

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

POLLY MARK DIZON, *Applicant*

vs.

**SPEARS MANUFACTURING COMPANY;
ZURICH SAN FRANCISCO, *Defendants***

**Adjudication Numbers: ADJ16783938; ADJ16778187
Van Nuys District Office**

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

Defendant seeks removal in response to the workers' compensation administrative law judge's (WCJ) May 24, 2024 Findings and Order requiring additional Qualified Medical Examination (QME) panels (F&O).

Defendant contends it will be subjected to substantial prejudice if applicant is allowed to obtain additional panels.

We did not receive an answer from applicant. The WCJ issued a Report and Recommendation on the Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the WCJ's May 24, 2024 F&O, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

We will briefly review the relevant facts. On October 5, 2022, applicant filed an application for adjudication alleging cumulative injury to multiple body parts while employed by defendant during the period from January 1, 2017 to October 3, 2022. On October 6, 2022, applicant also filed an application for adjudication alleging specific injury to multiple body parts on March 25, 2022.

The parties proceeded to a Mandatory Status Conference on May 7, 2024. The Minutes of Hearing (MOH) state in relevant part “A[pplicant’s]/A[ttorney] wants 3 panels hearing most important will file paperwork; def[endant] opposes panels.” The MOH also states the matter was ordered off calendar (OTOC). No record was made; and no testimony or evidence was admitted on the record.

On May 24, 2024, the WCJ issued the F&O granting applicant’s request for additional panels as follows:

IT IS HEREBY FOUND THAT: The medical record in this case requires further development on the disputed issue of HEARING LOSS AND HEADACHES; and a supplemental report or the deposition testimony of panel QME, Dr. CHRISTOPHER CHOW MD in his report dated 01-26-2024 will not sufficiently develop the record as the PQME has asked for additional examinations in the area of neurology and audiology.¹ Defendant’s objection did not articulate substantive objections but mere pro forma.

IT IS ORDERED THAT the Medical Director, Division of Workers’ Compensation, issue within 30 days of the date of service hereof, a QME panel in the specialty of MTO and MPN, within a reasonable geographic area of applicant’s residential zip code of 91342. Within 10 days of the panel assignment, the parties shall confer and attempt to agree on a medical evaluator from the panel. If the parties are unable to reach agreement by the 10th day, each may then strike one name from the panel and the remaining name shall serve as the QME. Upon the failure of one of the parties to strike a name from the panel within three working days of gaining the right to do so, the other party may select any physician who remains on the panel to serve as the QME.

(Finding and Order Re: Additional QME Panel (Represented Case), May 24, 2024.)

On June 13, 2024, defendant filed the Petition for Removal.

¹ QME report Dr. Chow pages 26 AND 29

DISCUSSION

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); *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).)

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].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant" (*Id.* at p. 158.) As stated by the California Supreme Court 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.)

The WCJ shall "... make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Labor Code section 5313 requires a WCJ to state the "reasons or grounds upon which the determination was made." 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, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and 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].) As required by Labor Code 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.)

Here, no documents or testimony were admitted into evidence at the May 7, 2024 hearing. The MOH preceding the order is unclear and does not reflect that the parties submitted the issue of additional panels on the pleadings. In the absence of an evidentiary record, and without the ability to review the evidentiary record and the stipulations and the issues, we cannot complete a meaningful review of the Petition for Removal.

Accordingly, due process requires that we grant defendant’s Petition for Removal, rescind the May 24, 2024 F&O, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the May 24, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the May 24, 2024 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 28, 2025

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

**POLLY MARK DIZON
AM INJURY LAW
STOCKWELL HARRIS**

DC/cs

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