

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CATALINA QUINTERO, *Applicant*

vs.

NORTHBAY DISTRIBUTION, INC.;
BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY DBA BHHC,
Defendants

Adjudication Numbers: ADJ20334345, ADJ18735362
Santa Rosa District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and based upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, which we adopt and incorporate, we will deny the Petition as one seeking reconsideration.

I.

Former Labor Code section 5909¹ 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.

¹ All section references are to the Labor Code, unless otherwise indicated.

(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 October 31, 2025, and 60 days from the date of transmission is December 30, 2025. This decision is issued by or on December 30, 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 October 31, 2025, and the case was transmitted to the Appeals Board on October 31, 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 October 31, 2025.

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 the threshold issue of employment. 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 23, 2025

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

**CATALINA QUINTERO
KNOPP PISTIOLAS
THE LAW OFFICES OF RICHARD K. GREEN, A.P.C.**

MB/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

I INTRODUCTION

Defendant seeks removal of the undersigned's September 29, 2025 Findings and Order finding that the QME panel requested by Applicant's counsel was valid. The Petition was filed timely and properly verified. No hearings are currently scheduled.

II FACTS

Applicant retained counsel in December 2024. Shortly thereafter, on January 5, 2025, applicant's counsel sent an opening letter to the defendant insurer (defendant was unrepresented at the time) indicating objection to the finding of the current treater and its intention to request a QME panel. An application was filed the same day. After the required time had transpired, applicant's counsel requested a panel in chiropractic.

At the time of the panel request, applicant's counsel was not in possession of a claim number, and it appears likely that one did not exist. In place of the claim number, applicant's counsel used the ADJ number instead. Defendant alleges that this was inadequate and that applicant's counsel's request was therefore in error, and the chiropractic panel should be struck. Defense counsel later requested a panel using the claim number. Defense counsel selected a panel in orthopedics.

III DISCUSSION

Defendant argues that applicant's counsel's panel request was flawed because it failed to comply with QME Rule § 30(b)(1)(A)(1)(ii), which requires the requesting party to identify the claim number. They argue that the identification of the correct claim number is required to properly identify the injury for which the panel is being requested. In support they offer the board panel decision in *Sidahmed v. Alameda County Counsel, PSI*, 2024 Cal. Wrk. Comp. P.D. Lexis 103, in which a defendant obtained a panel using an incorrect claim number, and the panel generated was invalidated.

In the undersigned's estimation, the present circumstance is different. In *Sidahmed*, the non-requesting party was misled about what injury the panel was requested to address. In the present case, identifying the case number correctly identifies the injury for which the panel was requested.

In addition, as it is the defendant who generates the claim number, requiring a claim number to request the panel essentially gives the defendant control over when the applicant can start the panel process. As noted in the Findings and Order and Opinion, defendants are not always prompt in responding to applicant inquiries or requests for information. The undersigned believes that in a situation like this one, where the case number is available, and the claim number is not, providing the case number is the functional equivalent of providing the claim number. Plus, the case number is publicly available information, available to applicants and defendants.

Finally, the court notes that Removal is an extraordinary remedy, and the defendant has not presented any compelling case that they will be harmed by having to use a chiropractic panel rather than an orthopedic one.

IV **RECOMMENDATION**

The court recommends denial of the Petition for Removal.

NOTICE OF TRANSMISSION:

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

DATE: 10/31/2025

JASON E. SCHAUMBERG
Workers' Compensation Judge