

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

ANA BERTHA ORTIZ, *Applicant*

vs.

**ATLANTIC SOLUTIONS GROUP, INC., dba EMPIRE WORKFORCE SOLUTIONS;
SUNZ INSURANCE COMPANY, administered by NEXT LEVEL ADMINISTRATORS,
*Defendants***

**Adjudication Number: ADJ20508246
Pomona District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant seeks removal of the Findings and Order (F&O) of June 19, 2025, wherein the workers' compensation judge (WCJ) ordered that panel number 7799274 remained as the panel in the matter. Applicant contends that panel 7799274 in the specialty of orthopedic surgery is invalid as defendant's request for the panel was premature.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the Petition for Removal, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition as one seeking Reconsideration, amend the WCJ's the decision to find panel 7799274 invalid, and return the matter to the district office for further proceedings.

FACTS

Applicant sustained injury arising out of and in the course of employment (AOE/COE) to her head, back, and left elbow while working for defendant as a laborer on November 11, 2024.

Dr. Randal Roberts, D.C., filed a Doctor's First Report of Occupational Injury or Illness report on March 10, 2025. In a letter of March 18, 2025, defendant objected to the opinion of Dr. Roberts and instead proposed using Dr. David Kim as the agreed medical evaluator (AME).

(Ex. 1, objection letter dated 3/18/25, p. 1.) Defendant further stated that if there was no response within 10 days to the letter, defendant would request a panel qualified medical evaluator (PQME) to resolve all issues. (Ex. 1, p. 1.) Defendant served the letter by email on applicant's attorney on March 19, 2025, within California. (Ex. 2, email dated 3/19/25 with attached objection letter, p. 1.)

The Medical Unit issued panel 7799274 on April 3, 2025, in response to a request by defendant. (Ex. 4, panel list dated 4/3/25, QME form 106, with supporting documentation, pp. 1-6.) On April 3, 2025, after 5:00 pm., the Medical Unit rejected applicant's request for a panel, stating that a panel with the same claim number, date of injury, and injured worker name had already issued and therefore applicant was ineligible for an additional QME panel. (Ex. 6, letter from Medical Unit dated 4/3/25, denying applicant's panel list with supporting documentation, pp. 1-6.)

Applicant objected to panel 7799274 on April 3, 2025, stating the panel was invalid as a panel could not be requested until after 5 pm on April 3, 2025. (Ex. 3, objection to panel by applicant's attorney dated 4/3/25, p. 1.) Applicant stated she had attempted to obtain a panel in the chiropractic specialty after 5:00 pm on April 3, 2025, but the Medical Unit rejected the request due to the existence of panel 7799274. (Ex. 3, p. 1.) Applicant demanded that defendant withdraw panel 7799274 and stipulate to a replacement panel in the specialty of chiropractic. (Ex. 3, p. 1.)

The hearing on the sole issue of whether the panel request was timely and whether the panel that issued should be replaced occurred on June 11, 2025. (Minutes of Hearing (MOH), p. 1.) There was no testimony and the WCJ admitted six exhibits into evidence. (MOH, pp. 1-3.) The WCJ issued the F&O on June 19, 2025, ordering that panel 7799274 remained as the panel in that matter. (F&O, p. 2.) Applicant filed her Petition for Removal of the F&O on June 19, 2025.

DISCUSSION

I.

Former Labor Code¹ 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.

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

(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.

(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 1, 2025, and 60 days from the date of transmission is Saturday, August 30, 2025. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Tuesday, September 2, 2025, 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 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 1, 2025, and the case was transmitted to the Appeals Board on July 1, 2025. 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 1, 2025.

² 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.

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 decision includes a finding regarding a threshold issue that applicant sustained injury arising out of and in the course of employment (AOE/COE). (F&O, p. 1.) Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. 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, as discussed below, we are persuaded

that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

III.

The sole issue presented is whether panel 7799274 is valid based on the timing of the request for a panel. Section 4062.2 sets forth the process that the parties must use to resolve disputes using a panel Qualified Medical Evaluator when the employee is represented by an attorney. It provides that:

No earlier than the first working day that is at least 10 days after the date of mailing of a request for a medical evaluation pursuant to Section 4060 or the first working day that is at least 10 days after the date of mailing of an objection pursuant to Sections 4061 or 4062, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(Lab. Code, § 4062.2(b).)

When a document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California. (Cal. Code Regs., tit. 8, § 10605 (a)(1); see, e.g., *Trigueros v. Gonzalez Ag.* (Oct. 28, 2022, ADJ13190781) [2022 Cal.Wrk Comp. P.D. LEXIS 296, *5].) Defendant's objection letter was served on applicant by email on March 19, 2025, within California. (Ex. 2, p. 1.) Therefore, the parties were required to wait until 15 days after March 19, 2025, before requesting a PQME.

In a represented case,

Requests may be made twenty-four hours a day, seven days a week. For determining the timeliness of requests under Labor Code section 4062.2, requests made on Saturday, Sunday or a holiday will be deemed to have been made at 8:00 a.m. on the next business day. Requests made Monday through Friday after 5:00 p.m. and before 12:00 a.m. will be deemed to have been made at 8:00 a.m. on the next business day, and requests made between 12:00 a.m. and 8:00 a.m. will be deemed to have been made at 8:00 a.m. on the same business day.

(Cal. Code Regs., tit. 8, § 30(b)(2).) Therefore, the earliest a request for a PQME could be made in this case was after 5:00 pm on April 3, 2025.

Defendant made their panel request prior to 5:00 pm on April 3, 2025, and the Medical Unit issued panel 7799274 on April 3, 2025, in response to defendant's request. (Ex. 4, pp. 1-6.) On April 3, 2025, after 5:00 pm., the Medical Unit rejected applicant's request for a panel, stating that a panel with the same claim number, date of injury, and injured worker name had already issued and therefore applicant was ineligible for an additional QME panel. (Ex. 6, pp. 1-6.)

Thus, based upon the evidence presented, defendant's request was premature, in violation of section 4062.2(b), and invalid.

Therefore, we will grant the Petition as one seeking Reconsideration, amend the F&O to find panel 7799274 invalid, and return this matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the June 19, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the June 19, 2025, Findings and Order is **AMENDED** as follows:

FINDINGS OF FACT

1. Ana Bertha Ortiz, born [], while employed on November 11, 2024, as a laborer, Occupational Group Number deferred, at Santa Fe Springs, California, by Atlantic Solutions Group, Inc., dba Empire Workforce Solutions, sustained injury arising out of and in the course and scope of employment to the head, back, and left elbow.
2. Panel 7799274, which issued April 3, 2025 is invalid.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 2, 2025

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

**ANA BERTHA ORTIZ
LAW OFFICES OF JAMES YANG
DOMINGO, ELIAS & VU**

JMR/abs

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