

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

JEREMY VIETMEIER, *Applicant*

vs.

**NORTHROP GRUMMAN SYSTEMS CORPORATION;
AMERICAN HOME ASSURANCE COMPANY,
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ14784661
Van Nuys District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR
RECONSIDERATION,
GRANTING PETITION FOR REMOVAL
AND DECISION AFTER REMOVAL**

Applicant seeks reconsideration of the May 8, 2025 Findings of Fact and Orders (F&O) wherein a workers' compensation administrative law judge (WCJ) determined that good cause existed for the issuance of an additional panel in neurology but not in psychiatry. The WCJ ordered the Medical Director of the Division of Workers' Compensation (DWC) to issue a panel of Qualified Medical Evaluators (QMEs) in neurology but denied applicant's request for additional panels. The WCJ made no ruling as to the admissibility of applicant's proffered psychiatric report from David Kauss, Ph.D.

Applicant contends the F&O does not rule on the admissibility of the reporting of Dr. Kauss, and that good exists for the issuance of an additional QME panel in psychiatry.

We have received an answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration recommending that the petition be denied.

Applicant has further filed a Request to file a Supplemental Petition, and a Supplemental Petition for Reconsideration on May 29, 2025 (Supplemental Petition). We have granted the request pursuant to WCAB Rule 10964 and have reviewed the Supplemental Petition herein. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration and 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, we will dismiss the petition to the extent it seeks reconsideration and grant it to the extent it seeks removal, and rescind and restate the F&O, except that we will find good cause for the issuance of additional panels in both neurology and psychiatry.

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.

Here, the WCJ's decision solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision and the petition will be dismissed to the extent it seeks reconsideration.

Considering the Petition as Petition for Removal, applicant contends the record supports a finding of good cause for the issuance of an additional panel in psychiatry. (Petition, at p. 4:14.) Defendant contends applicant has not timely alleged psychiatric injury, and as a result, there is no disputed medical issue warranting the issuance of a panel of QMEs in psychiatry. Defendant observes that orthopedic QME Dr. Rah did not recommend a psychiatric QME or defer psychiatric issues to an appropriate specialist. (Answer, at p. 5:1.) Defendant further observes that applicant

failed to timely claim psychiatric injury, and that the January 23, 2025 reporting of David Kauss is inadmissible because it violated “discovery rules.” (*Id.* at p. 4:21.)

Administrative Director (AD) Rule 31.7(b) provides for an additional QME panel in another specialty as follows in relevant part:

(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

(2) Where an acupuncturist has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter; 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; or

(4) In an unrepresented case, that the parties have conferred with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of and with the assistance of the Officer on the specialty requested for the additional QME panel. The parties may confer with the Information and Assistance Officer in person or by conference call.

In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383] (*Ramirez*), the court of appeal observed that:

Upon notice or knowledge of a claimed industrial injury an employer has both the right and *duty to investigate the facts* in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he *take the initiative in providing benefits*. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Ramirez, supra*, at p. 234, italics added.)

In *United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, [19 Cal.Comp.Cases 8], the court similarly states:

Section 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury....The duty imposed upon an employer who has notice of an injury to an employee is not ... the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary to determine the extent of his obligation and the needs of the employee.

(*Moynahan, supra*, at p. 435.)

Here, applicant seeks the issuance of additional panels in neurology and psychology to evaluate his claimed injury. Orthopedic QME Andrew Rah, M.D. has documented applicant's complaints of depression and anxiety in reporting dated August 30, 2021 and March 7, 2022. (Ex. X2, Report of Andrew Rah, M.D., dated August 30, 2021, at p. 7; Ex. X2, Report of Andrew Rah, M.D., dated March 7, 2022, at p. 7.) Applicant's August 9, 2024 Declaration of Readiness to Proceed indicated the disputed issues included a request for a panel of QMEs in psychiatry. (Declaration of Readiness to Proceed, dated August 9, 2024, at p. 7.) The parties proceeded to trial on February 27, 2025, and the corresponding minutes reflect applicant's claimed body parts as included psyche. (Minutes of Hearing and Summary of Evidence (Minutes), dated February 27, 2025, at p. 2:8.) Applicant testified to continued emotional difficulties related to his injury, including difficulties with focus and concentration, vertigo, and anxiety. (*Id.* at p. 5:12.)

Labor Code section 4062.2 governs the process to obtain a medical-legal evaluation from a panel QME in a represented case if the parties do not agree on an agreed medical evaluator (AME). (Lab. Code, § 4062.2.) Although defendant has admitted injury to the left shoulder, defendant has denied liability for all other claimed body parts. (Minutes, at p. 2:5.)

In the absence of additional panels in psychiatry, applicant is precluded from conducting the medical-legal discovery necessary to determine the nature and extent of his admitted industrial injury. (See *Jover v. County of San Bernardino Dept. of Public Health* (May 8, 2025, ADJ18210611) [2025 Cal. Wrk. Comp. P.D. LEXIS 125; 2025 LX 142301] [verification of medical causation of contested body parts not a prerequisite to obtain additional QME panels]; *Hester v. Sloat Garden Center* (June 24, 2024, ADJ12396719) [2024 Cal. Wrk. Comp. P.D. LEXIS 227; 2024 LX 22043] [applicant will incur significant prejudice if not allowed QME on contested

body parts]; *Espinoza v. Marborg Industries* (June 24, 2024, ADJ14300773, ADJ16390001) [2024 Cal. Wrk. Comp. P.D. LEXIS 229; 2024 LX 94175] [although best practice would involve direct QME referral, sufficient notice to defendant of claimed body part to satisfy good cause requirement for additional panels].)

We therefore conclude that good cause exists under Rule 31.7 (Cal. Code Regs., tit. 8, § 31.7(b)), an additional QME panel in psychiatry is appropriate. (See *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; Lab. Code, §§ 5701, 5906 [the Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues].)

Accordingly, we will dismiss applicant's petition to the extent it seeks reconsideration but grant the petition as one seeking removal. We will rescind and restate the F&O, except that we will find good cause for the issuance of additional panels in both neurology and psychiatry.

In addition, we offer the following nonbinding guidance to the parties. We observe that applicant has sought to introduce in evidence Exhibit 3, the January 23, 2025 report of David Kauss, Ph.D. (Minutes of Hearing and Summary of Evidence, dated April 28, 2025, at p. 2:6.) Defendant objected to the report's admissibility, averring it was not previously disclosed and that the body part of psyche had not previously been pleaded. (*Id.* at p. 2:9.) The WCJ marked Exhibit 3 for identification, but did not ultimately rule on the report's admissibility. Thus, we believe that an analysis of the admissibility of the reporting is not yet ripe. However, given our order for the issuance of a panel of QMEs in psychiatry, we acknowledge that the parties will need to determine the issue of the admissibility of the report and whether the report may be submitted for review by a QME. (See Lab. Code, § 4062.3.)

We respectfully disagree with our dissenting colleague that the report is otherwise inadmissible in evidence. The WCJ's Report observes that the reporting of Dr. Kauss is "strictly self-procured under sec. [4605]," and that the report has not been reviewed by a QME. (Report, at p. 4.) We observe, however, that section 4605 does not limit the admissibility of a self-procured report, and that the report is not offered or relied upon by the WCJ as the sole basis of an award of compensation.

In *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231 [78 Cal.Comp.Cases 1209] (*Valdez*), the California Supreme Court analyzed the admissibility of medical reports in workers' compensation proceedings and opined in pertinent part:

[T]he comprehensive medical evaluation process set out in section 4060 et seq. for the purpose of resolving disputes over compensability does not limit the admissibility of medical reports ... Under section 4064, subdivision (d), "no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense," and "[a]ll comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board ..." except as provided in specified statutes. **The Board is, in general, broadly authorized to consider "[r]eports of attending or examining physicians."** (§ 5703, subd. (a).) **These provisions do not suggest an overarching legislative intent to limit the Board's consideration of medical evidence.**

(*Valdez, supra*, at p. 1239, emphasis added.)

As acknowledged by the Court in *Valdez*, sections 4060, 4064(d) and 5703 suggest an expansive rather than limiting approach by the Legislature regarding the admissibility of medical evidence. The Court recognized that section 4060 "does not limit the admissibility of medical reports." Seen in this light, section 4060(c) merely restricts the procedure to obtain a medical evaluation to address compensability to the procedure outlined in section 4062.2 if the employee is represented by an attorney.

With respect to reports privately obtained from doctors by the employee pursuant to section 4605, the *Valdez* court added:

... when we consider the reforms enacted by Senate Bill 863 ... [t]he Legislature did not ... narrow employees' right to seek treatment from doctors of their choice at their own expense, or bar those doctors' report admissibility in disability hearings. Rather, it provided that privately retained doctors' reports "shall not be the sole basis of an award of compensation." (§ 4605.) The clear import of this language is that such reports may provide some basis for an award, but not standing alone.

(*Valdez, supra*, 57 Cal.4th at p. 1239.)

As the reporting of Dr. Kauss is being offered *in conjunction with* applicant's request for the issuance of a panel of QME in psychiatry, we discern no inherent basis under section 4605 for the exclusion of this evidence.

The WCJ also observes that Dr. Kauss evaluated applicant during a telemedicine appointment. Citing AD Rule 46.3(a)(2)(A), the WCJ observes that there was no mutual consent

to a remote evaluation. (Cal. Code Regs., tit. 8, § 46.3(a)(2)(B) [remote health evaluation requires “agreement in writing ... by the injured worker, the carrier or employer, **and the QME**” (emphasis added)].) However, we observe that by its own terms, the rule is applicable to QME, AME or other medical-legal evaluations, and does not require written agreement from the defendant for applicant’s treating or consulting physician reports.

More broadly, we also observe that the weight accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. (Lab. Code, § 3202.5.)

Even in instances where a WCJ determines that a report has limited or no evidentiary weight with respect the medical-legal conclusions reached by the evaluating physician, or because of other procedural or substantive deficiencies, the report may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of relevant information may include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations.

Here, we acknowledge that the WCJ has not ruled on the admissibility of the reporting of Dr. Kauss in the first instance. However, following our review of the record, including the WCJ’s recommendations as set forth in the Report, we respectfully disagree with our dissenting colleague that the report should be deemed inadmissible, in part because the issue is not yet ripe, and we need not address it at this time.

In summary, and following our review of the entire evidentiary record, we agree with the WCJ that an additional panel in neurology is warranted and further conclude that good cause exists for the issuance of an additional panel in psychiatry.

Accordingly, we will dismiss applicant’s petition to the extent it seeks reconsideration but grant the petition as one seeking removal. We will rescind and restate the F&O, except that we will find good cause for the issuance of additional panels in both neurology and psychiatry.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of May 8, 2025 is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Good cause exists to require additional panels in neurology and psychiatry under Cal. Code Regs., tit. 8, § 31.7.
2. There are no issues that require a judicial order to develop the record.

ORDERS

- a. IT IS ORDERED that the Medical Director, Division of Workers' Compensation, issue within 30 days of the date of service hereof, a QME panel in neurology (MPN) and a QME panel in psychiatry (MPD) within the geographic area of Applicant's employment zip code of 93550.
- b. The employer is ORDERED to provide all necessary transportation and accommodation for said QME examinations.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 1, 2025

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

JEREMY VIETMEIER
FIELD LAW GROUP
BLACK AND ROSE

SAR/abs

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

CONCURRING AND DISSENTING OPINION OF COMMISSIONER RAZO

I agree with my colleagues that the current record meets the criteria necessary under Administrative Director Rule 31.7(b) for the issuance of an additional panel in psychiatry. I therefore concur with the decision to grant removal and to rescind and restate the F&O to order the issuance of panels in both neurology and psychiatry.

However, I also observe that the WCJ has not made a final determination as to the admissibility of the January 23, 2025 report of David Kauss, Ph.D. Based on my analysis of the record, I am persuaded that the report is inadmissible, and accordingly I would further amend the F&O to issue an order excluding the January 23, 2025 report from evidence.

The report of Dr. Kauss was not listed on the pre-trial conference statement originally dated October 22, 2024 and filed on December 4, 2024. There is no indication in the Exhibits page to the pre-trial conference statement that a psychological evaluation had been scheduled or that a report was pending. (Pre-trial Conference Statement, dated October 22, 2024.) Applicant offered no psychological reporting into evidence at the February 27, 2025 trial proceedings, and again made no mention of a recent psychological evaluation or impending evaluation report.

On the second day of trial on April 28, 2025, applicant for the first time offered into evidence a report from Dr. Krauss arising out of an evaluation that took place on January 23, 2025. (Minutes of Hearing and Summary of Evidence, dated April 28, 2025m at p. 2:5.) Applicant offered no explanation for why the report could not have been obtained prior to trial, or why a pending evaluation was not disclosed from the trial-setting conference, or why the court was not notified of a pending report from an evaluation with Dr. Krauss that had *already taken place* as of the first date of trial on February 27, 2025.

Following applicant's submission of the January 23, 2025 report of Dr. Kauss into evidence, the WCJ marked the report for identification only. In his Report, the WCJ acknowledges that no decision was ultimately rendered regarding the admissibility of the reporting. However, the WCJ noted that despite this oversight, the reporting of Dr. Kauss is not admissible in evidence.

Thus, while I agree with my colleagues that good cause for an additional panel in psychiatry exists under Rule 31.7, I would also amend the Findings of Fact to reflect that Ex. 3, the January 23, 2025 report of Dr. Kauss is inadmissible in evidence. I dissent, accordingly.



WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 1, 2025

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

**JEREMY VIETMEIER
FIELD LAW GROUP
BLACK AND ROSE**

SAR/abs

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