

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

MANUEL VARGAS, *Applicant*

vs.

**QUALITY PLUMBING ASSOCIATES;
GUIDEONE INSURANCE,
administered by TGM CLAIM SERVICE, *Defendants***

**Adjudication Number: ADJ15631113
Salinas District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION AND
DENYING PETITION FOR REMOVAL**

Defendant seeks reconsideration/removal of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 28, 2025, wherein the WCJ found, in pertinent part, that Dr. Charles Roland's qualified medical evaluator (QME) report does not currently constitute substantial medical evidence as to causation of injury, because it lacks specific necessary information; that Dr. Roland stated he was able to provide additional information in a supplemental report; that he should be afforded the opportunity to correct the deficiencies in his report; and, if he is unable to do so, there may be a need for a replacement QME.

Defendant contends in the Petition for Reconsideration (Petition) that the WCJ failed to issue a summary of evidence; that the WCJ did not address all trial issues listed on the Pre-Trial Conference Statement; that Dr. Roland failed to conduct his exam without bias; that the WCJ erred in permitting Dr. Roland to file a supplemental report; and that a replacement panel in orthopedic surgery should be ordered.

We have received an Answer from applicant.

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

Defendant filed a supplemental pleading entitled “Defendant’s Verified Request to Amend Petition for Reconsideration to Petition for Removal and Request to Supplement Pleading Pursuant to 8 CCR 10964; Supplemental Pleading” (Supplemental Pleading) in which defendant withdrew its contention that the WCJ failed to issue a summary of evidence, requested that the Petition for Reconsideration be treated as a Petition for Removal, and provided additional argument. Pursuant to WCAB Rule 10964(a), we have accepted and considered defendant’s Supplemental Pleading. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations in the Petition, the Supplemental Pleading, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss the petition to the extent it seeks reconsideration, we will treat defendant’s Petition as a Petition for Removal, and we will deny it to the extent it seeks removal.

BACKGROUND

Applicant filed an application for adjudication on January 4, 2022, claiming a cumulative trauma injury to his left knee for a time period ending on February 1, 2019, while employed as a plumber by defendant Quality Plumbing Associates. On April 10, 2024, the application was amended to include injury to applicant’s left femur.

Defendant denied liability, based on the reports of applicant’s treating doctors, and the reporting of QME Dr. Michael Ciepiela, who found applicant’s injury non-industrial. (2/8/22 Answer; 4/22/22 DOR; 11/8/21 QME report by Dr. Ciepiela.) Applicant objected to defendant’s DOR, explaining that he had two distinct injuries (as previously acknowledged by defendant) including a prior specific injury claim, and the current cumulative trauma claim, and asserting that Dr. Ciepiela’s evaluation only concerned the specific injury claim. (5/2/22 Objection.) Applicant argued that he was entitled to proceed with obtaining a QME panel.

The matter went to trial and the WCJ found that Dr. Ciepiela’s reporting was not substantial medical evidence and that his attempts to cure the deficiencies were unsuccessful. (7/31/23 MOH; 10/18/23 F&O.) The WCJ granted applicant’s request for a replacement QME panel in orthopedic surgery. (*Ibid.*)

Dr. Charles Roland was then selected as the replacement QME. (1/30/24 Letter.) He provided a report dated February 14, 2024, in which he found applicant’s cumulative trauma injury to be industrial. (Defendant’s Exh. D2, at p. 22.) He was deposed on July 24, 2024, and indicated

that he had not reviewed all of the materials provided by defendant. (8/30/24 Letter; Defendant's Exh. D1, at p. 8.) Applicant then requested that Dr. Roland be permitted to file a supplemental report. (Defendant's Exh. D8.) Defendant instead requested a replacement QME panel. (8/28/24 MOH.) Applicant objected. (Defendant's Exh. D7.) In a response dated September 11, 2024, the DWC Medical Unit deferred jurisdiction to the WCAB. (Defendant's Exh. D9.)

The parties proceeded to trial on January 15, 2025, on the issue of defendants' petition for a replacement QME panel, applicant's opposition to this request, applicant's assertion that defendant did not take the required steps to remedy alleged deficiencies in Dr. Roland's reporting, and other issues. (1/15/25 MOH, at p. 3.) Findings and Order were issued on February 28, 2025, in which the WCJ found, in pertinent part, that:

Dr. Roland's report of February 14, 2024 does not constitute substantial evidence as to causation of injury, as it lacks specific necessary information, as admitted by Dr. Roland, with indication that he would be able to provide the additional information in a supplemental report. It was also found that Dr. Roland should be afforded the opportunity to supplement his report of February 14, 2024, in order to attempt to correct its deficiencies to provide a report that constitutes substantial evidence. Should Dr. Roland be subsequently unable to cure the need to develop the record, after attempting to do so, there may be a need to replace him as the QME, however, that is premature at this time, as the doctor has not been afforded the opportunity to provide supplementary reporting to cure the deficiencies.

(Report, at p. 5.)

Defendant's Petition was timely filed in response to these findings. Defendant's Supplemental Pleading requested that we treat the Petition as a Petition for Removal.

DISCUSSION

I.

Former Labor Code section 5909¹ 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 All references are to the Labor Code, unless otherwise indicated.

(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 April 18, 2025 and 60 days from the date of transmission is June 17, 2025. This decision is issued by or on June 17, 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 workers’ compensation administrative law judge, the Report was served on April 18, 2025, and the case was transmitted to the Appeals Board on April 18, 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 April 18, 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 (*Rymer*); *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.*

(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 as one for reconsideration.

We will also deny the petition to the extent it seeks removal. 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, defendant made neither required showing. Thus, we are not persuaded that substantial 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 dismiss the Petition as one for reconsideration and deny it as one for removal.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 16, 2025

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

**MANUEL VARGAS
DILLES LAW GROUP
GUIDEONE LEGAL**

MB/ara

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