

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

JUAN SOSA, *Applicant*

vs.

**RC GREEN TOUCH INC.;
INSURANCE COMPANY OF THE WEST;
SECURITY NATIONAL INSURANCE COMPANY,
administered by AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ19039281
San Bernardino District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration, or in the alternative removal, of the July 21, 2025 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ found that applicant's requested panel number 7774203 in the specialty of chiropractic was invalid, and the WCJ ordered the panel not to be used by the parties.

Applicant contends the WCJ erred by invalidating applicant's requested panel number 7774203.

We did not receive an answer from any party.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be denied.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will deny the Petition as one for reconsideration.

FACTUAL BACKGROUND

The WCJ's Report detailed the following relevant facts:

Applicant, Juan Sosa, . . .] while allegedly employed during the period March 12, 2023, through March 12, 2024, by RC Green Touch Incorporated, claims to have sustained injury arising out of and in the course of employment to his head, neck, arms, legs, knees, ankles, shoulders, elbows, hands and back.^[1] At the time of the alleged injury, the employer's workers' compensation carriers were [AmTrust] and [ICW].

The Application for Adjudication listed ICW as the insurance carrier. (EAMS 51075674.) Defense counsel for ICW requested a panel on April 26, 2024, [using claim number 2024007878, which was issued by ICW] and a panel # 7688611 was issued on April 29, 2024, in the specialty of orthopedic surgery. (Defendant Exhibit B.) Security National Insurance was joined as a party defendant on December 11, 2024. (EAMS 78673887.) On December 31, 2024, AmTrust, on behalf of Security National, issued a notice of delay in determining liability for the claim. (Joint Exhibit W.) Applicant requested a panel on January 26, 2025, [using claim number 3948619-1, which was assigned by AmTrust] and panel #7774203 issued on January 27, 2025, in the specialty of chiropractic. (Defendant Exhibit C.)

On February 13, 2025, AmTrust filed a Petition to Set Aside and Replace Panel. (Defendant Exhibit A.) Thereafter, on February 20, 2025, AmTrust filed a Declaration of Readiness to Proceed (hereinafter DOR) referencing the pending Petition to Set Aside and Replace Panel. (EAMS 56459677.) Defendant's DOR resulted in the March 19, 2025, Mandatory Settlement Conference (hereinafter MSC) being set before WCJ Van Kolken. Notice of the MSC was sent by the Board to all parties on February 21, 2025. At the MSC on March 19, 2025, the matter was set for Trial over applicant's objection. Applicant filed a Petition for Removal challenging the Trial setting on March 19, 2025. (EAMS 56952681.) WCJ Van Kolken issued a Report and Recommendation on Removal recommending the Petition for Removal be denied. (EAMS 79019126.)

On March 19, 2025, applicant filed a Notice of Election dated March 14, 2025, stating, "Applicant hereby elects, authorized by *Labor Code* § 5500.5, against **SECURITY NATIONAL INSURANCE** in this claim of injury." (EAMS 56928066.) There is no mention of the election on the Minutes of Hearing from March 19, 2025, and attorneys for both AmTrust and ICW were present for the hearing. (EAMS 79001390.) On March 31, 2025, counsel for ICW filed an objection to the notice of election and requested an Order rejecting applicant's election. (EAMS 57127930.)

The case was initially calendared for Trial with WCALJ Tracy Hughes on April 17, 2025, but was reassigned to the undersigned due to a petition for

¹ To the extent applicant alleged injury to other body parts, as they were not raised at trial and not decided therein, they are assumed deferred.

automatic reassignment dated March 26, 2025. (EAMS 57108477.) On April 17, 2025, applicant filed a Petition to File Supplemental Pleading after filing Petition for Removal. (EAMS 57437083.)

As of April 30, 2025, the Petition for Removal had not been acted on by the Appeals Board. Therefore, after consulting with Presiding Judge Eaton, the matter proceeded to Trial with the undersigned on April 30, 2025, and was submitted. As discussed on the day of the April 30, 2025, Trial, and noted in the Minutes of Hearing and Disposition, parties were given until May 16, 2025, at 5:00 PM to file optional post-trial briefs addressing the contested issues. (EAMS 79205072.) However, none of the parties filed a post-trial brief.

On May 21, 2025, applicant filed a petition for disqualification. (EAMS 58021557.) Applicant also filed a Petition to File Supplemental Pleading after filing Petition for Removal on May 21, 2025. (EAMS 58021543.) The undersigned filed a Report and Recommendation on the Petition for Disqualification on June 4, 2025. (EAMS 79238357.) On July 18, 2025, an Opinion and Orders Dismissing Petition for Removal and Dismissing Petition for Disqualification was issued by the Appeals Board panel. (EAMS 79379419.) The undersigned issued Findings and Order and Opinion on Decision dated and served on July 21, 2025.

By verified Petition for Reconsideration dated August 15, 2025, and filed on August 15, 2025, applicant, by and through his attorney of record, Garrett Law Group PC, seeks reconsideration. At the time of preparing this Report and Recommendation, neither defendant has filed an Answer to the Petition for Reconsideration.

(Report, August 29, 2025, pp. 1-3.)

DISCUSSION

I.

Former Labor Code 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, Labor Code 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.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code 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 August 29, 2025, and 60 days from the date of transmission is October 28, 2025. This decision is issued by or on October 28, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 August 29, 2025, and the case was transmitted to the Appeals Board on August 29, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 29, 2025.

II.

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 a finding that the employer's workers' compensation carriers at the time of the alleged injury were Security National Insurance Coverage, administered by AmTrust, and Insurance Company of the West, which is a threshold issue. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

In addition to the WCJ's Report and the analysis set forth in the Opinion on Decision, which provides the rationale for the F&O, we observe the following.

Although applicant alleges the WCJ erred by not addressing applicant's election against defendant AmTrust, as explained by the WCJ in the Report, no action has been taken with respect to the notice and objection to the election at the time of the April 30, 2025 trial. Accordingly, to the extent the WCJ's Report addressed this issue, we do not revisit it here, except to reaffirm the well-established understanding that all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Additionally, the WCJ's decision to invalidate panel number 7774203 to the extent it was not properly served is consistent with WCAB Rule 10625, which states in relevant part:

- (a) Service shall be made on the attorney or agent of record of each affected party unless that party is unrepresented, in which event service shall be made directly on the party, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10625 (a).)

Further, the WCJ's determination that panel number 7774203 was invalid because the information submitted on the Qualified Medical Examiner Online Form is inconsistent and misleading is supported by our prior decisions. (Opinion on Decision, p. 3, ¶ 5-p. 5, ¶ 1.)

The process by which a party may seek the issuance of a panel of QMEs is addressed in AD Rule 30 (Cal. Code Regs., tit. 8, § 30). The Rule requires that represented parties submit a request for a panel of QMEs electronically to the DWC Medical Unit, and that they identify the following elements:

1. Panel Request Information Section

- i. Date of Injury

- ii. Claim Number
- iii. Requesting Party
- iv. Reason QME Panel is being Requested
- v. Dispute type
- vi. Name of primary treating physician
- vii. Date of report being objected to
- viii. Date of objection communication
- ix. Specialty of treating physician
- x. QME Specialty Requested
- xi. Opposing Party's QME Specialty Preferred (if known)

(Cal. Code Regs., tit. 8, § 30(b)(1)(A)(1).)

We have previously addressed an issue similar to the one presented here and explained that parties must “strictly comply with the requirement in AD Rule 30 to provide a complete and correct claim number in making a request, rather than weighing and adjudging the individual facts and equity surrounding each incorrectly listed claim number in a QME panel dispute. In so doing, we seek to avoid the dangers of inconsistent outcomes, provide clarity to parties with respect to applicable minimum standards in requesting a QME panel, and allow parties to more easily predict whether a particular panel is valid without the need to seek intervention at the WCAB.” (*Silveira v. FedEx Ground Package Sys., Inc.* (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 243, *13, emphasis in original [QME panel request invalidated even where omission of single digit of claim number appeared inadvertent in QME panel request]; see also, *Sidahmed v. Alameda County Counsel, PSI* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 103 [QME panel request invalidated where party inadvertently listed incorrect claim number].)²

Here, applicant previously participated in the QME process for the same claim through panel number 7688611 that used the claim number issued by ICW. (Def. Exh. B.) Applicant then secured a second QME panel, number 7774203, by using a different claim number, in addition to

² 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 citable authority and we consider these decisions to the extent that we find their reasoning 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].) Here, we refer to *Silveira v. FedEx Ground Package Sys., Inc.* and *Sidahmed v. Alameda County Counsel, PSI* because they considered a similar issue.

failing to properly serve defendant AmTrust. (Def. Exh. C.) Whether intentional or not, such actions defeat our goal of minimizing potential conflicts with respect to the validity of a QME panel. (*Silveira, supra*, at *14) Accordingly, applicant's requested panel number 7774203 was properly invalidated. (*Id.* at *13 ["[T]he claim number underlying a panel request must be correctly identified to provide all parties with the opportunity to evaluate the validity of the request and to be heard on issues arising out of the request, as necessary."])

Regarding applicant's remaining objections, applicant attempts to offer arguments not directly on point to the issues identified at the time of the April 30, 2025 trial (Minutes of Hearing, April 30, 2025, p. 2, lines 10-18.), and, if adjudicated by the Appeals Board, would result in denying defendant their right to due process. Thus, we do not consider them further.

In this case, based upon our review of the record and the WCJ's analysis of the merits of applicant's arguments in the Report, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Accordingly, we deny the Petition as one for reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 28, 2025

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

**JUAN SOSA
GARRETT LAW GROUP PC
D'ANDRE LAW, LLP
YRULEGUI & ROBERTS**

DC/cs

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