WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAYMOND HADLEY, *Applicant*

vs.

EAST BAY MUNICIPAL UTILITY DISTRICT, PERMISSIBLY SELF-INSURED, BY ATHENS ADMINISTRATORS, *Defendants*

Adjudication Numbers: ADJ10222062; ADJ8022488
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant East Bay Municipal Utility District (defendant) seeks removal, or in the alternative, reconsideration of the October 3, 2024 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed by defendant on December 8, 2015, sustained industrial injury to his bilateral knees and claims to have sustained injury to his low back and internal organs in the form of bladder cancer, hypertension, hearing loss, and also to his psyche as a compensable consequence of the cancer claim. The WCJ found in relevant part that good cause existed to replace Qualified Medical Evaluator (QME) Michael Bronshvag, M.D., and appointed Scott T. Anderson, M.D., in his place as the regular physician pursuant to Labor Code[1] section 5701.

Defendant contends that it is not necessary to replace the QME, that development of the record with the existing QME is appropriate, and that if a replacement ultimately proves necessary the WCJ should order a replacement panel of QMEs rather than appoint a regular physician.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed.

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[1] All further references are to the Labor Code unless otherwise noted.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the decision, except that we will amend the decision to allow the parties the opportunity to select an Agreed Medical Evaluator prior to the appointment of a regular physician.

FACTS

The WCJ's Opinion on Decision reviews the relevant facts, as follows:

> Applicant worked for the East Bay Municipal Utility District (EBMUD) for a number of years and sustained an accepted cumulative injury to his bilateral knees through December 8, 2015. At trial, the parties could not agree on his job title, so that was deferred as it is not relevant to the current dispute, but it appears he worked as some type of plant maintenance mechanic. The Applicant also claims cumulative injuries to his low back and internal organs in the form of bladder cancer, hypertension, hearing loss, and to his psyche as a compensable consequence of the cancer claim. MOH, Stipulation No. 1, at p. 2. The parties have utilized Joel Renbaum, M.D., as the orthopedic AME, Robert Larsen, M.D., as the psychiatric AME, and Barry Barron, M.D., as the otolaryngologist AME for the hearing loss claim. Previously, internist Adam Duhan, M.D., acted as the internal medicine QME, up until his untimely death. He issued five reports over the period May 31, 2017 through August 22, 2018, (Joint 103) and was deposed on January 8, 2018. (Joint 104.) After the passing of Dr. Duhan in June of 2019, a replacement QME panel issue and after respective strikes, he was replaced by internist Michael Bronshvag. Dr. Bronshvag has seen the Applicant on three occasions and has issued nine different reports covering the period August 25, 2020 through April 25, 2023. (Joint 101.) He was also deposed on October 23, 2023. (Joint 102.)
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> On November 11, 2023, at the joint request of the parties, and in response to Dr. Bronshvag's reporting and testimony that he believed an oncologist opinion would be necessary and/or helpful in order for him to complete his reporting, I issued an order for the Medical Unit to create a QME panel in Internal Medicine Oncology. Unfortunately, the Medical Unit was unable to do so, because there were less than five doctors in that QME specialty at present. (See Medical Unit letter dated December 5, 2023. (Applicant's 1.) This is an issue because Dr. Bronshvag in his deposition testimony on December 23, 2023 at p. 35, (Joint 102) … basically testified that before doing so he wanted to have a genitourinary specialist who "evaluates people with bladder deformities every day" to examine the Applicant and review his report before doing so. (Id. at pp. 30-32.) At page 33, lines 9-11, he says, "I would really prefer the [bladder] rating be done by

> someone that does this all the time." Earlier in the deposition, he testified that "I would want a genitourinary surgeon who specializes in the structure and structural pathology of the genitourinary tract and the pelvic area to provide ratable language relative to impairment – whether or not that impairment is partially, totally, or not at all work related." (Id. at p. 25, lines 1-8.)

(Opinion on Decision, at pp. 3-5.)

On May 16, 2024, applicant filed a petition seeking a replacement panel of QMEs in internal medicine, averring Dr. Bronshvag "has failed to provide final impairment ratings for Mr. Hadley's internal medicine impairments despite three physical examinations and voluminous record review." (Petition for Replacement Panel in Specialty MMM, dated May 16, 2024, at p. 2:8.)

On June 7, 2024, defendant filed its opposition to applicant's petition, noting that "the original QME has already been replaced and the current QME has served as the QME for four years, written ten reports, three of which were following evaluations … [t]he claim is nearly ten years old, and eight years have passed since the initial evaluation with the original QME." (Defendant's Objection and Answer to Applicant's Petition for Replacement Panel, dated June 7, 2024, at p. 3:20.) Defendant concluded that "[a] replacement QME at this stage in this case would only cause undue delay." (*Ibid*.)

On July 9, 2024, the parties proceeded to trial and framed the issue of applicant's petition and request to replace QME Dr. Bronshvag pursuant to Administrative Director (AD) Rule 31.5, or in the alternative, the appointment of a regular physician to replace the QME pursuant to section 5701. The parties also placed in issue defendant's request for the issuance of an additional panel of QMEs in either toxicology or occupational medicine, pursuant to the request of Dr. Bronshvag. (Minutes of Hearing and Summary of Evidence (Minutes), dated July 9, 2024, at p. 2:37.)

On October 3, 2024, the WCJ issued the F&O, finding in relevant part "good cause to replace QME, Michael Bronshvag, M.D., with Scott T. Anderson, M.D., who I will appoint as a regular physician pursuant to section 5701, to succeed him with respect to evaluation and reporting on all the relevant internal medicine medical/legal issues posed by this case." (Finding of Fact No. 3.)

DISCUSSION

I.

Former 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.
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> (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 November 27, 2024, and 60 days from the date of transmission is Sunday, January 26, 2025. The next business day that is 60 days from the date of transmission is Monday, January 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on January 27, 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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 November 27, 2024, and the case was transmitted to the Appeals Board on November 27, 2024. 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 November 27, 2024.

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, 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 WCJ's decision includes a finding regarding threshold issues including employment and injury arising out of and in the course of employment. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra,* 5 Cal.App.5th 658.)

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).)

III.

The WCJ has issued an interim order replacing QME Dr. Bronshvag and appointing Scott Anderson, M.D., as the regular physician pursuant to section 5701. (Finding of Fact No. 3.)

Defendant contends that there is no good cause to replace the QME under AD rule 31.5(a), and that good cause has not been demonstrated because the case requires further discovery. (Petition, at p. 6:20.) Despite the difficulty in obtaining a QME panel in medical oncology, defendant observes that panels in other specialties including toxicology or occupational medicine may suffice. (*Id.* at p. 7:7.) Defendant further contends that if a replacement of Dr. Bronshvag is deemed necessary, the WCJ should issue an order for a replacement panel of QMEs to ensure that defendant maintains its due process rights to strike a physician from the QME panel list under section 4062.2. Defendant avers the appointment of a regular physician by the WCJ should only be undertaken as a last resort that was "intended to only be used when the medical record is insufficient after considering all available physicians in the case." (*Id.* at p. 9:26.)

The WCJ's analysis notes analytical similarities to *Corrado v. Aquafine Corp.* (June 24, 2016, ADJ9150447, ADJ9150446) [2016 Cal. Wrk. Comp. P.D. LEXIS 318], wherein we held that late supplemental QME reporting does not necessarily require the replacement of the QME, and that various factual considerations should inform the decision to order a replacement panel. Here, as in *Corrado, supra*, the WCJ notes that his decision to replace the QME with a regular physician "emphasizes the balancing of a need for substantial justice and the expeditious resolution

of workers' compensation claims pursuant to the California Constitution," which in turn requires that the WCJ "consider the length of delay caused by the late report, potential prejudice caused by the delay [versus] the time involving in starting from new, and case specific reasons." (Opinion on Decision, at p. 6.) The WCJ further noted that "[a]pplicant's alternative requested remedy, the appointment of a regular physician to evaluate the Applicant under Labor Code section 5701 is entirely outside of the QME process, but in my view entails similar considerations when deciding whether or not to go down that path." (*Ibid*.)

The WCJ's Opinion observes:

> Reviewing Dr. Bronshvag's deposition testimony in its entirety, it seems evident to me that even if he cannot quite admit it to himself or the parties, and despite multiple requests to do so via cover letters and requests for supplemental reports, he is unable and/or unwilling to give timely final opinions on industrial causation and/or an impairment rating for the bladder cancer … despite three exams of the Applicant, nine total reports, and one deposition over the course of the last four plus years, we still seemingly far from final opinions, and even then, he seems to be saying he requires or needs a genitourinary surgeon to rate the bladder impairment. The respective briefing and review of his reports (Joint 101), in my view makes clear that despite being provided with records, Dr. Bronshvag has failed to provide final substantive opinions on other issues including the hypertension claim. In short, I can understand both parties frustration with Dr. Bronshvag's reporting and deposition testimony in this case. While replacing him at this point will obviously take additional time, after much thought and consideration, I find and conclude that despite defense counsel's hopeful assertions to the contrary, I think the likely pattern based on past experience, and the specific facts of this case, is that replacement of Dr. Bronshvag is warranted, in order to expedite the resolution of this case.
>
> To that end, rather than going through the QME process for a third time, or fourth if you include the unsuccessful effort to obtain a QME panel in the internal medicine oncology specialty, I find that it would be most efficient and appropriate on these facts, to appoint an internist as a regular physician to evaluate and report on Applicant's internal medicine claims. I therefore designate Scott Anderson, M.D., to act in that capacity.

(Opinion on Decision, at pp. 6-7.)

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].)

Administrative Director (AD) Rule 31.5(a) enumerates 16 circumstances under which a party may request a replacement QME panel. (Cal. Code Regs., tit. 8, § 31.5(a).) Despite the evidentiary requirement that decisions by the Appeals Board be supported by substantial evidence, this is not one of the enumerated reasons for a replacement QME panel pursuant to Rule 31.5(a). Consequently, Rule 31.5(a) does not provide authority for a replacement QME panel on the grounds that the QME's reporting, when viewed in the aggregate, has failed to reach the ultimate conclusions necessary to address and resolve the issues presented for medical-legal evaluation.

In *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406], we explained that "in most cases the specific provisions of the Labor Code and of our rules relating to discovery will provide adequate tools to the practitioner, and that he should not be encouraged to go beyond them in search of other remedies." (*Id*. at p. 114.) In those cases where the Labor Code and our rules do not provide a sufficient remedy, "the trial judge has, and should exercise[,] the authority conferred on him by § [10330] of our rules to issue such interlocutory orders relating to discovery as he determines are necessary to insure the full and fair adjudication of the matter before him, to expedite litigation and to safeguard against unfair surprise." (*Ibid*.)

In addition, the Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence to determine causation of a disputed body part. (See Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [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* (2002) 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*." (*McDuffie, supra,* 67 Cal.Comp.Cases at 141, *italics added*.)

Here, the WCJ reviewed in detail the history of the prior QME evaluation process with internist Dr. Duhan, who issued five reports between May, 2017, and August 2018, and was deposed on January 8, 2018, but was unable to issue final reporting prior to his passing. (Opinion on Decision, at p. 4.) Following the appointment of replacement QME Dr. Bronshvag, the parties obtained nine additional reports between August, 2020 and April, 2023, and deposed the QME in October, 2023. The WCJ has noted the QME's current request for supplemental reporting from a genitourinary specialist familiar with bladder deformities, and the parties' unsuccessful efforts to obtain an additional panel of QMEs in the specialty of oncology. (*Ibid*.)

The WCJ has carefully weighed the medical-legal history, the present need for additional reporting in another medical sub-specialty as a prerequisite to obtaining final reporting from Dr. Bronshvag, the nature of the supplemental reporting sought by the QME, the efforts expended by the parties to obtain final reporting from the QME, and the prejudice to both parties in restarting the medical-legal evaluation process anew. The WCJ concluded that "if [the QME is] not replaced now, there will be many more months and years of discovery on the internal medicine issues, and in my judgment the appointment of an AME quality regular physician in my discretion under Labor Code section 5701, as requested by Applicant's attorney, is the most efficient and appropriate means to do so, especially with the lack of any Internal Medicine, Medical Oncology panels available." (Report, at p. 7.)

Following our independent review of the record occasioned by defendant's Petition and the specific facts of this case, we are persuaded that the WCJ reasonably acted within his discretion to determine that the medical opinions in the record were inconsistent and incomplete. (*McDuffie, supra,* 67 Cal.Comp.Cases at 141; *Hardesty, supra*, 41 Cal.Comp.Cases at p. 114.) Moreover, based on more than six years of the parties' attempts to obtain final QME reporting responsive to applicant's internal medicine claims, that the appointment of a regular physician is a course of action reasonably calculated to effectuate substantial justice in a timely manner. Although the preferred procedure to develop a deficient medical record per *McDuffie* is to return to the existing

physicians who have already reported in the case, we are not persuaded that WCJ abused his discretion in concluding that further discovery with Dr. Bronshvag will not cure the deficiencies in the record. Per *McDuffie*, if the existing physicians cannot cure the need for development of the record, the selection of an agreed medical evaluator (AME) should be considered by the parties. If the parties cannot agree to an AME, the WCJ can then appoint a physician to evaluate applicant's injury pursuant to section 5701. (*Ibid.*)

Thus, while we are persuaded that the WCJ has not abused his discretion in ordering the existing QME be replaced, we observe that pursuant to *McDuffie, supra*, the parties must be afforded the opportunity to select an AME prior to the WCJ's appointment of a regular physician.

We will therefore grant defendant's Petition and amend Finding of Fact No. 3 to reflect that the there is good cause to replace Dr. Bronshvag as the QME and that Dr. Anderson will be appointed as a regular physician if the parties are unable to agree on an AME. We will amend Order No. "b" to direct the parties to meet and confer regarding the selection of an Agreed Medical Evaluator in internal medicine prior to the next hearing, and amend Order No. "c" to set this matter for status conference to determine whether an AME agreement has been reached, but otherwise to determine Dr. Anderson's availability and willingness to act as a regular physician and to address a discovery plan. We will then return this matter to the trial level for the WCJ to take appropriate action following a determination of whether the parties are able to reach an AME agreement consistent with *McDuffie*, *supra,* 67 Cal.Comp.Cases at 141.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of October 3, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of October 3, 2024 is **AFFIRMED,** except that it is **AMENDED** as follows:

FINDINGS OF FACT

…

3. Based on the record and the applicable law, I find good cause to replace QME, Michael Bronshvag, M.D. The parties must meet and confer with respect to an agreed medical evaluator. If they do not reach an agreement, Scott T. Anderson, M.D., is appointed as a regular physician pursuant to Labor Code section 5701.

ORDERS

b. The parties are ordered to meet and confer regarding whether they can agree on the selection of an Agreed Medical Evaluator in internal medicine prior to the next hearing in this matter. If the parties do not agree, Scott Anderson, M.D., provided he is willing to do so, is hereby appointed to evaluate applicant as a regular physician under Labor Code section 5701.

c. This case shall be set for my next available status conference, to determine whether the parties have agreed on an agreed medical evaluator, and if not, determine Dr. Anderson's availability and willingness to act a "regular physician" and to coordinate a discovery plan with the parties going forward.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2025

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

RAYMOND HADLEY
BRIAN J. THORNTON, A LAW CORPORATION
FINNEGAN MARKS

SAR/abs

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

DISSENTING OPINION OF CHAIR ZALEWSKI

I dissent. While I share my colleagues' concern with effectuating substantial justice in an expeditious manner, I do not agree that Dr. Bronshvag's request for an additional QME evaluation requires his replacement as the QME. Dr. Bronshvag has determined that he would benefit from the contributing opinions of a genitourinary specialist to assist him in issuing final reporting. In so doing, Dr. Bronshvag has made a *medical determination* as to the necessity of a consulting opinion. I am concerned that in ordering the replacement of the QME, the WCJ has effectively substituted his opinion for that of the QME. In my view, the QME's request for a referral to a consulting physicians is an expression of medical opinion, one that should not be circumscribed by a WCJ absent true good cause.

Nor am I convinced that the difficulties engendered in obtaining the requested supplemental reporting are sufficient basis to replace the QME. Administrative Director (AD) Rule 35.5(d) authorizes a medical evaluator to "advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations in another specialty." (Cal. Code Regs., tit. 8, § 35.5(a).) Rule 35.5 does not authorize the removal of a QME for reaching the conclusion that disputed medical issues require additional reporting in specialties outside the QME's normal scope of practice.

As we explained in *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111, 114 [1976 Cal. Wrk. Comp. LEXIS 2406], "in most cases the specific provisions of the Labor Code and of our rules relating to discovery will provide adequate tools to the practitioner, and that he should not be encouraged to go beyond them in search of other remedies." Here, I believe that Rule 35.5 adequately provides the parties and the WCJ with the appropriate tools necessary to resolve the disputed medical issues herein, and following my review of the record, I am not persuaded of the need to "go beyond them in search of other remedies." (*Id.* at p. 114.)

Accordingly, while I agree with my colleagues' grant of reconsideration, I would rescind the F&O and substitute a new decision denying applicant's petition to replace QME Dr. Bronshvag and granting defendant's request for the issuance of an additional panel of QMEs in toxicology or occupational medicine.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2025

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

RAYMOND HADLEY
BRIAN J. THORNTON, A LAW CORPORATION
FINNEGAN MARKS

SAR/abs

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