WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

REBECCA CORDOVA, *Applicant*

vs.

SACRAMENTO METROPOLITIAN FIRE DISTRICT, PSI, adjusted by SEDGWICK, *Defendants*

Adjudication Number: ADJ14244361
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the July 3, 2024 Findings of Fact, Award, and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a firefighter during the period ending August 5, 2019, sustained industrial injury to her psyche. The WCJ found, in relevant part, that the reporting of Qualified Medical Evaluator (QME) Joseph R. Nevotti, Ph.D., did not constitute substantial medical evidence and that the deficiencies in the QME reporting could not be rehabilitated. Accordingly, the WCJ ordered Dr. Nevotti stricken as the QME and ordered the parties to consider the use of an Agreed Medical Evaluator or to obtain a new panel of QMEs.

Applicant contends that the replacement of the QME is premature, that the QME's stated positions regarding apportionment are not inconsistent with statutory and case law, and that the QMEs deposition testimony was not accorded the appropriate weight by the WCJ.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant

reconsideration, rescind the F&O, and substitute new findings of fact that an additional evaluation is reasonable and necessary to resolve disputed issues. We will order that defendant's petition for the issuance of a replacement panel of QMEs be granted, and further order that the Medical Director issue a new panel of QMEs in psychology.

FACTS

Applicant sustained injury to her psyche in the form of post-traumatic stress disorder (PTSD) while employed as a firefighter by defendant Sacramento Metropolitan Fire District during the period ending August 9, 2019.

Applicant, while unrepresented, selected Joseph Nevotti, Ph.D., as the QME in psychology. The QME has evaluated the applicant and issued multiple reports.

On May 10, 2023, the parties undertook Part I of the deposition of the QME but were unable to complete the deposition.

On July 27, 2023, defendant filed a Petition for Order for Replacement Panel, contending the QME had stated a clear intention to enter findings inconsistent with the applicable statutory requirements for apportionment to causation, and because the QME had already formed conclusions evincing bias against defendant.

On November 20, 2023, the parties proceeded to trial. However, the WCJ ordered the matter taken off calendar pending completion of the deposition of the QME.

On February 14, 2024, the parties conducted part II of the deposition of Dr. Nevotti.

On March 7, 2024, defendant filed a First Amended Petition for Order for Replacement Panel (Petition for Replacement Panel), again asserting that the QME had exhibited unprofessional conduct and bias against the defendant, that the QME had prejudged the matter, and that the QME had professed his unwillingness to apply a correct legal theory of apportionment. (Petition for Replacement Panel, at p. 7:13.) Defendant also asserted that the QME had issued unsolicited emails after the March deposition that evinced bias as described in Administrative Director (AD) Rule 41 (Cal. Code Regs., tit. 8, § 41), warranting the disqualification of the QME. (*Id.* at p. 10:7.)

On June 25, 2024, the parties proceeded to trial on the sole issue of defendant's Petition for Replacement Panel. No testimony was heard, and the WCJ took the matter under submission the same day.

On July 3, 2024, the WCJ issued his F&O,[1] determining in relevant part that the actions by Dr. Nevotti were unprofessional and indicated the QME's intention not to follow the law on apportionment. (Finding of Fact No. 35). The WCJ determined that Dr. Nevotti's reporting does not constitute substantial evidence and that Dr. Nevotti cannot be rehabilitated as a QME in this matter. (Finding of Fact No. 36.[2]) The WCJ ordered Dr. Nevotti stricken as the QME and ordered the parties to consider an AME, or if no AME agreement is possible, to obtain an additional panel of QMEs. (F&O, Order, p. 5.)

Applicant's Petition contends that the disqualification of the QME is unwarranted, because the QME has stated positions in deposition that are consistent with case law. Applicant contends that the QME's statement at deposition that "in order for him to consider apportionment, the pre-existing condition must currently be contributing to the disability," conforms to the holdings in *City of Petaluma v. Workers' Comp. Appeals. Bd.* (*Lindh*) (2018) 29 Cal.App.5th 1175 [83 Cal.Comp.Cases 1869] (*Lindh*). Applicant contends that any determination of whether the QME's apportionment analysis is consistent with statutory and decisional authority is premature. Applicant also asserts that the QME's confusion at deposition was compounded by the fact that the QME has never been provided with transcripts from the depositions of applicant and her treating physician. (Petition, at p. 4:7.) Accordingly, applicant concludes that the decision to replace the QME is premature, and that Dr. Nevotti should not be replaced as there is no significant evidence that he is biased toward one party or that he is unable to apply the law. (*Id.* at p. 5:4.)

The WCJ's report observes that the QME is "is required to act as an unbiased expert so that any report he generates can be relied upon by all parties as fair, unbiased and impartial." (Report, at p. 7.) Following an additional review of the evidentiary record, including both volumes of the QME's deposition testimony and the email communications sent by the QME to the parties, the WCJ's Report again concludes that the QME is no longer capable of acting in accordance with applicable standards of impartiality. The Report recommends we deny applicant's Petition, accordingly. (*Ibid*.)

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[1] The WCJ's decision includes 39 Findings of Fact. We observe that pursuant to Labor Code section 5806, any findings and order, decision or award of the WCAB may be reduced to an entry of judgment with the clerk of the superior court of any county. (Lab. Code, § 5806.) Accordingly, we recommend that in the future the WCJ consider limiting the Findings of Fact, as is necessary and appropriate, to findings that are directly responsive to the issues submitted for decision, with the Opinion on Decision explicating the legal and evidentiary basis for those findings.

[2] Per the WCJ's Report (fn. 1), Findings of Fact No. 36 was inadvertently used to identify both of the WCJ's determinations that (a) Dr. Nevotti's reporting is not substantial evidence, and (b) that Dr. Nevotti cannot be rehabilitated as a QME.

DISCUSSION

Former Labor Code[3] 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, 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.
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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 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 July 17, 2024 and 60 days from the date of transmission is Sunday, September 15, 2024. The next business day that is 60 days from the date of transmission is Monday, September 16, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)[4] This decision is issued by or on Monday, September 16, 2024, 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

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

[4] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 July 17, 2024, and the case was transmitted to the Appeals Board on July 17, 2024. 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 July 17, 2024.

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.

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 of employment, injury, and need for future medical care. These are final orders subject to reconsideration and not removal. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

Although the decision contains findings that are final, the petitioner is only challenging an interlocutory finding/order disqualifying the QME and ordering the use of an AME or a replacement panel of QMEs. Therefore, we will apply the removal standard to our review. (See *Gaona, supra,* 5 Cal.App.5th 658, 662.)

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 substantial 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).)

Applicant contends that the WCJ's decision to replace the QME was premature. Applicant's Petition submits that "Dr. Nevotti has stated that in order for him to consider apportionment, the pre-existing condition must currently be contributing to the disability," but that "[t]hat position is not contrary to the *City of Petaluma v. Workers' Comp. Appeals. Bd.* (*Lindh*) (2018) 29 Cal.App.5th 1175 … [w]hile *Lindh* does state that apportionment is allowed to pre-existing conditions that were asymptomatic, those conditions have to be currently contributing to the disability in order for apportionment to be allowed. Dr. Nevotti's position is simply that he needs evidence to substantiate apportionment." (Petition, at p. 3:7.) Applicant's Petition also contends that "Dr. Nevotti's confusion during the deposition stemmed from the fact that he was never provided the deposition transcript of treating physician, Dr. Debbie Knight, and never provided the deposition transcript of the Applicant." (*Ibid*.)

The WCJ's Report discusses the importance of a neutral and impartial medical-legal evaluation in workers' compensation proceedings:

> [T]he doctor's impartiality ensures that the evaluation is based solely on medical evidence and facts, rather than on subjective opinions or external pressures. This objectivity is essential for accurately determining the extent of the injury, its impact on the individual's life, and the appropriate compensation or medical

> treatment required. A fair and impartial medical evaluation protects the rights of all parties in a given claim. For the injured person, it ensures that their medical condition is accurately represented without exaggeration or minimization. For the opposing party, it guarantees that they are not subject to inflated claims or unjust demands based on biased medical testimony. Ultimately, the impartiality of the evaluating doctor is extremely important to ensure that legal decisions are made based on substantial, reliable, and unbiased medical evidence.
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> (Report, at p. 2.)

The WCJ then discusses why the actions taken by the QME have significantly eroded the confidence of the parties and the WCJ in the QME's neutrality and impartiality. These actions include the QME's communications with the parties which the WCJ deemed "abusive and unprofessional"; *ex parte* communications with each of the parties; the QME's failure to take an adequate medical history; and improper demand for payment before completing a deposition. (*Id.* at p. 5.) Following a review of the entire evidentiary record, the WCJ further determined that the QME could not be rehabilitated in his role as an impartial evaluator. (*Ibid*.)

Of central import to the WCJ's decision was the question of whether the QME would apply a correct theory of apportionment to his analysis. The WCJ's Report observes that in his deposition testimony, the QME stated that unless a nonindustrial condition or factor of apportionment is symptomatic, "it doesn't exist." (Report, at p. 2, citing Ex. 13, Transcript of the Deposition of Jospeh Nevotti, Ph.D., dated February 14, 2024, at p. 58:11.)

The QME has testified that although he has read the holding in *Lindh, supra,* 29 Cal.App.5th 1175, he does not understand it. (Ex. 13, Transcript of the Deposition of Jospeh Nevotti, Ph.D., dated February 14, 2024, at p. 53:21.) When asked whether he would consider preexisting asymptomatic conditions as part of his apportionment analysis, the QME stated that "I have to see empirical evidence that the person's – either the person's job performance or activities of living, daily living, was in fact impaired prior to the date of injury … *[i]f there's no evidence of impairment to job performance or activities of daily living prior to the date of injury, then there's no apportionment*." (*Id.* at p. 57:18, italics added.) The QME further acknowledged the existence of asymptomatic conditions in the present matter, noting that applicant "had problems with depression and anxiety prior to her date of injury, but there was no evidence that it affected her job performance or activities of daily living prior to [the current injury], therefore it doesn't exist. It doesn't matter in terms of my decision." (*Id.* at p. 58:23.) The WCJ's Report observes, however,

that the QME "does not have the option of addressing apportionment, he has an obligation to do so." (Report, at p. 6.)

We agree. Section 4663(a) provides that apportionment of permanent disability shall be based on causation. Section 4663(c) requires evaluating physicians to make an apportionment determination in order for their medical-legal report to be considered complete. In *Nunes v. State of California, Dept. of Motor Vehicles*[5] (2024) 88 Cal.Comp.Cases 741 [2023 Cal. Wrk. Comp. LEXIS 30] (*Nunes I*), we explained that section "4663(c) authorizes and requires the reporting physician to make an apportionment determination, and further prescribes the standards the physician must use." (*Id.* at p. 748.) In *Escobedo v. Marshalls*[6] (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc) (*Escobedo*), we explained that the QME's apportionment analysis must account for "other factors both before and subsequent to the industrial injury," and may include disability that formerly could not have been apportioned, including apportionment to pathology, *asymptomatic prior conditions*, and retroactive prophylactic work restrictions. (*Id.* at p. 607, 611-612.) As en banc decisions, both *Escobedo* and *Nunes* are binding authority on all Appeals Board panels and WCJs.

And in *Lindh, supra,* 29 Cal.App.5th at p. 1175, the Court of Appeal held that where substantial medical evidence supported the conclusion that a preexisting condition caused a portion of applicant's present disability, consideration of that factor was required, even if the condition was asymptomatic. (*Id. at p.* 1184.)

The QME's statements as to his understanding of the legal principles involved in apportionment, both in general, and as applied to the specific facts of this case, are inconsistent with current decisional authority as described in *Escobedo, supra*, *Nunes I, supra*, and *Lindh, supra*.

Following a careful review of the record, the WCJ has concluded that the testimony, statements, and actions of the QME are incompatible with his continued status as the Qualified Medical Evaluator in this matter. (Report, at p. 7.) Accordingly, the WCJ has issued an interlocutory order for development of the record with either an AME or a replacement QME.

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[5] En banc decisions of the Worker's Compensation Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [23 Cal. Rptr. 3d 782] [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Board* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [118 Cal. Rptr. 2d 105] [67 Cal.Comp.Cases 236]; see also Govt. Code, § 11425.60(b).)

[6] See footnote 3, ante.

We accord to the WCJ wide latitude in the determination of discovery disputes at the trial level. (Cal. Code Regs., tit. 8, § 10955(a); *Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654 [64 Cal.Comp.Cases 624]; *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406].) We emphasize that the WCJ is vested with the full power, jurisdiction, and authority, to hear and determine all issues of fact and law presented, and it is within the sound discretion of the WCJ to accept or reject the testimony of an expert witness, so long as the WCJ does not act arbitrarily. (*Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752 [2023 Cal. Wrk. Comp. LEXIS 30] (*Nunes II*).) Moreover, "the proper application of apportionment to a determination of permanent disability must be based on an apportionment analysis that constitutes substantial evidence, that is based on a review of the entire record, and that does not rely on an incorrect legal theory." (*Nunes I, supra,* 88 Cal.Comp.Cases 894, 897-898, citing *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 274 [39 Cal.Comp.Cases 310]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525].) We are thus persuaded that the WCJ has appropriately exercised his authority in response to the instant discovery dispute.

We observe, however, that the WCJ's order "strikes" the QME and directs the parties to seek agreement as to an AME or to obtain a replacement QME. We are concerned that insofar as the order purports to "strike" the QME, it may be understood as a qualifying strike pursuant to section 139.2(d), which governs the appointment and reappointment of Qualified Medical Evaluators in the California workers' compensation system. Section 139.2(d) provides that the QME may be reappointed upon request, provided they meet the qualifications necessary for the initial appointment, and provided that the QME has not had more than five of their evaluations rejected by a WCJ "on the basis that it fails to meet the minimum standards for those reports established by the administrative director or the appeals board" in the most recent two-year period. (Lab. Code, § 139.2(d)(2).)

Here, neither the parties nor the WCJ have framed the issue in terms of whether a qualifying rejection should issue pursuant to section 139.2(d)(2). We also observe that the issuance of a qualifying rejection implicates the due process rights of the physician whose reporting is found to be deficient. This is because the issuance of a qualifying rejection may adversely affect the physician's ability to seek reappointment. (Lab. Code, §139.2(d)(4).) Due process considerations

require, but are not limited to, notice to the physician in question that the reporting may be stricken, and the opportunity for the physician to respond and be heard on the issue.

We also observe that pursuant to Administrative Director (AD) Rule 32.6 (Cal. Code Regs., tit. 8, § 32.6), either the WCJ or the Appeals Board may order the issuance of a panel of Qualified Medical Evaluators based on a finding that an additional evaluation is reasonable and necessary to resolve disputed issues under Labor Code sections 4060, 4061 or 4062. Here, the disputed issues include the nature and extent of the injury under both sections 4061 and 4062.

Thus, while we agree with the WCJ's reasoning regarding the need for a replacement medical-legal evaluator and agree that it was within the WCJ's discretion to do so, we will grant reconsideration and order the issuance of an additional panel of QMEs without further reference to the physician (or his reporting) being stricken.

Additionally, we note that notwithstanding the order for an additional QME, the reports of Dr. Nevotti remain in the evidentiary record. This is appropriate because the weight accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312. 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) Even in instances where a WCJ determines that a report has limited or no evidentiary weight with respect the medical-legal conclusions reached by the evaluating physician, or because of other procedural or substantive deficiencies, the report may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of relevant information may include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations.

Allowing deficient medical-legal reporting to remain in evidence while assigning it the appropriate evidentiary weight is consonant with well-established principles favoring the broad admissibility of evidence in workers' compensation proceedings. "[T]he Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence." (*Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Similarly, the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (§ 5703, subd. (a); *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [78 Cal.Comp.Cases 1209] (*Valdez*).) Section

4064(d) provides the no party is prohibited from obtaining *any* medical evaluation or consultation at the party's own expense, and that *all* comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in specified statutes. (Lab. Code, § 4064(d); *Valdez, supra,* at p. 1239.) Section 4062.3(a) further provides that any party may provide to the QME, subject to the restrictions set forth in the statute, any records prepared or maintained by the employee's treating physician or physicians and medical and nonmedical records relevant to determination of the medical issue. (Lab. Code, § 4062.3(a).) Taken together, these case law and statutory prescriptions underscore the importance of allowing for the full consideration of the entire evidentiary record, in furtherance of the substantial justice required in workers' compensation proceedings. Accordingly, even in those instances where a report does not meet minimum standards, it should generally remain in evidence and be accorded its appropriate evidentiary weight. (See also Cal. Code Regs., tit. 8, § 10682(c).)

In summary, the F&O is a hybrid decision, including both final and non-final determinations. Applicant challenges a non-final interlocutory order of the WCJ to replace the current QME, and we therefore evaluate the issue under the removal standard. We conclude that applicant's Petition does not establish irreparable harm arising out of the WCJ's discovery order. However, for reasons of procedural clarity and due process, we will grant reconsideration and rescind the F&O, substituting new findings that an additional panel of QMEs is reasonable and necessary. We will further grant defendant's March 7, 2024 First Amended Petition for Replacement Panel, and order the issuance of a new panel of QMEs in psychology.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 3, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 3, 2024 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. An additional evaluation is reasonable and necessary to resolve disputed issues under Labor Code sections 4060, 4061 or 4062.

ORDER

a. Defendant's March 7, 2024 First Amended Petition for Order for Replacement Panel is granted.
b. The Medical Director is ordered to issue a panel of QMEs in the field of psychology (PSY) within a reasonable geographic distance of zip code 95667.

IT IS FURTHER ORDERED that defendant serve a copy of this decision on the DWC Medical Unit forthwith, and to file a copy of the proof of service in the Electronic Adjudication Management System.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 16, 2024

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

REBECCA CORDOVA
BROWN & DELZELL
INTERCARE
LENAHAN, SLATER, PEARSE & MAJERNIK
SACRAMENTO METROPOLITAN FIRE DISTRICT

SAR/abs

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