical opinion is not substantial evidence if it rests on speculation, conjecture, or inadequate factual and medical reasoning. Dr. Chauhan's report was tentative, derivative, and deferred. He agreed only "to a certain degree" with Bonin, stated he was not a biomechanical expert, used tentative phrases including "must assume," "probably," and "may be indicated," and deferred further determination to Dr. Hill. The report therefore did not constitute an independently reasoned final medical opinion and was properly excluded from transmission to the QME. (Defendant's Exhibit B.)

(Report, August 7, 2026, p. 3, ¶ 4-p. 5, ¶ 1.)

Moreover, defendant may not do indirectly what it cannot do directly. Because the WCJ properly found that defendant was precluded from sending Dr. Bonin's report to QME Dr. Hill, it is equally improper to send Dr. Chauhan's supplemental report to QME Dr. Hill when the report was based on Dr. Chauhan's review of Dr. Bonin's report. Dr. Chauhan's supplemental report is likewise "fruit of the poisonous tree" and should not be sent to QME Dr. Hill.

Dr. Hill's initial QME Report, following an in-person examination of applicant, thoroughly considers applicant's history in assessing causation of applicant's industrial injuries. (App. Exh. 1, QME Evaluation Report, Dr. Hill, December 12, 2016.) Dr. Bonin's report, on the other hand, obtained ten years after the date of injury and without examination of applicant, appears to do precisely what is prohibited by *Batten*, which is attempt to rebut, outside of the med/legal process, QME Dr. Hill's opinion that applicant's cervical, thoracic, and lumbar spine injuries were the result of applicant's head striking the locker door, causing compression to the entire spine. (Def. Exh. A, MEA Forensic Report, p. 9, ¶ 2-p. 13, ¶ 2.) We emphasize that defendant has already stipulated to injury AOE/COE.

The WCJ also noted that applicant's procedural objection to transmission of Dr. Bonin's report was not "timely" (Def. Exh. D) but acknowledged that the untimeliness of the objection did not require the WCJ to authorize transmission of Dr. Bonin's report to the QME. (Report, August 7, 2026, p. 4, ¶ 4.). We agree. Indeed, the authority to determine whether reporting is admissible and/or can be sent to the QME rests with the WCJ, regardless of whether there was an objection by a party. The purpose of the time period for the objection in section 4062.3(b) is to allow time to seek intervention at the WCAB. That is, if a possibly prejudicial or inadmissible document is sent to the QME who then reviews it, a question may arise in the future as to whether the QME's opinion was tainted, and thus, in the interest of judicial economy, it is preferable for a WCJ to decide the question before the QME reviews the disputed document.

In *Suon*, we clarified that section 4062.3(b) does not give a specific timeline for the opposing party to object to the QME's consideration of medical records, but the objection must be within a reasonable time to preserve it. (*Suon*, *supra*, at p. 1812.) Thus, although applicant did not object within the 10-day period identified in section 4062.3(b), it did not eliminate applicant's ability to object. Here, defendant's letter informing applicant it intended to send Dr. Bonin's report to QME Dr. Hill was dated November 1, 2024, meaning applicant had until November 18, 2024, to file an objection that would automatically preclude defendant from sending Dr. Bonin's report to QME Dr. Hill. Applicant submitted his objection by facsimile on November 25, 2024, which was only seven days beyond the time period in section 4062.3(b). Such a delay was reasonable and preserved applicant's objection.

Lastly, we note that defendant has other avenues to question QME Dr. Hill about Dr. Bonin's report, for example, by formulating hypothetical questions for cross-examination at

deposition. As such, defendant fails to demonstrate the requisite significant prejudice or irreparable harm to justify removal.

Finally, as explained by the WCJ in the Report:

> To the extent the wording of the Findings may be read as requiring Bonin's report itself to constitute substantial medical evidence before it could be reviewed by the QME, the undersigned clarifies that no such categorical rule was intended. The ruling intended was that Bonin's report, although nonmedical information, was not an appropriate report to transmit to the QME on this record.

(Report, August 7, 2026, p. 3, ¶ 3.)

Accordingly, we rescind the F&O and substitute a new F&O, which deletes the findings as to substantial medical evidence and deletes the reference to "substantial medical evidence" in the Order.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact, Order issued on June 26, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Order issued on June 26, 2026 by the WCJ is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. William Ramirez, while employed on November 13, 2014 as a cashier, occupational group number in dispute, at Fresno, California by Barnes & Noble, sustained injury AOE/COE to esophagus, hiatal hernia, psyche, GERD, urinary, headaches, neck, thoracic, back, sleep, head, brain.

2. At the time of injury, the employer's workers' compensation carrier was Ace American Insurance Company.

3. At the time of injury, the employee's earnings were $496.87 per week warranting indemnity rates of $331.25 for temporary disability and $290 for permanent disability. All these rates are subject to proof.

4. The employer has furnished some medical treatment.

5. No attorney's fees have been paid, and no attorney-fee arrangements have been made.

6. Defendant Exhibit A, the report of Dr. Bonin, dated October 23, 2024, and Exhibit B, the supplemental report of Dr. Chauhan, dated January 21, 2025, are admitted into evidence.

7. The supplemental report of Dr. Chauhan, dated January 21, 2025, shall not be sent to any QME for review and comment.

8. The report of Dr. Bonin, dated October 23, 2024, shall not be sent to any QME for review and comment.

ORDER

IT IS ORDERED THAT Dr. Bonin's report, dated October 23, 2024, shall not be sent to any QME for review and comment.

IT IS FURTHERE ORDERED THAT Dr. Chauhan's supplemental report, dated January 21, 2025, shall not be sent to any QME for review and comment.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2026

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

WILLIAM RAMIREZ
LAW OFFICES OF BRYAN K. LEISER
LAW OFFICES OF DUNCAN, CASSIO, LUCCHESI, BINKLEY, AND VAN DOREN
EMPLOYMENT DEVELOPMENT DEPARTMENT

DC/*pm*

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