

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

DARRELL DICKERSON, *Applicant*

vs.

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, permissibly self-insured;
administered by ATHENS ADMINISTRATORS, INC., *Defendants***

**Adjudication Number: ADJ14778693
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration

Defendant seeks reconsideration of the Findings of Fact and Orders (F&O) of April 12, 2024, wherein the workers' compensation judge (WCJ) found in relevant part that defendant was not entitled to a replacement Qualified Medical Evaluator panel (PQME) and that Dr. Lucas Campos remained as the valid PQME. Defendant contends that a replacement PQME was required because the Dr. Campos did not set a subsequent evaluation within the required maximum 120-day time limit pursuant to Administrative Director (AD) Rule 31.3(e).

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied, or alternatively, for the Appeals Board to address the issue of the interplay between AD Rules 31.3(e) and 31.5(a)(2).

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 rescind the F&O and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant, while employed during the cumulative trauma period from August 15, 2019, through August 15, 2020, as a grounds worker at Oakland, California, by the San Francisco Bay Area Rapid Transit District, sustained injury arising out of and in the course of employment (AOE/COE) to his right middle finger.

PQME Dr. Lucas Campos first evaluated applicant on January 8, 2022, and filed a report dated January 25, 2022, in the specialty of pain medicine, and found that applicant's injury to his right hand was AOE/COE. (Ex. 3, Report of Dr. L. Campos, dated 1/25/22, pp. 4-5, 28-29.) Dr. Campos filed a second report on June 15, 2022 (Ex. 2, Report of Dr. L. Campos, dated 6/15/22); a third report on October 24, 2022 (Ex. 1, Report of Dr. L. Campos, dated 10/24/22); and a fourth report on February 22, 2023. (Ex. 4, Report of Dr. L. Campos, dated 2/22/23.)

On August 22, 2023, defendant requested Dr. Campos provide a date for a reevaluation. (Ex. A, email from defendant's attorney to Dr. Campos, dated 8/22/23, p. 2.) Defendant did not receive a reply from Dr. Campos' office and sent additional requests for a re-examination date on September 21, 2023 (Ex. B, email from defendant's attorney to Dr. Campos, dated 9/21/23) and September 28, 2023. (Ex. C, email from defendant's attorney to Dr. Campos, dated 9/28/23.) On September 28, 2023, Dr. Campos' office responded with a re-examination date of February 3, 2023. (Ex. E, email from Dr Campos to defendant's attorney, dated 9/28/23.) Immediately after receiving this new date, defendant then requested a replacement panel from the Medical Unit because the reevaluation was set for more than 120 days from the initial request. (Ex. F, replacement panel request, dated 9/28/23, p. 2.) In response, the Medical Unit issued a new panel in pain medicine (No. 3368530) on October 18, 2023. (Ex. G, Panel #3368530 with correspondence from medical unit, dated 10/18/23.)

On October 25, 2023, defense counsel advised applicant's attorney of a "typo" of a missing check in one of the boxes on the replacement panel request and the plan to resubmit the request for a replacement panel. (Ex. H, email from defendant's attorney to applicant's attorney, dated 10/25/23, p. 2.) On October 26, 2023, defendant submitted the amended replacement panel request, detailing the prior strikes and the typo. (Ex. I, replacement panel request, dated 10/26/23.) On October 26 and 27, 2023, the attorneys for the parties exchanged emails regarding the replacement panel, and applicant's attorney advised they had not received the initial response from the Medical Unit because service went to the prior applicant's attorney. (Ex. J, email exchange

between defendant's attorney and applicant's attorney, dated 10/26/23 and 10/27/23.) On November 28, 2023, the Medical Unit issued a replacement panel in pain medicine, Panel No. 3385029. (Ex. M, QME Panel #3385029, dated 11/28/23.)

The case proceeded to trial on February 1, 2024, on the issue of whether a new panel should issue pursuant to Rule 31.3(e). (2/1/24 Minutes of Hearing (MOH), p. 2.) There was no testimony and the WCJ submitted the case after admitting various exhibits into evidence from both parties. (2/1/24 MOH, pp. 3-4.) At the conclusion of the trial, the WCJ found in relevant part that applicant, while employed during the cumulative trauma period from August 15, 2019, through August 15, 2020, as a grounds worker (occupational group number deferred), at Oakland, California, by the San Francisco Bay Area Rapid Transit District, sustained injury arising out of and in the course of employment to his right middle finger; that defendant was not entitled to a replacement QME panel; and that Dr. Campos remained the valid PQME. (F&O, p. 1.) The WCJ ordered that the parties continue to utilize Dr. Campos as the QME in this matter and that no examination shall take place with any physician from panel numbers 3368530 or 3385029. (F&O, p. 2.) Defendant filed its Petition of the F&O on May 2, 2024.

DISCUSSION

I.

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 findings regarding threshold issues, including injury AOE/COE, employment, and insurance coverage. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Although the decision contains findings that are 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, following the recent opinion in *Vazquez v. Inocensio Renteria* (2025) 90 Cal.Comp.Cases 514 (Appeals Bd. en banc) (*Vazquez*)¹, significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

II.

The Appeals Board has broad powers to adjudicate discovery disputes, which include the taking of additional medical evidence. (*Vazquez, supra*, 90 Cal.Comp.Cases at p. 522, citing *McDuffie v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc); *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) A common discovery dispute arises where parties seek to replace a QME. (*Vazquez, supra*, at p. 522.)

¹ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

A party has a statutory right to seek replacement of a QME in represented cases when the QME fails to timely issue a report following a medical evaluation. (*Vazquez, supra*, 90 Cal.Comp.Cases at pp. 523, 525, citing Lab. Code, § § 139.2(j)(1) & 4062.5.)

However, a different situation arises when the QME is unavailable to set an evaluation within the statutory time limits.

AD Rule 31.3(e), amended on February 2, 2023, provides

If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within ninety (90) days of the date of the appointment request, that party may waive the right to a replacement in order to accept an appointment no more than one-hundred-twenty (120) days after the date of the party's initial request for an appointment. When the selected QME is unable to schedule the evaluation within one-hundred-twenty (120) days of the date of that party's initial request for an appointment, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the one-hundred-twenty (120) day time limit for scheduling the initial or any subsequent evaluation.

(Cal. Code Regs., tit. 8, § 31.3(e).)

AD Rule 31.5(a)(2), also amended on February 2, 2023, further provides:

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided upon request whenever any of the following occurs:

....

(2) A QME on the panel issued cannot schedule an examination for the employee within ninety (90) days of the initial request for an appointment, or if the 90 day scheduling limit has been waived pursuant to section 31.3(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within one-hundred and twenty (120) days of the date of the initial request for an appointment.

(Cal. Code Regs., tit. 8, § 31.5(a)(2).)

Vazquez held that, in represented cases, “the determination of whether a QME should be replaced due to unavailability to set an evaluation is within the discretionary power of the Appeals Board, and a QME may be replaced where a party demonstrates good cause for the replacement.” (*Vazquez, supra*, 90 Cal.Comp.Cases at p. 523.) The timelines in AD Rules 31.3 and 31.5 should be followed but the Appeals Board has the right to finally determine whether a QME should be replaced. (*Id.* at p. 526.) The Appeals Board must consider whether good cause exists to replace the QME due to unavailability and should consider factors such as:

- a. The length of delay caused by the QME's unavailability.
- b. The amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the QME process.
- c. What efforts, if any, have been made to remedy the QME's availability.
- d. Case specific factual reasons that justify replacing or keeping the current QME, including whether a party may have waived its objection.
- e. The Appeals Board's constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal. Const., art. XIV, § 4.)

(*Vazquez, supra*, at p. 527.)

Defendant first requested the re-evaluation by Dr. Campos on August 22, 2023 (Ex. A), which was after the February 2, 2023 change in regulations. It did so again on September 21, 2023, and September 28, 2023, before QME Campos provided the appointment date of February 4, 2024, on September 28, 2023. (Exs. B, C, E.) The re-evaluation was scheduled over 120 days from the initial request in violation of AD Rules 31.3(e) and 31.5(a)(2). Thus, the WCJ should consider whether there was good cause pursuant to *Vazquez* to replace the QME due to unavailability.

Therefore, we rescind the F&O and return this matter to the WCJ for consideration of whether good exists to order a replacement QME panel.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the April 12, 2024 Findings of Fact and Orders is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 29, 2025

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

**DARRELL DICKERSON
JENNY JEREZ, ESQ.
LAUGHLIN, FALBO, LEVY & MORESI**

JMR/abs

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