

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

**JOE REYNOSO, *Applicant***

**vs.**

**SHIPPERS TRANSPORT EXPRESS;  
CHUBB INSURANCE, BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ10151836; ADJ17430831; ADJ17430341  
Los Angeles District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR RECONSIDERATION,  
GRANTING PETITION FOR REMOVAL,  
AND DECISION AFTER REMOVAL**

Applicant seeks reconsideration or in the alternative removal of the Joint Order Approving Petition To Compel Attendance at a panel qualified medical evaluation (PQME) with Joseph Hohl, M.D. (Order) on June 10, 2024, dated April 17, 2024, by the workers' compensation administrative law judge (WCJ).

Applicant contends that Dr. Hohl was the qualified medical evaluator (QME) for applicant's previously settled case number ADJ10151836 and should not be the QME in the other cases.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Applicant's Petition For Reconsideration or Removal (Report) recommending that the Order dated April 17, 2024 be upheld as to Case Number ADJ10151836 and requested that the WCAB "provide input" on the other two Case Numbers ADJ17430831 and ADJ17430341.

We have considered the allegations of the Petition for Reconsideration or Removal and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss the petition to the extent it seeks reconsideration as the Order is a non-final order. We will grant the petition as one seeking removal. As our Decision After Removal, we will rescind the April 17, 2024 Order and return this matter to the trial level for further proceedings.

## **BACKGROUND**

Applicant claims to have sustained a specific injury to his back and a hernia on May 14, 2015 while employed by defendant as a truck driver (Case Number ADJ10151836). On June 20, 2016, applicant amended his claim removing the hernia from his claim. On March 21, 2019, applicant filed a Petition to Reopen on the grounds that future medical treatment had been authorized pursuant to the Stipulation and Request for Award. The Petition to Reopen is also filed on the grounds of potential new and further disability from the original injury pursuant to Labor Code section 5410.

Applicant claims to have sustained a cumulative injury to his back, upper and lower extremities, and shoulders, waist, stress, psyche, and sleep from May 17, 2017 to July 28, 2021 while employed by defendant as a truck driver (Case Number ADJ17430831).

Applicant claims to have sustained a specific injury to his back, right leg, right knee (patella), neck, and hips on July 28, 2021 while employed by defendant as a truck driver (Case Number ADJ17430341).

On April 12, 2024, defendant filed a Petition To Compel Attendance at a QME evaluation with Dr. Hohl.

On April 17, 2024, the WCJ signed a Joint Order Approving Petition To Compel Attendance At QME Evaluation which states:

**IT APPEARING THAT** Defendant filed a verified Petition to Compel Applicant's attendance at a QME evaluation with Dr. Joseph Hohl on June 10, 2024 for all open claims against defendant, and

**GOOD CAUSE APPEARING,**

**IT IS HEREBY ORDERED THAT** applicant be compelled to attend a QME evaluation with Dr. Joseph Hohl on June 10, 2024.

(Order Compelling Attendance at Medical Evaluation, April 18, 2024.)

On April 19, 2024, defendant served via mail the Joint Order Approving Petition to Compel QME Attendance on applicant and via email and fax on applicant's attorney. (Proof of Service Order Approving Petition to Compel QME Attendance, 4/19/2024.)

## DISCUSSION

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*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 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 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, or similar issues.

Here, the order that issued was for applicant to attend a QME evaluation. This is an interim order affecting discovery and is not a final order for purposes of reconsideration. Accordingly, the petition for reconsideration will be dismissed.

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)<sup>1</sup>.)

A WCJ is required to “. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together

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<sup>1</sup> All statutory references not otherwise identified are to the Labor Code.

with the findings, decision, order, or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc)<sup>2</sup>.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.) In *Hamilton*, we held that the record of proceeding must contain at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.)

WCAB Rule 10832 states:

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

- (1) Allowing, disallowing, or dismissing a lien;
- (2) Granting, denying, or dismissing a petition;
- (3) Sanctioning a party;
- (4) Submitting the matter on the record; or
- (5) Dismissing an application.

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<sup>2</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

(b) A Notice of Intention may be served by designated service in accordance with rule 10629.

(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

- (1) Sustain the objection;
- (2) Issue an order consistent with the notice of intention together with an opinion on decision; or
- (3) Set the matter for hearing.

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

(e) An order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10832.)

Here, the WCJ did not issue an NIT after her review of the Petition to Compel and did not schedule a hearing. Instead, she issued the Order. Although, applicant did not file an objection to the defendant's Petition, applicant did not receive adequate notice and the opportunity to be heard before the Order issued because there was no NIT and no hearing. We observe that applicant's attorney filed the instant Petition apparently as an objection to the QME evaluation, and upon return the WCJ may treat it as an objection. Thus, we believe that applicant has suffered irreparable harm, and we will rescind the Order.

Accordingly, we will grant the petition to the extent it seeks removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this decision. Upon return to the trial court the WCJ should hold a hearing and create a record regarding the issue of the QME.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the decision dated April 17, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 24, 2024**

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

**JOE REYNOSO  
LAW OFFICE OF ROBERT LEE  
RTGR LAW  
STEVEN SAPERA**

**DLM/oo**

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