

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

JULIE GOODENOUGH, *Applicant*

vs.

**TROPICANA MANUFACTURING COMPANY/PEPSICO; ACE AMERICAN
INSURANCE COMPANY, administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ18784544
Van Nuys District Office**

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

Defendant seeks removal of the Order Granting applicant's Petition for Additional Panels (Order) in the fields of dentistry, psychiatry, and internal medicine – gastroenterology, issued by the workers' compensation administrative law judge (WCJ) on October 7, 2024.

Defendant contends that the WCJ abused his discretion in ordering additional panels without first issuing a Notice of Intent from which they may object, as defendant has denied applicant's claim, and there is no factual justification for ordering such panels based upon the existing record.

We did not receive an Answer from applicant.

We received a Report and Recommendation (Report) from the WCJ, which recommends that the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the Report. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the October 7, 2024 Order regarding additional Qualified Medical Evaluator (QME) panels, and return this matter to the district office for further proceedings.

FACTUAL BACKGROUND

Applicant, while employed by defendant during the period January 18, 1999 through October 19, 2023, claims to have sustained injury arising out of and in the course of employment (AOE/COE) to her neck, back, left leg and foot, hands, stomach, psyche, and in the form of dental injury. (Application for Adjudication, January 25, 2024.)

Defendant filed an Answer on March 20, 2024, denying applicant's claim in its entirety. On September 6, 2024, applicant filed a Petition for Additional Medical Panels (Petition) in the fields of dentistry, psychiatry, and internal medicine-gastroenterology. Per the Petition, applicant's primary treating physician (PTP), Scott Rosenzweig, M.D., issued a Request for Authorization (RFA) in Internal Medicine and Psychology on April 16, 2024. On June 10, 2024, applicant's counsel received the medical report of chiropractic Panel Qualified Medical Evaluator (QME) Anish Chandra, D.C., dated June 3, 2024 discussing the need to enlist appropriate doctors in the field of dentistry (DEN), psychiatry (MPD), and internal medicine-gastroenterology. On June 20, 2024, the PTP also issued an RFA in dental. (Petition, p. 1.)

On September 30, 2024, the WCJ issued an Order Granting applicant's petition for additional panels. The Order stated:

GOOD CAUSE APPEARING, as set forth in applicant's unopposed petition,

IT IS HEREBY ORDERED Good cause appears to grant applicant counsel's Petition for Additional Panels in the field of Dentistry (DEN), Psychiatry (MPD), and Internal Medicine- Gastroenterology (MMG), and the Director of the Medical Unit is ordred [sic] to issue QME panels in these specialties within a reasonable distance of applicant's zip code, 90713. Original Panel No.: 7667279

Applicant's Address: xxxxxxxxxxxxxx, Lakewood, CA 90713
(Order, 9/30/24.)

Service of the Order was delegated to applicant's counsel per WCAB Rule 10629, who served defendant with the Order on October 8, 2024.

On October 15, 2024 defendant filed an Objection to the Order, alleging that applicant has failed to comply with the factual discovery needed to address the allegations made, and failed to complete her scheduled deposition. On October 17, 2024, filed the Petition for Removal.

DISCUSSION

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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).)

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].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) 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].)

Cal. Code Regs., tit. 8, § 10832 states, in pertinent part:

- (a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to...
 - (2) Granting, denying or dismissing a petition...
- (b) A Notice of Intention may be served by designated service in accordance with rule 10629.
- (c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:
 - (1) Sustain the objection;
 - (2) Issue an order consistent with the notice of intention together with an opinion on decision; or
 - (3) Set the matter for hearing.
- (d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

WCAB Rule 10628 states, in pertinent part:

(a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties of record with any final order, decision or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision or award relating to a submitted issue.

(Cal. Code Regs., tit., 8 § 10628(a).)

Further, WCAB Rule 10629, which relates to designated service, states, in relevant part:

(a) The Workers' Compensation Appeals Board, may, in its discretion, designate a party or their attorney or agent of record to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with rule 10628.

(Cal. Code Regs., tit. 8 § 10629(a).)

Here, the WCJ failed to issue an NIT prior to issuing the Order for additional panels sought by applicant. Further, insofar as the issue was clearly disputed per both applicant's petition and the defendant's filed objection and petition for removal, while WCAB Rule 10832(b) permits designation of service for an NIT, any final Order should have been served on the parties directly by the WCAB, per WCAB Rule 10628, and not by applicant's counsel.

Had such a Notice of Intention issued versus an Order to permit the additional panels, the filed objection of defendant would mandate consideration before issuing an order for the additional panels, as well as an opinion on decision as to the basis for the order if granted, and if requested, provide the objector the opportunity to be heard prior to issuance of the Order. (Cal. Code Regs., tit. 8 § 10382).

As noted in both applicant's petition as well as defendant's opposition and removal pleadings, the issue of additional panels is apparently in dispute, and therefore, the issuance of the Order without the ability of the parties to present evidence in support or opposition thereto is a violation of due process.

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the

responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).)

As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at p. 476 citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Rule 31.7(b) and (c) provide 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;

(Cal. Code Regs., tit. 8, § 31.7.)

As there was no agreement as to the issuance of additional panels here, an order by a WCJ would be necessary.

Further, while 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, no record was made in this instance as to the basis for the WCJ's finding and order for additional panels.

Thus, we are unable to determine if good cause exists at this juncture due to a lack of an adequate record. Therefore, we must rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion. However, we note that since applicant claims injury to body parts outside the field of orthopedic medicine, it appears that additional QME panels will likely be required to fully address the claimed injury.

Accordingly, we grant defendant's Petition for Removal, rescind the October 7, 2024 Order, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal in response to the Order issued on October 7, 2024 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order of October 7, 2024 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 19, 2025

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

**JULIE GOODENOUGH
BARKHORDARIAN LAW FIRM
ACUMEN LAW LLP**

LAS/kl

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