

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

PATRICK AGUIRRE, *Applicant*

vs.

**CALIFORNIA INSTITUTION FOR MEN, legally uninsured,
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12301639
Santa Barbara District Office**

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

Defendant has filed a petition for removal from the “Order Vacating Submission, Order Directing Further Development of the Record, and Order Striking QME Reports” (Orders) issued on October 30, 2024, by the workers’ compensation administrative law judge (WCJ).

Defendant contends that the qualified medical evaluator’s (QME) reporting should not have been stricken from the record, which precludes defendant from providing the reporting to subsequent evaluators.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ’s Report. Based on our review of the record we will grant removal and as our Decision After Removal, we will rescind the October 30, 2024 Orders and substitute a new order that the issue of striking the reports of the QME is deferred.

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

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).) Here, amongst other orders, the WCJ ordered the reporting of the current QME stricken from the record, however, this order is without legal support and thus, the order violates the parties right to due process, which constitutes irreparable harm. Thus, removal is proper in this case.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, 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, § 10761.)

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. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that “[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete. (Citations.)” (*McDuffie, supra*, 67 Cal.Comp.Cases at 141.)

Here, we agree with the WCJ that the current reporting of the QME is deficient and that a regular physician was properly appointed, however, the fact that a QME report is not substantial medical evidence goes to the *weight* of the evidence, not the *admissibility*. (Cal. Code Regs., tit. 8, § 10682(c).) While the current QME reporting does not appear to meet the standard for

substantial medical evidence, that alone is not sufficient grounds to strike the reports from evidence or to preclude those reports from being reviewed by a subsequent physician. Indeed, a regular physician may wish to review the entire present medical record of a case so as to better understand precisely what deficiencies exist in the current medical reporting. Striking a report requires a substantive basis (e.g., a finding of evaluator bias, a report contains inadmissible evidence, a report was obtained through impermissible ex-parte contact, etc.). We cannot find support in the current record for striking the reports. However, we will defer that issue to the parties, so that if a substantive basis for striking the reports exists, the parties may litigate that issue at the trial level in the first instance.

Accordingly, we grant removal and as our Decision After Removal, we rescind the October 30, 2024 Orders, and substitute a new order that the issue of striking the reports of the QME is deferred.¹

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Orders issued on October 30, 2024, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Orders issued on October 30, 2024, by the WCJ are **RESCINDED** with the following **SUBSTITUTED** therefor:

ORDERS

IT IS ORDERED that the submission in this matter is hereby **VACATED**.

IT IS FURTHER ORDERED that the issue of striking the reporting of Dr. Mabry-Height is deferred.

¹ We have not reissued the order setting this matter for conference as that order is now moot.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 17, 2025

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

**PATRICK AGUIRRE
SCIF INSURED SAN BERNARDINO
FERRONE FERRONE WESTLAKE VILLAGE**

EDL/mt

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