

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

ADDA LARA, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured
administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ11565056, ADJ11556788
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Applicant has filed a petition for removal from the Findings of Fact and Order ("F&O") issued on April 22, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that the qualified medical evaluator (QME) should be replaced because defendant failed to serve a communication upon applicant 20 days in advance pursuant to Labor Code¹ section 4062.3(e).

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny removal.

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

¹ All future references are to the Labor Code unless noted.

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, and for the reasons discussed below, the WCJ was correct to deny applicant's petition for a replacement panel. Thus, applicant has not established substantial prejudice or irreparable harm.

The facts of this case do not appear to be in dispute. Per the WCJ's Report:

On January 10, 2024, applicant's attorney sent proposed advocacy letter and schedule of records to defendant (Exhibit 1). According to this advocacy letter, the Panel QME (PQME) evaluation with Osep Armagan, M.D. was scheduled for January 18, 2024 at 10:00 a.m. On January 29, 2024, defendant sent proposed advocacy letter with "Enclosures as stated" to applicant's attorney (Joint Exhibit X). According to this advocacy letter, the PQME evaluation was scheduled for February 16, 2024.

On February 15, 2024, applicant's attorney objected to defendant's proposed advocacy letter "as containing non-medical information and unsworn statements, and for being untimely," as well as to "non-medical records 'DOI 5/15/17 DATED 9/28/18' and 'DOI 4/11/14 DATED 10/2/18'" (Joint Exhibit Y). On February 16, 2024, applicant's attorney sent his advocacy letter to PQME with exhibits, copying defense counsel (Exhibit 2). It appeared that the PQME evaluation took place on February 16, 2024 (Joint Exhibit Z).

On March 12, 2024, defendant sent its advocacy letter with enclosures to Dr. Armagan via email, copying applicant's attorney (Exhibits A and B). On the same date, defendant sent a letter to applicant's attorney, enclosing the PQME advocacy letter, and notifying applicant's attorney that his February 15, 2024 objection was untimely (Exhibit C).

On March 21, 2024, Dr. Armagan served his PQME report of the same date on the parties (Joint Exhibit Z).

On April 5, 2024, applicant's attorney filed a Petition for Attorney Fees and Replacement QME Panel, dated April 4, 2024, along with a Declaration of Readiness to Proceed on both cases for a Mandatory Settlement Conference (MSC) on the issues of PQME replacement and attorney's fees. Defendant filed an untimely objection on April 23, 2024.

(WCJ's Report, pp. 2-3.)

Section 4062.3 provides in relevant part as follows:

(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.

* * *

(e) All communications with a qualified medical evaluator selected from a panel before a medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

* * *

(g) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation.

(Lab. Code, § 4062.3(b), (e) & (g).)

Ex parte communication with a QME is prohibited. (See *Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal. App. 4th 575, 590, [75 Cal. Comp. Cases 817]; see also *Suon v. California Dairies* (2018) 83 Cal. Comp. Cases 1803, 1809 (Appeals Board en banc).) However, and as was clearly explained in *Suon*:

A. Written Communication With The QME That Is Properly Served To The Opposing Party Is Not Ex Parte.

In *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal. Comp. Cases 136 (Appeals Board en banc), the Appeals Board analyzed what constitutes an ex parte communication.⁸ Specifically, it was noted that:

Black's Law Dictionary defines 'ex parte' as, 'On or from one party only, usually without notice to or argument from the adverse party.' (Black's Law Dict. (7th ed. 1999) p. 597, col. 2.) Black's further states that an 'ex parte communication' is, 'A generally prohibited communication between counsel and the court *when opposing counsel is not present*.' (*Id.*, [emphasis added].)

(*Maxham, supra*, 82 Cal. Comp. Cases at p. 142.) In *Maxham*, the Appeals Board found that "[b]ecause defendants' counsel was copied on all communications with the AMEs, those communications cannot be said to be 'ex parte'." (*Id.*)

Whether a party properly served a written communication with the QME to the opposing party is a question of fact the determination of which must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 274 [113 Cal. Rptr. 162, 520 P.2d

978, 39 Cal. Comp. Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal. 3d 312 [90 Cal. Rptr. 355, 475 P.2d 451, 35 Cal. Comp. Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal. Comp. Cases 16].)

* * *

II. Under Section 4062.3(b), Information That A Party Proposes To Provide To The QME Must Be Served On The Opposing Party 20 Days Before It Is Provided To The QME.

If a communication was not ex parte, the trier of fact must decide if the documents or materials sent to the QME nonetheless constitute “information” subject to section 4062.3(b). Section 4062.3 contains different procedural requirements depending on the nature of the documents or materials to be provided to the QME. Section 4062.3(b) requires that “information” proposed to be provided to the QME “shall be served on the opposing party 20 days before the information is provided to the evaluator.” Section 4062.3(e) separately requires that “communications with a [QME] before a medical evaluation” must be served on the opposing party “20 days in advance of the evaluation.” However, section 4062.3(e) further provides that “[a]ny subsequent communication with the medical evaluator ... shall be served on the opposing party when sent to the medical evaluator.” The preliminary question is whether the documents or materials sent to the QME are “information” or “communication” as those terms are used in the Labor Code.

In *Maxham*, the Appeals Board distinguished between “information” and “communication” under section 4062.3 as follows:

1. ‘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.
2. A ‘communication,’ as that term is used in section 4062.3, can constitute ‘information’ if it contains, references, or encloses (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.

(*Suon, supra* 83 Cal. Comp. Cases at 1809-1811.)

Here, defendant served its letter, which contained both information and communication on January 29, 2024. Applicant issued an untimely objection to that letter on February 15, 2024, and thus, applicant waived objection. Defendant thereafter emailed its letter on March 12, 2024, with service upon all parties. Defendant’s letter was properly served and thus, it does not constitute an ex-parte communication.

Next, and to the extent that defendant's letter also contained information, it was served well beyond the 20-day period outlined in the Labor Code. Thus, it was properly served. To the extent that applicant objected to the content of the information, applicant's objection was untimely and thus waived.

While it is clear that defendant has not violated section 4062.3, we would also note that applicant waited to receive the QME's report before acting upon her objection. As discussed in *Suon*:

If the aggrieved party wishes to elect to terminate the evaluation due to an ex parte communication, the aggrieved party must exercise its right to seek a new evaluation within a reasonable time following discovery of the prohibited communication. Conduct by the aggrieved party that is inconsistent with an election to terminate the evaluation may be construed as forgoing its right to terminate the evaluation and seek a new QME. (See *Fajardo, supra*, 72 Cal. Comp. Cases 1158.) **Inaction by the aggrieved party following discovery of the ex parte communication is in effect an election to proceed with the QME.**

(*Suon, supra* 83 Cal. Comp. Cases at 1815, (emphasis added).)

The WCJ correctly denied applicant's petition for a replacement QME.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the Findings of Fact and Order issued on April 22, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 23, 2025

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

**ADDA LARA
TERRELL FIRM
LAW OFFICES OF WEITZMAN & ESTES**

EDL/mt

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