

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

ELENA SANTAMARIA, *Applicant*

vs.

**MAGIC MOUNTAIN LLC, dba SIX FLAGS MAGIC MOUNTAIN;
PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD,
Administered by CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ15168100
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 24, 2024. The WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her abdominal wall; that the record needs development on the disputed issue of industrial injury to the psychiatric system; and that applicant's claim is presumptively compensable pursuant to Labor Code, section 5402. The WCJ ordered that the "disputed issue of industrial injury to the psychiatric system is deferred pending further development of the record."

Defendant contends in the Petition for Reconsideration (Petition) that the WCJ erred in ordering development of the record, when applicant did not meet her burden of proof regarding the psychiatric injury under Labor Code, section 3208.3. Defendant also contends that the WCJ erred in ordering development of the record in accordance with *Rolda v. Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc).

The WCJ issued a Report and Recommendation on defendant's Petition (Report) recommending that the Petition be denied.

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

WCJ's Report, which we adopt and incorporate, we will deny the Petition as one seeking reconsideration.

DISCUSSION

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 two threshold issues: that applicant's abdominal wall injury was AOE/COE and that the claim is presumptively compensable under Labor Code, section 5402. (F&O, at p. 1.) Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, the petitioner is only challenging interlocutory findings/orders regarding development of the record. (Petition, at pp. 2-4.) 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, for the reasons stated in the WCJ's 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.

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 1, 2024

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

**ELENA SANTAMARIA
KNIGHT TEMPLE ATTORNEYS, APC
FLOYD SKEREN MANUKIAN LANGEVIN, LLP**

MB/ara

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

INTRODUCTION:

On June 11, 2024, the Defendant filed a timely and verified petition for reconsideration dated June 11, 2024, alleging that the undersigned WCJ erred in his Findings of Fact & Order dated May 24, 2024. The Defendant contends that the undersigned WCJ erred in ordering further development of the record on the disputed issue of whether the Applicant sustained a compensable psychiatric injury and should have found instead no industrial psychiatric injury. The Defendant also criticized the undersigned WCJ's citation of Rolda v. Pitney Bowes, Inc. (2001) 66 Cal. Comp. Cases 241 (Appeals Board en banc) in his recitation of the legal framework of the analysis for determining the compensability of a psychiatric claim, claiming that it did not assert a good faith personnel defense pursuant to Labor Code 3208.3(h).

STATEMENT OF FACTS:

The Applicant, while employed on July 28, 2021, as a parking lot attendant, by Six Flags Entertainment Corporation, claimed to have sustained an industrial injury to her abdominal wall and psychiatric system.

The Applicant submitted into evidence the psychological permanent and stationary evaluation report of Bal S. Grewal, Ph.D., dated August 15, 2023. The Defendant submitted no contrary psychiatric medical evidence to rebut the findings of Dr. Grewal.

On May 24, 2024, the undersigned WCJ issued his Findings of Fact & Order determining that the Applicant's claim was presumed compensable pursuant to Labor Code § 5402 and that she sustained an compensable injury to her abdominal wall, but found that Dr. Grewal's opinion on psychiatric causation was conclusory and not substantial, mandating development of the record.

Aggrieved by this decision, the Defendant filed its petition for reconsideration.

DISCUSSION:

In order to constitute an industrial psychological injury an applicant must have sustained a compensable mental disorder, either directly or as a compensable consequence, "which cause[d] disability or [the] need for medical treatment." [Labor Code § 3208.3(a).] Disability is evidence that there is either compensable "temporary disability" or "permanent disability." [State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte) (2004) 69 Cal. Comp. Cases 579, 584.] Therefore, a physician, in determining compensability, must analyze all the causal factors that contributed to the applicant's first need for psychiatric temporary disability and/or the need for medical treatment.

Pursuant to Labor Code § 3208.3(b)(1), in order to establish that a psychiatric injury is compensable, an applicant must show by a preponderance of the evidence that actual events of employment predominantly caused the psychiatric injury.

In this case, the only evidence submitted on this issue was the permanent and stationary report of Bal S. Grewal, Ph.D., dated August 15, 2023. With respect to causation, despite the multiple factors surrounding the Applicant's alleged psychiatric injury, on page 13, Dr. Grewal merely wrote, "I find that, within the reasonable realm of medical probability, Ms. Santamaria has suffered an industrial injury to the psyche, which was predominantly caused by actual employment events." This was insufficient evidence to render a finding on industrial causation.

Notwithstanding the Defendant's claim that the undersigned WCJ should find unfavorably against the Applicant based solely on an insufficient evidentiary record, where a WCJ identifies "deficiencies, inaccuracies or lack of completeness," in the medical record, "Labor Code [§§] 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings." [McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138, 141 (Appeals Board en banc).] "[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims and militates in favor of our presuming the continued vitality of [§§] 5701 and 5906, absent a clear legislative intention to the contrary." [Tyler v. Workers Comp. Appeals Bd. (1997) 62 Cal. Comp. Cases 924, 928.] Thus, where there is a lack of substantial medical evidence in the record, a WCJ should direct the parties to obtain additional medical evidence to fill the void. [San Bernardino Community Hospital v. Workers Comp. Appeals Bd. (McKernan) (1999) 64 Cal. Comp. Cases 986.] An adequately developed record affords all parties due process of law and further provides for meaningful review by the WCAB of a WCJ's decision. [Evans v. Workmen's Comp. Appeals Bd. (1968) 33 Cal. Comp. Cases 350; Pulido v. Warner Bros. Studio Facilities, Inc. (2002) 2022 Cal. Wrk. Comp. P.D. LEXIS 204, *7-8 (Appeals Board noteworthy panel decision); see Hernandez v. Staff Leasing (2011) 76 Cal. Comp. Cases 343 (Appeals Board significant panel decision).]

Finally, the Defendant's criticism of the undersigned WCJ's citation and dicta surrounding Rolda cannot constitute any basis for reversible error.

Therefore, for the reasons set forth above, there is no reasonable basis to disturb the undersigned WCJ's decision to develop the record.

RECOMMENDATION:

The undersigned WCJ respectfully recommends denial of the Defendant's petition for reconsideration dated June 11, 2024.

Date: **June 12, 2024**

**DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**