WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HEATHER TILLER KELLEY, *Applicant*

vs.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, permissibly self-insured, *Defendants*

Adjudication Number: ADJ18027061
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the June 10, 2025 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O), wherein the Workers' Compensation Appeals Board (WCAB) found that applicant, while employed by defendant from May 1, 2001 to May 18, 2023 claims to have sustained industrial injury to her back, neck, stress, and "multiple body parts," including stroke, brain, head, face, speech, bilateral upper extremities, bilateral lower extremities, circulatory and nervous systems. We ordered, in relevant part, that the reports of treating physicians Mark Zuber, D.C., Adrienne Pasek, Psy.D., and Kasra Maasumi, M.D., are admissible in evidence, and may be submitted to properly selected Qualified and Agreed Medical Evaluators (QME/AMEs).

Defendant contends that applicant has yet to receive any care for her injury despite defendant's acceptance of liability for the low back on March 27, 2024; that Dr. Zuber, Dr. Pasek and Dr. Maasumi did not establish a treatment relationship with applicant; that applicant obtained comprehensive medical-legal reports outside of the medical-legal process required by Labor Code[1] section 4062.2 which has delayed legal discovery; and that the O&O has not explained why the trial judge's decision is legally invalid.

[1] All further references are to the Labor Code unless otherwise noted.

We have received an Answer from applicant. Because defendant seeks reconsideration of a WCAB decision, the WCJ has not prepared a Report and Recommendation on Petition for Reconsideration.

We have considered the Petition for Reconsideration and the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

The relevant factual background is set forth in our O&O as follows:

> Applicant claimed injury to her back, neck, stress, "multiple body parts," including stroke, brain, head, face, speech, bilateral upper extremities, bilateral lower extremities, circulatory and nervous systems, while employed by defendant Sacramento Unified School District from May 1, 2001 to May 18, 2023.
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> On August 9, 2023, defendant denied all liability for applicant's claim and requested a panel of QMEs in orthopedic surgery pursuant to section 4060. (Ex. 1, Defense Denial Letter and Panel Request, dated August 9, 2023.)
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> On August 24, 2023, the Division of Workers' Compensation Medical Unit issued a panel of orthopedic QMEs under panel number 7614316.
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> On August 25, 2023, defendant issued its Answer to applicant's claim, and in relevant part, denied injury arising out of and in the course of employment. (Exhibit 10, Answer, dated August 25, 2023.)
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> On January 25, 2024, applicant designated "Disabled Workers' Advocate" as her PTP under section 4600. (Ex. 3, Primary Treating Physician Designation Letter, dated January 25, 2024.)
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> On January 30, 2024, defendant objected to the designation and declined to authorize the designated PTP. (Ex. L, Change of Treater Objection, dated January 30, 2024.)
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> On March 27, 2024, defendant admitted liability for the low back only. (Ex. H, Claim Acceptance Letter, dated March 27, 2024.)
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> On April 19, 2024, applicant designated Mark Zuber, D.C., as her primary treating physician pursuant to section 4600. (Ex. 2, Primary Treating Physician Designation Letter, dated April 19, 2024.)
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> On April 27, 2024, defendant objected to the PTP designation on the grounds that Dr. Zuber did not have offices in California and requested that applicant

"select a physician in the Sacramento area who might be able to provide necessary treatment." (Ex. A, Objection to Change of Treating Physician, dated April 27, 2024.)

On May 14, 2024, Dr. Zuber issued a "Primary Treating Physician's Initial and PR-4 Permanent and Stationary Comprehensive Medical Legal Evaluation and Report." (Ex. 5, Report of Mark Zuber, D.C., dated July 12, 2024.)

On July 12, 2024, defendant objected to the report of Dr. Zuber on the grounds that "it appears to be a QME report," and that the report was obtained pursuant to section 4064(d). (Ex. B., Objection to Report of Mark Zuber, D.C., dated July 12, 2024.)

On September 2, 2024, Adrienne Pasek, Psy.D., issued a "Secondary Treating Physician's Initial and PR-4 Permanent and Stationary Comprehensive Medical Legal Evaluation and Report" in the specialty of psychology. (Ex. 6, Report of Adrienne Pasek, Psy.D., dated September 2, 2024.)

On October 1, 2024, Kasra Maasumi, M.D., issued a "Secondary Treating Physician's Initial and PR-4 Permanent and Stationary Comprehensive Medical Legal Evaluation and Report" in the specialty of neurology/internal medicine. (Ex. 7, Report of Kasra Maasumi, M.D., dated October 1, 2024.)

The parties thereafter selected Pramila Gupta, M.D., as the QME in neurology, and a dispute arose regarding whether the reports of applicant's treating physicians would be submitted for review by Dr. Gupta. (See Exs. 8 & 9, Email Correspondence, dated December 2, 2024.)

On March 4, 2025, the parties proceeded to trial on the primary issue of the records to be submitted to QME Dr. Gupta. Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision the same day.

On March 20, 2025, the WCJ issued the F&O, determining in relevant part that neither applicant's purported PTP Dr. Zuber, nor her purported secondary treating physicians Dr. Pasek or Dr. Maasumi, established a treatment relationship with applicant. Accordingly, the comprehensive medical-legal reports of all three physicians were obtained in violation of section 4062.2(a). (Finding of Fact No. 8.) The WCJ ordered, in relevant part, that the reports from Drs. Zuber, Pasek and Maasumi be excluded from evidence, and further ordered that the reports not be sent to any properly selected QME or AME. (Order No. 1.)

The WCJ's Opinion on Decision observes that applicant's selections of a "chiropractor in Texas as a Primary Treating Physician and requesting a medical-legal report with no actual treatment relationship between Applicant and the doctor is found be an attempt to circumvent the statutory limitation

> expressly created by section 4062.2." (Opinion on Decision, at p. 4.) The WCJ similarly found that the reports of secondary treating physicians Drs. Pasek and Maasumi did not reflect an actual treatment relationship with applicant and were medical-legal reports obtained outside the dispute resolution process required under section 4062.2. (*Ibid*.)
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> Applicant's Petition contends the WCJ's analysis necessarily decides issues that were not framed for decision at trial. (Petition, at p. 12:7.) In the alternative, applicant contends that she appropriately selected treating physicians following defendant's denial of her claim, and that reports of treating physicians are expressly admissible pursuant to section 4060(b) and 4061(i). (*Id.* at p. 13:17.)
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> The WCJ's Report observes that applicant did not prove by a preponderance of the evidence that Drs. Zuber, Pasek and Maasumi met the standards described in Administrative Director Rule 9785 (Cal. Code Regs., tit. 8, § 9785) for primary and secondary treating physicians. (Report, at p. 3.)

(O&O, pp. 2-4.)

On June 10, 2025, we issued our O&O, granted reconsideration, and applying the removal standard to the WCJ's non-final order, rescinded the March 20, 2025 Findings of Fact and substituted new findings of fact. In relevant part, we ordered that the reports of Dr. Zuber, Dr. Pasek and Dr. Maasumi were admissible in evidence and may be submitted to a properly selected AME or QME. (O&O, Order No. "a".) We observed that defendant's August 9, 2023 claim denial had the effect of relinquishing medical control and that applicant could thereafter self-procure her medical treatment through a physician of her choosing. (*Id.* at p. 7.) We further observed that although defendant admitted injury to the low back only on March 27, 2024, defendant did not take steps to reestablish medical control other than to instruct applicant to select a physician in the Sacramento area. (*Id.* at p. 8.) We observed that applicant properly obtained medical evaluations and treatment from primary and secondary treating physicians with the resulting reporting served on defendant more than 20 days prior to a scheduled QME evaluation in accordance with Labor Code section 4062.3(b). We also observed that the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (Lab. Code, § 5703(a); *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231, 1239 [78 Cal.Comp.Cases 1209].) Accordingly, we concluded that the reports of applicant's treating physicians were admissible in evidence and could be submitted to a properly selected AME or QME. (O&O, at p. 9.)

Defendant's Petition contends that none of applicant's purported treating physicians have actually treated applicant, and as such, the resulting reports cannot be deemed treating physician reports. (Petition, at p. 4:10.) Defendant further contends the reports of Dr. Pasek and Dr. Maasumi are medical-legal reports obtained in contravention of section 4062.2 and that the reports represent an abuse of the workers' compensation system. (*Id.* at p. 7:18.) Defendant further asserts that the O&O fails to show appropriate deference to the WCJ's decision. (*Id.* at p. 8:3.) Accordingly, defendant requests that we vacate our June 10, 2025 O&O and reinstate the WCJ's March 20, 2025 Findings of Fact and Orders.

Applicant's Answer contends that our O&O was not a final order because it addressed interim discovery issues, and that defendant's request for reconsideration is thus procedurally incorrect. (Answer, at p. 3:8.) Applicant also asserts that defendant's petition misstates the record and fails to set forth a statutory basis for reconsideration. (*Id.* at p. 11:3.)

DISCUSSION

I.

Former section 5909 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.
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> (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 July 14, 2025, and 60 days from the date of transmission is September 12, 2025. This decision is issued by or on September 12, 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 our review of the record, we did not receive a Report and Recommendation by a workers' compensation administrative law judge. However, a notice of transmission was served by the district office on July 14, 2025, which is the same day as the transmission of the case to the Appeals Board on July 14, 2025. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on July 14, 2025.

II.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" *(Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id*. at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not

include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar 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 WCAB'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 WCAB decision includes findings of employment and injury arising out of and in the course of employment. These are final orders subject to reconsideration and not removal. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

Although the decision contains findings that are final, the petitioner is only challenging an interlocutory finding and order regarding the reporting that may be submitted to a QME. Therefore, we will apply the removal standard to our review. (See *Gaona, supra,* 5 Cal.App.5th 658, 662.)

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).)

III.

Defendant's Petition asserts that applicant has received no treatment from her primary and secondary treating physicians, and that without a treatment relationship, the resulting reports cannot be deemed treating physician reports. (Petition, at p. 5:22.) Defendant observes that Primary Treating Physician (PTP) Dr. Zubek is a chiropractor based in Texas who conducted a telemedicine evaluation of applicant and issued a single Permanent and Stationary report.

Based on the assertion that Dr. Zubek's status as a primary treating physician was pretextual, defendant further asserts that the PTP's referrals to secondary treating physicians Dr. Maasumi and Dr. Pasek were invalid. Defendant observes that the reports of all three physicians take the form of comprehensive medical-legal reports and as such are obtained outside the procedures described in section 4062.2 for obtaining medical-legal reporting in represented cases. (Petition, at p. 7:14.)

We again observe, however, that following defendant's denial of all liability for applicant's claim on August 9, 2023, any medical treatment sought by applicant in response to her alleged industrial injuries would necessarily be self-procured. (Lab. Code, § 4600(a); *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82 [31 Cal.Comp.Cases 93].) And while treatment to cure or relieve from the effects of an industrial injury is statutorily authorized under section 4600(a), a treating physician may, in the exercise of their medical judgment, declare an injured worker to be permanent and stationary. The determination is based on an assessment of whether the injured worker's "condition is well stabilized, and unlikely to change substantially in the next year *with or without medical treatment*." (Cal. Code Regs., tit. 8, § 9785(a)(8); § 10116.9(m); italics added.) Thus, a treating physician is authorized to determine that an injured worker has reached a permanent and stationary plateau and issue the corresponding reporting irrespective of whether medical treatment is anticipated to change applicant's condition over the following year.

Moreover, treating physicians are authorized to issue medical-legal reports. Section 4060(b) allows for a medical-legal evaluation by a treating physician while section 4620(a) defines medical legal expense as "any costs and expenses … for the purpose of proving or disproving a contested claim." Section 4064(a) provides that an employer is liable for the cost of any comprehensive medical evaluations authorized under section 4060. In addition, the "primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation …." (Cal. Code Regs., tit. 8, § 9785(d).)

Read together, these sections authorize a physician upon determination that the injured worker has reached a permanent and stationary plateau to issue a medical-legal report. (Lab. Code, §§ 4060(b); 4064(a); Cal. Code Regs., tit. 8, § 9785(a)(8) & (d); § 10116.9(m); see also *Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550, 556 (Appeals Board en banc) [notwithstanding an AME agreement, parties are nonetheless authorized to obtain comprehensive medical-legal report from a treating physician].) And in this context, *the issuance of a medical-*

legal report is accomplished as part of the reporting duties of the treating physician. It is for this reason that the treatment rendered by an evaluating physician often involves a determination that the injured worker's condition is permanent and stationary and the PTP's issuance of a report evaluating the medical-legal issues presented. To the extent that the issuance of a medical-legal report is authorized as part of the duties of a treating physician, the issuance of a corresponding report is a valid component of medical treatment.

In addition, defendant cites to no decisional or statutory authority for the proposition that a treating physician should provide unnecessary treatment to an injured worker in service of the ultimate admissibility of a permanent and stationary report. Here, applicant's primary and secondary treating physicians have determined that her condition is unlikely to change in next 12 months *with or without* further treatment and is thus amenable to a permanent and stationary evaluation. Applicant's physicians have issued corresponding reports that address contested issues. Pursuant to sections 4060(b), 4064(a), and 5703(a), the evaluations are admissible in proceedings before the Appeals Board. (See also *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231, 1239 [78 Cal.Comp.Cases 1209].)

We also note that in the event defendant objects to the designation of a particular primary treating physician, section 4603 allows the employer or its claim administrator to "petition the administrative director who, upon a showing of good cause by the employer, may order the employer to provide a panel of five physicians, or if requested by the employee, four physicians and one chiropractor competent to treat the particular case, from which the employee must select one." (Lab. Code, § 4603.) Administrative Director (AD) Rule 9786 further provides a nonexclusive list of enumerated grounds for such a petition, including that "the primary treating physician or facility is not within a reasonable geographic area" of applicant. (Cal. Code Regs., tit. 8, § 9786(b)(4).) Here, however, the record reflects no attempt by defendant to avail themselves of this statutory remedy.

In summary, defendant relinquished medical control over applicant's treating physicians when it denied all liability in this case, and thereafter, applicant was free to choose her treating physicians. Following an evaluation of applicant's condition, applicant's treating physicians determined that she had reached a permanent and stationary status and issued corresponding comprehensive medical-legal reporting. These reports are statutorily admissible in proceedings before the Appeals Board. Moreover, to the extent that defendant objects on various grounds to

applicant's selection of her treating physicians, there are statutory remedies available to defendant to seek the replacement of a particular treating physician or chiropractor, which defendant has declined to pursue. We are thus persuaded that the reports of applicant's treating physicians are admissible in proceedings before the WCAB.

We also observe that our determination herein addresses the *admissibility* of the reporting, rather than the *weight* the evidence will be accorded both by subsequent medical-legal evaluators and the WCJ. The question of whether a report constitutes substantial evidence requires an analysis of a variety of factors, including whether the report is predicated on reasonable medical probability (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–417, 419 [33 Cal.Comp.Cases 660]; whether it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525]; and whether it adequately sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-62 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc).)

However, the question of the substantiality of a report reflects the weight of the evidence, rather than its admissibility. (Cal. Code Regs., tit. 8, § 10682(c) [failure to comply with rules concerning content of medical reports "will not make the report inadmissible but will be considered in weighing the evidence"].) Here, defendant raises issues regarding the adequacy of a chiropractic evaluation accomplished without a physical examination and asserts that various evaluating physicians accomplished only a limited record review. (Petition, at p. 6:6.) Notwithstanding the admissibility of these reports, defendant remains free to advance arguments responsive to the *persuasive value* of the reports in evidence, and the WCJ is free to consider these arguments in ascribing to the reporting its appropriate evidentiary weight.

Accordingly, we are not persuaded that our prior determination that the reports of applicant's treating physicians are admissible in proceedings before the WCAB was in error. Because we discern no irreparable harm arising out of our interim order allowing the admission of the reports in evidence, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 10, 2025

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

HEATHER TILLER KELLEY
NYMAN TURKISH
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

SAR/abs

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