WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ARIEL PRUDENTE, *Applicant*

vs.

RJP FRAMING, INC.
and ALASKA NATIONAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ13119496
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Applicant seeks removal of a June 18, 2025 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) ordered replacement of psychiatric panel Qualified Medical Evaluator (PQME), Dr. Peter Turek, based upon a finding that applicant's service upon Dr. Turek of "summaries and excerpts from the Kite decisions" constituted "information" in violation of Labor Code[1] section 4062.3(b). (F&O, June 18, 2025, p. 2.)

Applicant contends that the WCJ's F&O lacks "careful and accurate review" and fails to "prove prejudice[,]" or show why, pursuant to the recent case of *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Bd. en banc), defendant couldn't simply cross examine Dr. Turek or request a supplemental report in order to determine whether Dr. Turek "did or did not rely on proper legal principals or truthful facts" in the writing of his opinion. (Petition, pp. 3, 12.)

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

We have considered the Petition, 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,

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

rescind the F&O, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant claims that while employed by defendant as a carpenter on February 20, 2020, he sustained an injury arising out of and in the course of employment (AOE/COE) to the neck, psyche and left arm, shoulder, hand, and fingers.

The parties proceeded with discovery and retained Dr. Turek as the psychiatric PQME.

On May 17, 2023, Dr. Turek evaluated the applicant and issued an initial report dated June 9, 2023, wherein he found that the work injury was "the predominant cause of applicant's PTSD." (Exhibit CC, p. 15.)

On August 30, 2023, Dr. Turek was deposed by the parties. Immediately prior to the deposition, applicant's attorney sent Dr. Turek and defendant an email with attachments consisting of a November 12, 2021 report of orthopedic QME, Dr. Klassen and "summaries and excerpts from the Kite decisions" with "hand-written notations presumably written by Applicant's Attorney." (F&O, p. 2.)

On October 12, 2023, defendant filed a "Petition for Replacement of Panel QME" alleging that the information provided by applicant's attorney to Dr. Turek was served in violation of section 4062.3(b) and "had a highly prejudicial effect." (Petition for Replacement of Panel QME, October 12, 2023, p. 3.)

On March 27, 2024, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the limited issue of defendant's petition for a replacement QME panel.

On November 20, 2024, the WCJ issued a F&O which held that in light of applicant attorney's "violation of labor code section 4062.3(b)" which rendered it impossible for Dr. Turek to remain "completely impartial[,]" Dr. Turek would be replaced as the psyche PQME. (F&O and Opinion on Decision (OOD), November 19, 2024, p. 3.)

On December 10, 2024, applicant filed a Petition for Removal of the November 20, 2024 F&O.

On February 24, 2025, we issued an Opinion and Order Granting Petition for Removal and Decision after Removal (O&O) wherein we rescinded the November 20, 2024 F&O and held that the WCJ's decision to replace Dr. Turek lacked rationale and failed to explain why less drastic

measures were not available. (O&O, February 24, 2025, p. 6.) The matter was returned to the trial level for further development of the record.

The matter was thereafter set for trial, and on September 19, 2024, the issue was resubmitted for decision. Applicant offered into evidence two exhibits, both relating to inmate booking details of the applicant.

On June 18, 2024, the WCJ issued a F&O ordering replacement of Dr. Turek as the psyche PQME pursuant to section 4062.3(b) and *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803. It is from this F&O that petitioner seeks removal.

DISCUSSION

As discussed in our prior February 24, 2025 O&O, section 4062.3 provides guidance as to what is to be served upon the opposing party at least twenty days prior to provision to the QME and what may be served simultaneously. Section 4062.3 states, in relevant part that:

> (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:
>
> (1) Records prepared or maintained by the employee's treating physician or physicians.
>
> (2) Medical and nonmedical records relevant to determination of the medical issue.
>
> (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.
>
> (c) If an agreed medical evaluator is selected, as part of their agreement on an evaluator, the parties shall agree on what information is to be provided to the agreed medical evaluator.
> …
>
> (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.

(f) Communications with an agreed medical evaluator shall be in writing, and shall be served on the opposing party when sent to the agreed medical evaluator. Oral or written communications with physician staff or, as applicable, with the agreed medical evaluator, relative to nonsubstantial matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, do not constitute ex parte communication in violation of this section unless the appeals board has made a specific finding of an impermissible ex parte communication.

(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(a)-(c),(e)-(g).)

Pursuant to section 4062.3, the preliminary question to be answered is whether materials to be served constitute "information," which require service to the opposing party 20 days prior to the PQME, or "communication," which may be served simultaneously. In *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136 (Appeals Bd. en banc), we distinguished "information" from "communication" 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.

(*Maxham*, *supra*, at p. 138.)

As a reminder, in the instant case, immediately prior to Dr. Turek's August 30, 2023 deposition, applicant provided Dr. Turek and defendant with an orthopedic panel QME report from Dr. Michael Klassen, as well as attachments consisting of "summaries and excerpts from Kite decisions" with handwritten notations. (F&O, p. 2.) Although Dr. Klassen's report had already been in defendant's possession in excess of twenty days, the *Kite* summaries and excerpts had not.

We concluded that the *Kite* summaries and excerpts constitute "information" relevant to the determination of medical issues, and, as such, simultaneous service of the documents was a violation of section 4062.3(b).

With respect to remedies available in such instances, we concluded that although there is no specific Labor Code section which addresses the issue, *Maxham* and *Suon* provided guidance. Pursuant to *Maxham*, "[i]f the WCJ determines that applicant improperly provided 'information' to the AMEs, he has wide discretion in fashioning an appropriate remedy for the violation of section 4062.3(c)." (*Maxham*, *supra*, at p. 147.) *Maxham*, however, only addressed situations involving improper "information" having been provided to an AME, in violation of section 4062(c), and the WCJ's wide discretion in fashioning an appropriate remedy for such a violation.

In *Suon*, we addressed the issue of a violation of section 4062.3(b) as it relates to a QME, and stated that: 1) 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; 2) medical records and nonmedical records are treated differently by the Labor Code; and 3) if the parties are unable, in good faith, to informally resolve the dispute about what information is to be provided to the QME, then the trier of fact has wide discretion in fashioning an appropriate remedy for a violation of section 4062.3(b) pursuant to the Appeals Board's judicial powers to address discovery disputes. We further held that:

> In determining the appropriate remedy for a party's violation of section 4062.3(b), factors the trier of fact may consider include, but are not limited to, the following, as relevant:
>
> 1. The prejudicial impact versus the probative weight of the information.
>
> 2. The reasonableness, authenticity and, as appropriate, relevance of the information to determination of the medical issues.
>
> 3. The timeline of events including: evidence of proper service of the information on the opposing party, attempts, if any, by the offending party to cure the violation, any disputes regarding receipt by the opposing party and when the opposing party objected to the violation.
>
> 4. Case specific factual reasons that justify replacing or keeping the current QME, including the length of time the QME has been on the case.
>
> 5. Whether there were good faith efforts by the parties to agree on the information to be provided to the QME.

> 6. The constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.)
>
> Following consideration of all relevant factors, the trier of fact may determine the appropriate remedy for a violation of section 4062.3(b). Although the trier of fact may conclude that the appropriate remedy is a new QME, the trier of fact may conclude that other relief besides a new QME, or in addition to a new QME, is more appropriate for a party's violation of section 4062.3(b) depending on the circumstances.

(*Suon*, *supra*, at pp. 1815-1816.)

Additionally, we held that a written communication to a QME that is properly served on the opposing party is not an ex-parte communication, and that in situations involving a violation of section 4062.3(g) for an ex-parte communication, while the aggrieved party "may elect to terminate the medical evaluation and elect to exercise its right to seek a new evaluation within a reasonable time following discovery, the failure to do so may be construed as forgoing one's right to terminate the evaluation and seek a new QME. (*Id*. at p. 1815.) Here, there was no ex-parte communication. Thus, the specific right and remedy as set forth in section 4062.3(g) would not apply.

In the original November 20, 2024 Findings and Order, the WCJ ordered a replacement of Dr. Turek as the psyche PQME because, per the WCJ, the information provided by applicant "had a prejudicial effect upon [his] opinions." (Findings and Order and Opinion on Decision, November 20, 2024, p. 3.) The WCJ, however, failed to provide supporting evidence of said prejudice.

It is well established that pursuant to *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' 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.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized

form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, at pp. 473, 475.) 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." (*Id.* at p. 475.) This "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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

In light of the foregoing, we rescinded the November 20, 2024 Findings and Order and returned the matter to the trial level for further development of the record. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 9 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].)

On June 18, 2025, the WCJ issued a new F&O which once again ordered that Dr. Peter Turek be replaced as the psyche PQME due to applicant's violation of section 4062.3(b). (F&O, June 18, 2025, p. 2.) In the Opinion on Decision (OOD), the WCJ provided a cursory discussion of the *Suon* factors noted above. (F&O and OOD, June 18, 2025. pp. 3-6.)

In his Report, the WCJ claims that the cases discussed within the materials provided by defendant "are not consistent with the current case law or are misleading" in that they are in "direct conflict with *Vigil*[.]" (Report, p. 3.) We note that while *Vigil* was published by the Appeals Board on June 10, 2024, there has been no finding or determination by the WCJ which opines that updated reporting will be required pursuant to *Vigil*. Further, as to the validity or correctness of the cases discussed in the offending materials, the right to cross-examine the PQME, or to request supplemental reporting to address the issue would seem to be one of the less drastic measures the WCJ may carve out, along with whatever else may be deemed necessary. Additionally, although Dr. Turek has only evaluated applicant on one prior occasion, this fact alone does not justify replacement of the PQME, particularly with respect to issues unrelated to the dispute involving the use of "Kite" materials, which solely involve disputes over permanent disability and impairment. We note that Dr. Turek also resolved the issue of injury AOE/COE in his medical reporting, and while the WCJ opines in his Report that defendant is "bound" by their stipulation to injury AOE/COE as to the psyche per the Pre Trial Conference Statement, we disagree. The fact

remains there have been no formal stipulations by the parties that have been approved by a WCJ, or a Findings of Fact which provides finality as to the issue of injury AOE/COE.

Given that applicant is currently incarcerated, and taking into consideration the nature of the "information," as well as the other factors set forth in *Suon,* including, but not limited to our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character," we find that good cause exists to decline to replace Dr. Turek as the PQME in this case, and to return this matter back to the trial level for such further discovery or other proceedings deemed necessary by the WCJ.

Taking all of the above into consideration, we therefore grant applicant's Petition for Removal, rescind the WCJ's June 18, 2025 F&O, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the June 18, 2025 Findings and Order is **GRANTED.**

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the June 18, 2025 Findings and Order is **RESCINDED**, and this matter **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 29, 2025

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

ARIEL PRUDENTE
LAW OFFICES OF GUY MEDFORD
LAUGHLIN, FALBO, LEVY & MORESI
DONNELL, MELGOZA & SCATES

RL/*cs*

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