

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

**DAVID KOWALSKI, *Applicant***

**vs.**

**SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP aka KAISER  
FOUNDATION HEALTH PLAN, permissibly self-insured, administered by SEDGWICK  
CMS, *Defendants***

**Adjudication Numbers: ADJ10809836, ADJ5787628  
San Bernadino District Office**

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

Applicant seeks reconsideration of the Findings, Award and Order (F&O) issued on January 30, 2025, wherein the workers' compensation administrative law judge (WCJ) found in ADJ5787628 that (1) while employed on May 5, 2005 by defendant, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar, internal in the form of a pulmonary embolism, and psyche; (2) applicant's psychiatric injury was a result of his orthopedic injury; (3) applicant did not sustain injury AOE/COE to his lower extremities and neurological injury; (4) applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment; (5) applicant's injury caused permanent disability of 32%, entitling him to 145 weeks of disability indemnity payable at the rate of \$220.00 per week for the period beginning November 28, 2017, for a total of \$31,900.00, less credit to defendant for all sums previously paid for this date of injury, less reasonable attorney's fees in the amount of 15% of applicant's permanent disability award; (6) apportionment is valid; (7) applicant is entitled to further medical treatment to cure or relieve from the effects of this injury; and (8) the reasonable value of services and disbursements of applicant's attorney is \$4,785.00.

The WCJ issued an award in ADJ5787628 in favor of applicant and against defendants in accordance with these findings.

The WCJ found in ADJ10809836 that (1) while employed by defendant during the period of April 1, 2009 through April 1, 2013, applicant sustained injury AOE/COE to his cervical, lumbar, internal in the form of pulmonary embolism, right ankle, and psyche; (2) applicant did not sustain injury AOE/COE to his lower extremities or neurological injury; (3) applicant's psychiatric injury was a result of his orthopedic injury; (4) applicant is not entitled to a psychiatric impairment rating for this date of injury; (5) applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment; (6) applicant's injury caused permanent disability of 58%, entitling applicant to 335.25 weeks of disability indemnity payable at the rate of \$270.00 per week for the period beginning November 28, 2017 for a total of \$90,517.50, less credit to defendant for all sums previously paid for this date of injury, less reasonable attorney fees in the amount of 15% of applicant's permanent disability award; (7) apportionment is valid; (8) applicant is entitled to further medical treatment to cure or relieve from the effects of this injury; and (9) the reasonable value of services and disbursements of applicant's attorney is \$13,577.63.

The WCJ issued an award in ADJ10809836 in accordance with the findings.

The WCJ also found that in ADJ5787628 and ADJ10809836 that (1) further discovery in the form of clarification from the AME in orthopedics and panel QME in internal is not necessary nor warranted; (2) applicant did not provide sufficient evidence to establish entitlement for an additional PQME in neurology; and (3) defendant's DOR dated May 14, 2024 is not improper.

Applicant contends that the evidence establishes that (1) defendant's DOR dated May 14, 2024 is improper under WCAB Rule 10742(c); (2) an evaluation by a neurological PQME is warranted; and (3) an additional evaluation by the orthopedic AME to clarify whether applicant is entitled to compensable consequence benefits is warranted.

We did not receive an Answer.

We have reviewed the contents of the Petition and the Report. Based upon our review of the record, and for the reasons stated below, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&O and substitute new findings that good cause exists for an additional QME panel in neurology, that the issues of (1) whether applicant sustained new and different symptoms in the form of carpal tunnel syndrome; (2) whether applicant sustained new and different symptoms in the form of a ruptured shoulder; (3) whether applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment; (4) the amount of permanent disability; (5) the validity of apportionment; (6) attorney's fees; and (7)

all other issues are deferred; and we will order that applicant's request for a QME panel in neurology be granted and the matter returned to the trial level for further proceedings consistent with this decision.

### **BACKGROUND**

On August 15, 2024, the matter proceeded to trial in ADJ10809836 on the following issues:

1. Parts of body injured, alleging internal, psych, neurological, lower extremities including the right ankle and bilateral shoulders.
2. Permanent disability.
3. Apportionment.
4. Need for further medical treatment.
5. Attorney fees.
6. Whether further discovery is necessary in the form of clarification from the AME in orthopedics and the panel QME in internal.
7. Whether applicant is entitled to a neuro panel.
8. Whether defendant's DOR was proper.

(Minutes of Hearing and Summary of Evidence, August 15, 2024, p. 3:7-16.)

The court noted that the issue of whether applicant sustained injury to his bilateral shoulders was raised on the day of trial. (*Id.*, p. 2:17-18.)

Also on August 15, 2024, the matter proceeded to trial in ADJ5787628 on the following issues:

1. Parts of body injured internal, psyche, neuro and lower extremities.
2. Permanent disability.
3. Apportionment.
4. Need for further medical treatment.
5. Attorney fees.
6. Whether further discovery is necessary in the form of clarification from the AME in ortho and PQME in internal.
7. Whether applicant is entitled to a neuro panel.
8. Whether defendant's DOR was proper.

(*Id.*, p. 4:15-23.)

The WCJ admitted the Deposition Transcript of Dr. David Wood, dated July 28, 2020, into evidence. (*Id.*, p.5:24.) In it, Dr. Wood testified as follows:

Q. Doctor, you've provided us with a number of different final opinions and determinations based upon your review of the records and your multiple evaluations of the applicant. Do you believe that your final opinions, as they have been provided, accurately reflect applicant's condition as it's been presented to you orthopedically?

A. I do from an orthopedic. I think Ethan does bring out a good point in that a neurologist may add additional functional loss that I was missing.

Q. Do you believe that that neurological evaluation is required for your opinions to be complete or rather that they may be relevant to be considered?

A. Well, "required" is a strong word. I think relevant to be considered.

(Jt. Ex. Q, Deposition Transcript of David Wood, July 28, 2020, p. 18:9-23.)

On October 3, 2024, the matter proceeded to continued trial. (Minutes of Hearing and Summary of Evidence, October 3, 2024.) Applicant testified that his upper extremities symptoms have increased since his evaluation with Dr. Wood. (*Id.*, p. 6:8-11.) He received a diagnosis of carpal tunnel syndrome in late 2023, which he believes results from his use of canes and a walker. (*Id.*, p. 7:13-20.)

Applicant further testified that a physical therapist treating him in late 2023 or early 2024 pushed on his arm while his right shoulder was raised, and he felt it snap. Afterwards, he received a diagnosis of a shoulder muscle rupture. (*Id.*, p. 6:19-24.)

In the Report, the WCJ states:

Petitioner filed two Applications, first a specific injury on **5-5-2005** alleging injury to his back, nervous system (psyche), trunk, reproductive systems, circulatory system claiming injury to his back while working his usual and customary duties (EAMS#21452251). A second alleging injury due to cumulative trauma extending from **4-1-09 through 4-1-13** to his neck, back, hips, circulatory system, nervous system, as a result of repetitive work activities (EAMS#21452275).

Parties utilized Dr. David Wood as an Agreed Medical Examiner in orthopedics, Dr. James Lineback, Panel Qualified Medical Examiner in internal, Dr. Stephane Johnson, Panel Qualified Medical Examiner in psychiatry.

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As both specific and cumulative trauma claims are overlapping, the evaluators addressed both alleged dates of injury.

Following the initial filings of the Applications, the cases were heard at two Status Conferences before Judge Donaldson and five Mandatory Settlement Conferences before Judge Petty. At the last MSC on 7-1-2024, the matter was set for Trial with Pre Trial Conference Statements submitted. On the initial Trial date of 8-15-25, the cases proceeded on the record with testimony completed on a second date, 10-3-24 and final submission after applicant requested to file a Trial Brief, matter submitted on 11-5-24.

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## **Validity of Declaration of Readiness**

Petitioner contends that the WCJ erred when failing to find Defendant's DOR dated May 14, 2024 improper. Although the issue was raised in the Pre Trial Conference Statement dated 7-1-2024, applicant did not offer any evidence at Trial to support his contentions. In his Petition for Reconsideration, applicant argues, "defendant merely lists the various physician's names involved in the case." However, in review of the Declaration of Readiness dated 5-14-2024 (EAM#51919725), the statement provided by Defendant references the prior MSC which was set for 6-12-23 indicating it was taken off calendar pending an AME re-evaluation which has since been obtained and final MMI reports have been received from three named doctors. Reference was also made to "attempts made 12/29/2023 to resolve have been unsuccessfully".

Applicant references a 12/29/23 letter alleging Defendant's letter was "an objection to the AME report" and that "there was no indication that a DOR would be filed at all". Applicant turns to Rule §10742 and references:

...

[A]s evidenced in the DOR, Defendant not only referenced the 12-29-23 effort but also the prior MSC. In review of the 12-29-23 letter, Defendant does in fact object to the AME report of Dr. Wood and does reserve their right to cross-examine Dr. Wood or seek a supplemental report. However, the letter also requests applicant's most reasonable "updated formal settlement demand" (Def Ex D) which leads the reader to believe there were prior settlement discussions.

In review of EAMS, parties participated in two Status Conferences and four Mandatory Settlement Conference prior to the filing of the DOR on 5-14-24. In fact, the initial 8-22-17 DOR references, settlement efforts and there are five additional DORs filed referencing status and settlement efforts. Defendant offered the 12-20-22 letter to applicant's attorney (Def Ex B), along a letter dated 2-14-23 discussing return to the AME, Dr. Wood as well as a demand for information, photos and medical documentation (EAMS# 52794543 & 52794546).

Following the DOR of 5-14-24, an MSC was held before Judge Petty on 7-1-24. After multiple MSC before her on this matter, Judge Petty noted in the Minutes of hearing that the matter would be set for Trial as it was taken off calendar more than a year ago to develop the record (EAMS# 78125127). There is no reference on the Minutes of Hearing that validity of the DOR was at issue. Additionally, applicant also had remedies following the MSC, yet after a review of EAMS, it does not appear that applicant filed a Petition for Removal.

In this instance, the language in the Declaration of Readiness specifically references a prior MSC, as well as the specific date of 12-29-23 along with the AME re-evaluation and MMI reporting by multiple evaluators and without any evidence offered to the contrary, the undersigned finds the Declaration of Readiness dated 5-14-24 complies with section 10742 and is valid. Furthermore, considering the

lengthy history of these cases including the multiple Declaration of Readiness repeating efforts to settle, the undersigned is not persuaded by petitioner's contentions as there is sufficient specificity noted on the Declaration of Readiness. The undersigned still finds the Declaration of 5-14-2024 to be valid.

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### **Closing of Discovery**

Applicant second contention is that the undersigned erred in closing discovery.

### **Neurological Evaluation**

Petitioner contends that the AME testified that a neurological evaluation would be relevant during his cross-examination.

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Petitioner further argues that when an AME/QME identifies a medical dispute that falls outside of his/her expertise, an additional panel is appropriate. . . . [I]n review of Dr. Wood cross-examination, Dr. Wood stated "... I'm comfortable with my rating." (Jnt Ex Q pg 9, line 10-16). Dr. Wood went on to state that he is "always happy to have another opinion.." but did not request another panel specialty.

...

### **New and Different Symptoms**

...

Petitioner fails to acknowledge that upper extremities/carpal tunnel were not alleged nor included in either Pre-Trial Conference Statement nor issues at Trial. Petitioner is now attempting to include an issue not raised at the MSC or Trial.

According to Petitioner's first contention, applicant testified to "severe carpal tunnel and believes this is attributable to his industrial injury". In review of the Pre-Trial Conference Statement, neither upper extremities nor carpal tunnel, are body parts alleged for either date of injury (SOE 815-24 pg 2 ln 14 & pg 3 ln 22). . . . On the day of Trial, applicant did raise the issue of bilateral shoulders, again a body part conveniently missing for the both Pre Trial Conference Statement at the MSC. Petitioner contends that these are new symptoms, however, at Trial, applicant testified that his upper extremities symptoms have "increased" in the last two years (SOE 10-3-24 pg 10 ln 22).

...

For Petitioner to now try to add "carpal tunnel", bilateral shoulders, upper extremities as issues, having received treatment for these complaints on a non-industrial basis and now attempt to convert it to industrial without offering any medical evidence in support of his contentions, nor allow defendant the opportunity to be heard, violates due process rights.

...

Parties agreed to utilize Dr. Wood as an AME, his reporting was found to be substantial medical evidence. Petitioner had ample time to identify and disclose ALL issues. . . . Based on the above, petitioner is not entitled to further discovery on issues which pre dated the MSC. Petitioner offered no evidence of any

complaints arising after the MSC that could not be reasonably discovered by the MSC. Therefore, discovery was correctly closed at the MSC.  
(Report, pp. 1-8.)

### **DISCUSSION**

Former Labor Code section 5909<sup>1</sup> 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

(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.

(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 March 5, 2025, and 60 days from the date of transmission is May 5, 2025. This decision is issued by May 5, 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 March 5, 2025, and the case was

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

transmitted to the Appeals Board on March 5, 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 March 5, 2025.

## II.

Applicant first contends that defendant's DOR dated May 14, 2024 is improper under WCAB Rule 10742(c). Specifically, applicant argues that defendant's December 29, 2023 letter attempting to resolve the dispute was sent to the wrong address.

WCAB Rule 10742(c) provides:

All declarations of readiness to proceed shall state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing the Declaration of Readiness to Proceed, and shall state with specificity on the Declaration of Readiness to Proceed the efforts made to resolve those issues. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the Declaration of Readiness to Proceed. (Cal. Code Regs., tit. 8, § 10742(c).)

Here, we agree with the WCJ that the DOR meets the requirements of Rule 10742(c). In particular, the DOR cites several attempts to resolve the matter, irrespective of whether the December 29, 2023 letter was sent to the wrong address.

Accordingly, we are unable to discern merit to the argument that defendant's DOR dated May 14, 2024 is improper.

We next address applicant's contention that the evidence establishes that an evaluation by a neurological PQME is warranted. Specifically, applicant argues that AME Dr. Wood's testimony demonstrates that applicant's lower extremity functional losses should be evaluated by a neurologist.

Administrative Director Rule 31.7(b) provides:

(b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:



(1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

...

(3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators . . .

(Cal. Code Regs., tit. 8, § 31.7(b)(1) and (b)(3).)

Pursuant to AD Rule 32.6:

The Medical Director shall issue a panel of Qualified Medical Evaluators upon receipt of an order of a Workers' Compensation Administrative Law Judge or the Appeals Board, that includes a finding that an additional evaluation is reasonable and necessary to resolve disputed issues under Labor Code sections 4060, 4061 or 4062 . . .

(Cal. Code Regs., tit. 8, § 32.6.)

AD Rule 35.5 provides:

(c) (1) The evaluator shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as provided in subdivision 35(a)(3).

...

(d) At the evaluator's earliest opportunity and no later than the date the report is served, the evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations in another specialty. In the case of an Agreed Panel QME or a panel QME, the evaluator shall send a copy of the written notification provided to the parties to the Medical Director at the same time. *However, only a party's request for an additional panel, with the evaluator's written notice under this section attached, or an order by a Workers' Compensation Administrative Law Judge, will be acted upon by the Medical Director to issue a new QME panel in another specialty in the claim.* (Cal. Code Regs., tit. 8, § 35.5(c)(1) and (d), emphasis added.)

In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that sections "5701 and 5906

authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are . . . incomplete." (*McDuffie, supra*, at p. 141.)

Here, the parties obtained a medical-legal evaluation from the orthopedic AME, Dr. Wood. But when Dr. Wood was asked under oath whether his final opinions accurately reflected applicant's condition orthopedically, he testified that they did but added that "a neurologist may add additional functional loss that I was missing." (Jt. Ex. Q, Deposition Transcript of David Wood, July 28, 2020, p. 18:9-23.)

In our view, this testimony reveals Dr. Wood's opinion that applicant may have a neurological disability the existence and extent of which he was unable to assess as an orthopedic specialist.

Therefore, we conclude that the evidence establishes that an evaluation by a neurological PQME is warranted. Accordingly, we will substitute a finding that good cause exists for an additional QME panel in neurology and order that applicant's request for the additional panel is granted.

Lastly, we turn to applicant's contention that an additional evaluation by AME Dr. Wood is needed to clarify the issue of whether applicant has carpal tunnel syndrome and a ruptured shoulder in compensable consequence of his industrial injury.

Although the WCJ states in the Report that applicant did not raise these issues before trial, the record shows that the WCJ accepted injury to the shoulders as an issue for trial on the day of trial, and that neurological injury was raised for trial by way of the Pre-Trial Settlement Conference. (Minutes of Hearing and Summary of Evidence, August 15, 2024, pp. 2, 17-18, 3:7-16, 4:15-23; see Report, p. 7.)

Since applicant explicitly raised the issue of the shoulders at trial, and since carpal tunnel syndrome is a form of neurological injury, the pleadings record does not show that applicant waived his claim for adjudication of these issues. (See *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) (*Supervalu*) 74 Cal.Comp.Cases 720, 728 (stating that waiver is the intentional relinquishment of a known right after knowledge of the facts, and it may be either express or implied).) And, inasmuch as these issues were raised but not waived or decided on the

merits, defendant's right to be heard on them has not been violated. We therefore address the merits of applicant's request for an additional evaluation by AME Dr. Wood.

Here, applicant testified that his upper extremities symptoms have increased since he was evaluated by Dr. Wood and that he received a diagnosis of carpal tunnel syndrome which he believes resulted from his use of canes and a walker. (Minutes of Hearing and Summary of Evidence, October 3, 2024, pp. 6:8-11, 7:13-20.) He further testified that he was injured in early 2024 while treating with a physical therapist and was diagnosed with a shoulder muscle rupture. (*Id.*, p. 6:19-24.)

As we have explained, *McDuffie* authorizes augmentation of the medical record where the evaluator's medical opinion is incomplete. In this case, since applicant's testimony shows increased symptomatology of the shoulder which has not been evaluated by Dr. Wood, augmentation of the record is appropriate. Since AME Dr. Wood has previously reported on this case, Dr. Wood should evaluate the increased symptomatology of the shoulders. However, since we will order an additional QME panel in neurology, we recommend that the newly selected QME in neurology evaluate the alleged carpal tunnel syndrome. (*McDuffie, supra*, (stating that follow-up or supplemental evaluations should be obtained from the same physicians who have previously reported on the case to the extent possible).)

Accordingly, we will substitute findings that defer the issues of whether applicant sustained new and different symptoms in the form of carpal tunnel syndrome and shoulder rupture. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues).)

Accordingly, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&O and substitute new findings that good cause exists for an additional QME panel in neurology, that the issues of (1) whether applicant sustained new and different symptoms in the form of carpal tunnel syndrome; (2) whether applicant sustained new and different symptoms in the form of a ruptured shoulder; (3) whether applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment; (4) the amount of permanent disability; (5) the validity of apportionment; (6) attorney's fees; and (7) all other issues are

deferred; and we will order that applicant's request for a QME panel in neurology be granted and the matter returned to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED**, that the Petition for Reconsideration of the Findings, Award and Order issued on January 30, 2025 is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings, Award and Order issued on January 30, 2025 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

**FINDINGS OF FACT (ADJ5787628)**

1. Applicant sustained injury arising out of and in the course of employment with Southern California Permanente Medical Group aka/ Kaiser Foundation Health Plan on May 5, 2005 to his lumbar, internal in the form of a pulmonary embolism, and psyche.
2. Applicant's psychiatric injury was a result of his orthopedic injury.
3. Applicant did not sustain injury arising out of and in the course of employment to his lower extremities.
4. The issue of whether applicant sustained new and different symptoms in the form of carpal tunnel syndrome is deferred.
5. The issue of whether applicant sustained new and different symptoms in the form of shoulder rupture is deferred.
6. The issue of whether applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment is deferred.
7. The issue of the amount of permanent disability is deferred.
8. The issue of apportionment is deferred.
9. Applicant is entitled to further medical treatment to cure or relieve from the effects of this injury.
10. The issue of attorney's fees is deferred.
11. All other issues are deferred.

**AWARD (ADJ5787628)**

AWARD IS MADE in favor of DAVID KOWALSKI against SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP AKA KAISER FOUNDATION HEALTH PLAN; PSI; ADMIN BY SEDGWICK CMS of:

- (a) Further medical treatment reasonably required to cure or relieve from the effects of this injury.

**FINDINGS OF FACT (ADJ10809836) (MF)**

1. Applicant sustained injury arising out of and in the course of employment with Southern California Permanente Medical Group aka/ Kaiser Foundation Health Plan during the period of April 1, 2009 through April 1, 2013 to his cervical, lumbar, internal in the form of pulmonary embolism, right ankle, and psyche.
2. Applicant did not sustain injury arising out of and in the course of employment to his lower extremities.
3. Applicant's psychiatric injury was a result of his orthopedic injury.
4. Applicant is not entitled to psychiatric impairment rating for this date of injury.
5. The issue of whether applicant sustained new and different symptoms in the form of carpal tunnel syndrome is deferred.
6. The issue of whether applicant sustained new and different symptoms in the form of shoulder rupture is deferred.
7. The issue of whether applicant has the ability to compete in the open labor market or be retrained for suitable gainful employment is deferred.
8. The issue of the amount of permanent disability is deferred.
9. The issue of apportionment is deferred.
10. Applicant is entitled to further medical treatment to cure or relieve from the effects of this injury.
11. The issue of attorney's fees is deferred.
12. All other issues are deferred.

**AWARD ADJ10809836 (MF)**

AWARD IS MADE in favor of DAVID KOWALSKI against SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP AKA KAISER FOUNDATION HEALTH PLAN; PSI; ADMIN BY SEDGWICK CMS of:

- (a) Further medical treatment reasonably required to cure or relieve from the effects of this injury.

**JOINT FINDINGS**

- 1. Good cause exists for an additional QME panel in neurology.
- 2. Defendant's Declaration of Readiness dated May 14, 2024 is not improper.

**JOINT ORDER ADJ5787628; ADJ10809836 (MF)**

- (a) Applicant Exhibit #1, is ADMITTED in evidence.
- (b) Applicant's request for an additional QME panel in neurology is granted.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSE H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 5, 2025**

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

**DAVID KOWALSKI  
VISIONARY LAW GROUP  
LAW FIRM OF FRIEDMAN & BARTOUMIAN**

**SRO/bp**

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