

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

GABRIEL OROZCO, *Applicant*

vs.

**HEALTHVIEW INC., dba HARBOR VIEW HOUSE; ZURICH AMERICAN
INSURANCE COMPANY; CYPRESS INSURANCE COMPANY, administered by,
BERKSHIRE HATHAWAY *Defendants***

**Adjudication Number: ADJ11930717
Van Nuys District Office**

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

Applicant has filed a petition for removal from the Findings of Fact and Orders (F&O) issued on February 19, 2025, by the workers' compensation administrative law judge (WCJ), which denied applicant's request for an additional qualified medical evaluator (QME) in internal medicine.

Applicant contends that an additional QME is warranted because the current QME has already stated that applicant's claim of injury in the form of diabetes is outside the QME's area of expertise.

We have not received an Answer from either defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's Report. Based on our review of the record we will grant removal and as our Decision After Removal, we will rescind the February 19, 2025 F&O and substitute a new Finding and Order that an additional panel in internal medicine is warranted.

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 substantial 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, the WCJ denied applicant's request for an additional panel on the basis that applicant has not provided medical evidence of complaints or a diagnosis of diabetes, and thus, good cause was not presented for an additional panel. The trial judge's opinion is based upon legal error that ultimately precludes applicant from completing discovery, which constitutes irreparable harm. Thus, removal is proper in this case.

As noted in another panel addressing this same issue:

Where defendant has ***accepted liability*** for an injury, the compensability of an additional body part is ordinarily a medical determination to be made by the primary treating physician pursuant to section 4062. (See Lab. Code, §§ 4060(a), 4062.) In cases where applicant is being provided treatment, the ordinary procedure is to first obtain the opinion of the primary treating physician who "shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation[.]" (Cal. Code Regs., tit. 8, § 9785(d).) In cases where the additional body part is outside the expertise of the primary physician, the primary physician should refer applicant to a secondary physician who "shall report to the primary physician in the manner required by the primary physician." (*Id.* at § 9785(e)(3).) Then, the primary physician "shall be responsible for obtaining all of the reports of the secondary physicians and ... incorporate, or comment upon, the findings and opinions of the other physicians[.]" (*Id.* at § 9785(e)(4).) Once the parties receive the report of the primary treating physician that either incorporates or comments upon the compensability of the additional body part, either party may object to the primary physician's report pursuant [*7] to section 4062. Upon such objection, the parties should seek agreement on obtaining an additional panel. If the parties cannot agree, then either party can petition for an order of the Appeals Board pursuant to Rule 31.7(b). (Cal. Code Regs., tit. 8, § 31.7(b).)

The above procedure has been the traditional way to obtain an additional panel for a disputed body part in an accepted claim, but this is not an accepted claim. In denied claims, proceeding through a primary treater to obtain an additional panel is not possible.

Per Rule 31.7(b), an additional panel shall issue "[u]pon a showing of good cause that a panel of QME physicians in a different specialty is needed[.]" (*Ibid.*) Obtaining the opinion of the primary treating physician, and then objecting per section 4062 is one way to show good cause. Another way to show good cause is to ask the currently serving QME(s) whether they are capable of commenting upon all disputed issues in the case. This is precisely what applicant did. Where the

currently serving QME is not capable of resolving all disputed medical issues, good cause exists to order an additional panel.

Defendant notes a concern in its answer that: “An applicant could simply allege a body part without any medical evidence of industrial injury and immediately be entitled to get a new QME specialty.” (Answer to Petition for Reconsideration, June 10, 2021, p. 3, lines 23–26.) In essence, this is true. However, in many cases, including this one, applicant's *initial* QME appointment is obtained based solely on allegations of injury, without any reporting of a primary treating physician. Allegations of injury to other body systems should be treated the same. The need for expeditious resolution of cases is paramount. Sufficient remedies exist to combat those rare cases where a litigant may request additional panels frivolously or in bad faith. (§ 5813.)

(*Salcido v. Waste Management Collection and Recycling*, 2024 Cal. Wrk. Comp. P.D. LEXIS 63, *6-8.)¹

We continue to follow the sound logic of the *Salcido* panel. Here, applicant has pled a body part that is not within the specialty of the current QME. Applicant has presented good cause for an additional panel. If defendant presents a genuine concern that applicant may be obtaining an additional panel in bad faith, that concern should be addressed by filing a petition for sanctions and/or costs.

The WCJ further notes that an internal panel may be unnecessary because applicant's physical injury has not yet been found industrial. In workers' compensation, the general rule is that all matters are submitted at a single trial. (Cal. Code Regs., tit. 8, § 10787(a).) However, it is within the discretion of a WCJ to bifurcate any issue if good cause is presented. If defendants wish to proceed upon a bifurcated trial, they should submit such a request to the WCJ to decide. If applicant's internal complaints are alleged as a compensable consequence of the physical injury, a bifurcated trial may be warranted. However, if the internal complaints are, as they appear to be pled in the application, a direct cumulative injury, it would appear that bifurcation would not be warranted. Any decision on a bifurcated trial is deferred to the WCJ.

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Workers' Compensation Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) The panel decisions discussed herein are referred to because they considered a similar issue. Practitioners should proceed with caution when citing to a panel decision and verify its subsequent history.

Accordingly, we grant removal and as our Decision After Removal, we rescind the Findings of Fact and Orders issued on February 19, 2025, and substitute a new Findings and Order that finds good cause for an additional panel in internal medicine.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the Findings of Fact and Orders issued on February 19, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued on February 19, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant presented good cause for an additional QME Panel in internal medicine.

ORDER

IT IS ORDERED that an additional QME panel in internal medicine shall issue upon request of the parties presented to the Medical Director.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 23, 2025

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

**GABRIEL OROZCO
JIM RADEMACHER LAW
KAPLAN BOLDY LAW
PAUL HERMAN LAW OFFICES**

EDL/mt

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