WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KENNETH BROWN (deceased), VIRGINIA BROWN (spouse), ***Applicants***

vs.

SAN DIEGO GAS & ELECTRIC COMPANY, PERMISSIBLY SELF-INSURED; ALLIED CONSTRUCTION CO. A CORP; NEWBERRY CORPORATION; HOKIN & GALVAN aka TECHNO CORPORATION; TRAVELER'S INSURANCE COMPANY; STATE COMPENSATION INSURANCE FUND; PACIFIC INDEMNITY CO.; EMPLOYERS LIABILITY ASSURANCE; CROFTON COMPANY, ***Defendants***

Adjudication Number: ADJ19297551
San Francisco District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

Applicant Virginia Brown, spouse of decedent Kenneth Brown, seeks removal of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on May 9, 2025, wherein the WCJ found in pertinent part that applicant alleges that decedent, while employed during the period 1957 through 2001 as an electrician and lineman at San Diego, California, by defendants claims to have sustained injury arising out of and in the course of employment to the lungs and respiratory system; that applicant failed to meet her burden of proof that the April 19, 2024 pathology report of David Tarin, M.D., qualifies as a consulting physician report pursuant to Labor Code section 4605[1]; and that Dr. Tarin's report is barred by Administrative Director (AD) Rule 35(e) (Cal. Code of Regs., tit. 8, § 35(e)) from being provided to the Qualified Medical Evaluator (QME) Daniel J. Bressler, M.D. The WCJ ordered that Dr. Tarin's report shall not be sent to the QME.

[1] All section references are to the Labor Code, unless otherwise indicated.

Applicant contends that absent review of the post-mortem pathology report, the QME's opinion regarding causation of decedent's illness was incomplete and incorrect; that denying the QME access to the pathology report led to an incomplete evidentiary record, which denied applicant an opportunity to prove industrial causation of her husband's illness; that the WCJ erroneously relied on AD Rule 35(e) to exclude the pathology report; that the WCJ incorrectly applied WCAB Rule 10682(b) (Cal. Code Regs., tit. 8, § 10682(b)) when he found that section inapplicable to materials provided to a QME; that the WCJ's ruling is contradictory in that he permitted the pathology slides to be reviewed by the QME, but not the expert report interpreting those slides, when the QME is an internal medicine doctor, not an expert in pathology; and that applicant was penalized by choosing not to invoke section 4605.

We received an Answer from defendant.

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 for Removal, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record and as discussed below, we will treat applicant's Petition as one for reconsideration, grant applicant's Petition for Reconsideration, rescind the WCJ's May 9, 2025 decision, and issue a new decision ordering that Dr. Tarin's report be provided to QME Dr. Bressler.

BACKGROUND

Applicant Virginia Brown filed a claim of injury dated May 15, 2024, on behalf of her deceased husband, Kenneth Brown, alleging injury to Mr. Brown's lungs and respiratory system due to exposure to asbestos and other toxic substances, resulting in his death on May 29, 2023.

Answers were filed by the State Compensation Insurance Fund (SCIF); Liability Assurance Corp., in liquidation, for employer Techno Corp.; San Diego Gas and Electric; and Chubb Group on behalf of Techno Corp.

The parties obtained QME reporting from Dr. Bressler, who submitted a medical records review report dated September 3, 2024. (Joint Exh. 102, Dr. Bressler's 9/3/24 Report.) Dr. Bressler, an internal medicine specialist, reviewed extensive medical records, employment records, and other case documents. (*Id.* at pp. 1-34.) He reviewed the May 7, 2023 pathology report after a VATS biopsy, which indicated that Mr. Brown's diagnosis was:

> "Malignant high-grade neoplasm with immunohistochemistry favoring malignant mesothelioma."

(*Id.* at p. 27.)

Dr. Bressler noted, however, that the amended pathology report dated a week later, on May 15, 2023, indicated,

> "Final Diagnosis: Right pleural tissue and right pleura: 'Malignant high-grade biphasic neoplasm, most consistent with recurrent non-small cell pulmonary carcinoma. Under *Comment* was noted, 'Although the initial immunohistochemistry is suggestive of mesothelioma, Mayo Clinic favors progression of the patient's non-small cell carcinoma to a high-grade biphasic (epithelioid and sarcomatous) malignancy based on additional immunohistochemistry not available in this laboratory."

(*Id.* at p 29.)

Dr. Bressler wrote:

> "Attached to [the May 15, 2023 amended pathology report] … was a report from Dr. Tazelaar at Mayo Clinic (pg 33) noting, "While this profile suggests a mesothelioma, I did order a few additional stains. These show that the cells express Claudin-4, retain BAP-1, and show some reactivity with antibodies to GATA3. They fail to express ERG. The immunophenotypic workup is completely definitive, but Claudin-4 has not been reported to be reactive in mesothelioma, and calretinin can also be reactive in a small number of carcinomas. Additionally, the patient has a known carcinoma on that side. Therefore, we favor this to represent progression of his known adenocarcinoma to a high grade biphasic tumor."

(*Ibid.*)

The cause of Mr. Brown's death on May 29, 2023 was listed on his hospital records as:

> "cardiovascular collapse and acute-on-chronic hypoxemic respiratory failure secondary to metastatic lung cancer."

(*Id.* at p. 34.)

Dr. Bressler's diagnosis was "Metastatic adenocarcinoma of the lung." (*Id.* at p. 35.)

In response to a question about whether Mr. Brown's injury was related to his exposure to asbestos and other toxic substances, Dr. Bressler wrote,

> "Yes. Mr. Brown's adenocarcinoma of the lung was the main cause of his death. The adenocarcinoma of the lung was significantly contributed to by his asbestos exposure."

(*Ibid*.)

Dr. Bressler noted that the latency period for lung cancer is typically 20 years or more, and that Mr. Brown's last year of injurious exposure pertaining to California employment was 2001. (*Ibid*.)

In response to the question, "Is it your opinion 'within reasonable medical probability' that the applicant's injury and/or death was causally related to asbestos exposure, or exposure to welding or chemical fumes?" Dr. Bressler wrote:

> "Yes. The medical literature does note that electrical workers, particularly those involved in construction, have historically been exposed to asbestos-containing materials, leading to significant health risks. In her declaration, Mrs. Brown noted that her husband had worked as an 'electrician/lineman,' for San Diego Gas and Electric Company, repairing transformers inside the power station, and had been exposed to asbestos during that employment."

(*Id.* at p. 36.)

Regarding apportionment, Dr. Bressler opined,

> "Mr. Brown's lung cancer was contributed to by his asbestos exposure, as well as by his previous history of cigarette smoking. Without further capacity for precision, a simple 50 percent apportionment to both major causes is appropriate."

(*Id.* at p. 37.)

Dr. Bressler was not provided with Dr. Tarin's post-mortem pathology report. In response to the question, "Are there any records, including but not limited to pathology reports, CT/x-ray reports, or other reports or records, that you have not been provided that you would like to review in order to formulate your opinions in this case? It was noted that a report from David Tarin, M.D. dated 04/19/24 had not been included with the materials provided," Dr. Bressler answered,

> "The 04/19/24 report of David Tarin, M.D. would be helpful in order to substantiate or revise the opinions expressed above."

(*Id.* at p. 38.)

Pathologist Dr. David Tarin issued a report at the request of applicant's counsel on April 19, 2024 ("Dr. Tarin's report") in which he indicated that he reviewed Mr. Brown's death certificate, medical records from three medical providers, Mr. Brown's smoking and work history,

and twenty-six stained pathology slides.[2] (Joint Exh. 101 - Dr. Tarin's report, at p. 1.) Dr. Tarin concluded that Mr. Brown's diagnoses were:

> "Malignant Epithelioid Pleural Mesothelioma (1) with areas of biphasic pattern [and] asbestosis grade 3 (CAP NIOSH) (2)."

(*Id.* at p. 4.)

Dr. Tarin discussed the conclusion by Mayo Clinic pathologists in the amended pathology report that Mr. Brown had adenocarcinoma rather than mesothelioma, explaining in detail why this conclusion was incompatible with the facts of this case. (*Id.* at pp. 4-5.) Dr. Tarin concluded the diagnosis section of his report by writing:

> "In summary, all of the morphological and IHC properties of the tumor cells in all of these biopsies are in accordance with it being a malignant pleural mesothelioma."

(*Id.* at p. 5.)

In his overall assessment, Dr. Tarin concluded:

> "The patient had a debilitating, painful, terminal illness, which for the objective reasons outlined above, was a malignant pleural mesothelioma. On the basis of my greater than 55 years' experience in pulmonary pathology, cancer medicine and laboratory research on cancer causation, I conclude that, to a reasonable degree of medical probability, this disease was caused by his occupational and non-occupational exposure to airborne asbestos dust inhalation over many years."

(*Id.* at p. 8.)

On September 27, 2024, applicant's counsel informed defendant via email that she planned to forward Dr. Tarin's report to Dr. Bressler. (Applicant's Exh. 1, at pp. 2-3.) Defendant objected. (*Id*. at p. 2.)

Applicant filed a petition for penalties, sanctions and attorney's fees, requesting that penalties be assessed against defendant SCIF, for SCIF's objection to applicant's request that Dr. Tarin's report be provided to Dr. Bressler. (10/8/24 Penalty Sanctions Petition.) Applicant contended that defendant's objections were "baseless" and "aimed to cause delay to this claim." (*Id*. at pp. 2-4.)

[2] Applicant's counsel later indicated that the slides reviewed by Dr. Tarin consisted of "26 slides collected after Mr. Brown's death." (2/10/25 Pre-Trial Brief, at p. 2.)

At the mandatory settlement conference (MSC) on November 20, 2024, the matter was continued for further discovery, and the parties were ordered to meet and confer regarding redacting Dr. Tarin's report. (11/20/24 MOH amended.)

At the January 15, 2025 settlement conference, the matter was set for trial regarding defendant's objection to Dr. Tarin's report being provided to the QME and regarding the admissibility of applicant's attorney's email exchanges with John Connelly. (1/15/25 MOH, at p. 3.) The WCJ indicated, further, that "Trial is set solely on Reg. 35 dispute…" (*Id.* at p. 4.)

Applicant filed a pre-trial brief on February 10, 2025, providing information about Dr. Tarin's background and role in this matter and arguing that Dr. Tarin's report may be provided to the QME, based on section 4062.3, AD Rule 35 (a) and (e), and WCAB Rule 10682. (2/10/25 Pre-Trial Brief, at pp. 2-9, citing Lab. Code § 4062.3; Cal. Code Regs., tit. 8, §§ 35(a), 35(e), and 10682.)

The matter proceeded to trial on February 11 and 12, 2025. The parties entered stipulations regarding applicant's contentions, insurance coverage, and that no medical treatment was provided by defendant. (2/11/25 MOH, at p. 2.) The issue was identified as "[w]hether the April 19, 2024, report of Dr. Tarin can be sent to QME Dr. Bressler for review." (*Id.* at p. 3.) The WCJ offered applicant an opportunity to provide evidence regarding the applicability of section 4605, but noted that section 4605 would not be decided as a separate issue. (*Ibid*.) The QME report, and Dr. Tarin's report, as well as the email exchange between the attorneys, were admitted. (*Id.* at p. 3; Joint Exhs. 101, 102; App.'s Exh. 1.) The WCJ directed the parties to file post-trial briefs. (2/12/25 MOH at p. 3.) Both parties did so. (2/27/25 Defendant's Brief; 2/28/25 Applicant's Brief.)

The WCJ issued the F&O and Opinion on Decision on May 9, 2025.

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, 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 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 June 12, 2025, and 60 days from the date of transmission is August 11, 2025. This decision is issued by or on August 11, 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 the proof of service for the Report and Recommendation by the WCJ, the Report was served on June 12, 2025, and the case was transmitted to the Appeals Board on June 12, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 12, 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 May 9, 2025 F&O includes findings regarding the threshold issues of employment and insurance coverage. The WCJ's decision is thus a final order subject to reconsideration rather than removal. Although the decision contains findings that are final, petitioner is only challenging the order denying the request to provide the pathology report to the QME, which is an interlocutory 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, applicant's pre-trial brief explained that "[t]here are no QMEs in the specialty of pathology listed in the DWC's Qualified Medical Evaluator database. Without privately obtaining Dr. Tarin's pathology report, the Applicant would not have been able to prove industrial causation and a correct diagnosis of mesothelioma and asbestos." (2/10/25 Pre-Trial Brief, at p. 9.) In her Petition, applicant argued, further, that she met the standard for removal, explaining:

> This is a death claim in which the central issue in dispute is whether the decedent, Mr. Brown, died from mesothelioma, a condition exclusively caused by asbestos exposure, or from lung cancer, which may result from cigarette smoking and asbestos exposure, or potentially other causes. The distinction is critical, Mr. Brown was a lifelong smoker, and there are no asbestos markers of causation for lung cancer in the record, because his pathologic asbestos was only found post-death by Dr. Tarin. In contrast, a confirmed diagnosis of mesothelioma establishes industrial causation due to asbestos exposure.
>
> Dr. Bressler initially diagnosed metastatic lung cancer and found the death to be partially industrial. His opinion was based exclusively on pre-death treating pathology reports, as he was not afforded the opportunity to review any post-mortem pathology reports and not being a pathologist he is not qualified to review actual pathologic tissue. Recognizing this evidentiary gap, Dr. Bressler expressly stated that a review of the pathology report authored by Dr. David Tarin would be helpful to substantiate or revise his opinion as to diagnosis…
>
> …
>
> Absent review of the post-death pathology report, the QME's causation opinion will remain incomplete, lacking critical, expert pathological analysis of the only histological slides available in the case. As a result, Applicant is deprived of the opportunity to establish unequivocal industrial causation based on a mesothelioma diagnosis, an outcome that would presumptively entitle her to workers' compensation death benefits.

(Petition, at pp. 7-8.)

The WCJ agreed with applicant that the pathology slides and Dr. Tarin's pathology report were "highly relevant." (Report, at p. 6.)

We agree with applicant and the WCJ that the report in question is highly relevant to the QME's determination of causation of Mr. Brown's illness and resulting death. In addition, as discussed below, we hold that the WCJ's finding that he was precluded by law from ordering Dr. Talin's report to be provided to Dr. Bressler is not supported by the relevant laws and regulations. Given the relevance of Dr. Tarin's pathology report to the QME, and the lack of any valid legal basis for keeping the report from the QME, we conclude that applicant has met her burden to demonstrate that significant prejudice or irreparable harm will result if relief is not granted, and that reconsideration is not an adequate remedy.

III.

Section 4062.3 permits medical and non-medical records to be provided to the QME and lays out detailed requirements about the procedures that must be followed before such records may be provided. (Lab. Code, § 4062.3(a)- (l).)

Subdivision (a) of that statute provides:

> (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:
>
> (1) Records prepared or maintained by the employee's treating physician or physicians.
>
> (2) Medical and nonmedical records relevant to determination of the medical issue.

(Lab. Code, § 4062.3(a).)

In *Suon v. California Dairies*, we explained that parties must comply with the provisions of section 4062.3 before providing medical records to the QME. (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1811-1812 [2018 Cal. Wrk. Comp. LEXIS 100] (Appeals Board en banc).) We held that WCJs "have the authority to address discovery disputes, which includes disputes regarding what information may be provided to the QME. If the parties cannot informally agree on what information to provide to the QME, the trier of fact is empowered to determine whether the information may be provided to the QME." (*Id*. at p. 1814.) Here, there is no dispute that the parties adequately complied with section 4062.3, and that the WCJ had the authority to resolve, at trial, the question of whether Dr. Tarin's report could be provided to the QME.

It is well established that decisions by 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].) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

In his September 3, 2024 report, Dr. Bressler was posed the following question:

> *Are there any records, including but not limited to pathology reports, CT/x-ray reports, or other reports or records, that you have not been provided that you would like to review in order to formulate your opinions in this case? It was noted that a report from David Tarin, M.D. dated 04/19/24 had not been included with the materials provided.*

Dr. Bressler stated that: "The 04/19/24 report of David Tarin, M.D. would be helpful in order to substantiate or revise the opinions expressed above." (Joint Exh. 102, Dr. Bressler's 9/3/24 Report, at p. 38.)

Based on Dr. Bressler's own written response, Dr. Tarin's pathology report is relevant, so that it falls squarely within section 4062.3(a)(2)'s provision that a medical record can be provided to a QME that is "relevant to determination of the medical issue." Indeed, the failure to provide Dr. Bressler with the requested record could mean that Dr. Bressler's reporting is not substantial evidence because it is based on an inadequate history.

The Findings and Order that Dr. Tarin's pathology report could not be provided to the QME was based on the WCJ's interpretation of the provisions of AD Rule 35(e), as well as WCAB Rule 10682(b), and section 4605. (Opinion, at pp. 5-10; Report, at pp. 9-13.) As discussed briefly below, these provisions do not support the WCJ's conclusion. The WCJ found applicant did not carry her burden of proof to establish that the report in question is a consulting physician's report. (F&O, at p. 2, finding 5.) If this were correct, then AD Rule 35(e)(2) would be inapplicable, as this provision only applies to consulting physician's opinions. Here, the record demonstrates that Dr. Tarin was not appointed as a QME and was not Mr. Brown's treating physician as his record review and report occurred after Mr. Brown's death. The record demonstrates, too, that Dr. Tarin was not "an evaluator through the medical-legal process in Labor Code sections 4060 through 4062." (Cal. Code Regs., tit. 8, § 35(e)(2).) Rather, his role as a pathologist retained to render a post-mortem medical opinion on causation of injury more likely indicates that he was a consulting physician. We observe that a regulation such as AD Rule 35(e) may not be evoked in such a way as to defeat the plain meaning of the statute.

Here, applicant contends that WCAB Rule 10682, subdivision (b), must be read expansively, to not only permit non-examining physician reports to be admitted into evidence in death cases, but also to authorize the provision of those reports to the QME. (Petition, at pp. 10-11.) We agree with the WCJ that this provision of WCAB Rule 10682(b) involves admissibility

of reports into evidence and does not offer guidance about whether the pathology report in question here may be provided to the QME. (Opinion, at p. 7.) We observe, too, that Dr. Tarin's report was previously admitted into evidence in this matter. The WCJ correctly concluded that WCAB Rule 10682(b) has no relevance.

Lastly, section 4605 provides:

> Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.

(Lab. Code, § 4605.)

Here, we have concluded that Dr. Tarin's medical report is relevant to the issue and must be provided to Dr. Bressler under section 4062.3(a)(2). We note that the application of section 4605 is more significant in the context of whether reporting by a consulting physician may be the basis for an award. Here the issue is causation, not permanent disability, but we observe that the language of section 4605 also supports a conclusion that the QME should review the reporting.

Accordingly, we grant applicant's Petition, rescind the WCJ's May 9, 2025 F&O, and issue a new decision ordering that Dr. Tarin's report be provided to QME Dr. Bressler.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the decision of May 9, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on May 9, 2025 is **RESCINDED** in its entirety and the following is **SUBSTITUTED** in its place.

FINDINGS OF FACT

1) The applicant VIRGINIA BROWN alleges that decedent KENNETH BROWN, born _____, while employed during the period 1957 through 2001 as an electrician and lineman at San Diego, California, by SAN DIEGO GAS AND ELECTRIC and HOKIN AND GALVAN DBA TECHO CORP., claims to have sustained injury arising out of and in the course of employment to the lungs and respiratory system.
2) At the time of the injury alleged in Finding of Fact No. 1, SAN DIEGO GAS AND ELECTRIC was permissibly self-insured for workers' compensation coverage.
3) At the time of the injury alleged in Finding of Fact No. 1, HOKIN AND GALVAN DBA TECHO CORP. Was insured for workers' compensation coverage at various times by STATE COMPENSATION INSURANCE FUND, TRAVELERS INDEMNITY, and EMPLOYERS LIABILITY ASSURANCE CORPORATION, IN LIQUIDATION, C/O BEDIVERE INSURANCE COMPANY (FORMERLY ONE BEACON INSURANCE COMPANY), ALSO IN LIQUIDATION.
4) Daniel Bressler, M.D. is the Qualified Medical Evaluator for the evaluation of the compensability of the injury alleged in Finding of Fact No. 1.
5) The April 19, 2024, report of David Tarin, M.D. may be submitted to Qualified Medical Evaluator Daniel Bressler, M.D. pursuant to Labor Code section 4062.3(a)(2).
6) All other issues are deferred, with Appeals Board jurisdiction reserved.

ORDER

IT IS ORDERED THAT the April 19, 2024, report of David Tarin, M.D. shall be sent to Qualified Medical Evaluator Daniel Bressler, M.D. pursuant to findings of fact No. 5.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 11, 2025

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

VIRGINIA BROWN
BRAYTON PURCELL LLP
DIETZ, GILMOR & CHAZEN APC
STATE COMPENSATION INSURANCE FUND
LAURA G. CHAPMAN & ASSOCIATES
FINNEGAN, MARKS, DESMOND & JONES
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

MB/*ara*

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