

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

RICHARD ALDRIDGE, *Applicant*

vs.

**ANGELS BASEBALL LP; ACE AMERICAN INSURANCE, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12088514
Anaheim District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Applicant seeks removal of the Findings and Order (F&O) issued on July 22, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a professional athlete during the period of June 16, 2004 through July 15, 2010, applicant claims to have sustained injury arising out of and in the course of employment to the shoulders, elbows, wrists, hands, fingers, thoracic spine, lumbar spine, cervical spine, hips, feet, ankles, knees, and head; (2) at the time of injury, the employer's workers' compensation earner was Ace American Insurance, administered by Sedgwick Claims Management Services, Inc.; (3) Dr. David Kim is disqualified as the Qualified Medical Examiner (QME) for violating AD Rule 41(a)(4); and (4) the reports of Dr. Kim can be sent to a subsequent examiner.

The WCJ ordered that Dr. Kim be disqualified as the QME.

Applicant contends that the WCJ erroneously found a disqualifying conflict of interest based upon Dr. Kim's violation of AD Rule 41(a)(4).

We received an Answer from defendant.

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

We have reviewed the Petition for Removal, the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will treat the Petition for Removal as one for reconsideration and deny reconsideration under the removal standard.

FACTUAL BACKGROUND

In the Report, the WCJ states:

The matter came to Trial . . . on the limited issues of the disqualification of David Kim M.D. who served as the Qualified Medical Examiner in this case and, if disqualified, could a subsequent evaluator review Dr. Kim's reporting.

...

The facts in this matter are undisputed. Dr. Kim, while conducting a Qualified Medical Examination, wrote a prescription for 5 Hydrocodone tablets for the Applicant at the Applicant's request. The Court found that this constituted treatment and disqualified Dr. Kim as the Qualified Medical Examiner pursuant to CCR 41(a)(4).

...

The record reveals that on January 31, 2020, the Applicant asked for, and received via a prescription from Dr Kim, 5 hydrocodone pills for pain [MOH/SOE May 14, 2025 page 8; lines 10-13]. The Applicant further testified that he had an increase in pain in the low back and hips from both travel and from the physical examination [MOH/SOE page 7 lines 21-25/page 8 line 1-3]. In the report of Dr. Kim dated March 9, 2020 for date of evaluation January 31, 2020 [Joint Exhibit AA/EAMS DOC ID# 4802226] the Doctor notes constant back pain and intermittent hip pain (pg 7). Dr. Kim does not report the provision of prescription narcotic medication in this report and, curiously, at page 32 of the report states:

"For this reason, he is not considered to be at a clinical plateau for his cervical spine. As to his other areas of complaint, despite findings on clinical examination and diagnostic Testing, I do not believe Mr. Aldridge is *currently* in need of formal active treatment to these areas. He is well-versed in self-treatment modalities and is able to modify his activities as necessary. Nevertheless, in the event of a significant flare up, he should have provision for formal additional medical treatment in the future. This is not immediately *indicated* [emphasis added]"

At page 49 of the same report the Doctor opines that future medical care should include:

"refills of non-narcotic pain -relief medications on an as-needed basis in the future"

Dr. Kim testified in his deposition of April 21, 2025 [Joint Exhibit EE/EAMS DOC ID# 577 59709] at page 20 lines 16-19 that the provision of the prescription for medication was done on more of an emergency basis.

If Dr. Kim's provision of a prescription for narcotic pain medication was on an emergency basis, it was not disclosed in the report nor is it compatible

with the Doctor's findings on current complaints; current treatment; and future medical care.

...

Dr. Kim provided treatment that was undisclosed in his reporting and at odds with his own findings regarding current and future treatment needs. The actions of Dr. Kim lead to a reasonable doubt that he has acted or can act with impartiality or integrity.

The Applicant/Petitioner fails to clearly articulate how Dr. Kim's disqualification leads to either significant prejudice or irreparable harm. The Finding that Dr. Kim's is disqualified but that his reporting in this matter can be viewed by a subsequent evaluator and given its due weight isn't severely prejudicial nor is it irreparably harmful.

(Report, pp. 1-4.)

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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

(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.”

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Here, according to Events, the case was transmitted to the Appeals Board on August 12, 2025 and 60 days from the date of transmission is Saturday, October 11, 2025. The next business day that is 60 days from the date of transmission is Monday, October 13, 2025². This decision is issued by or on October 13, 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 August 12, 2025, and the case was transmitted to the Appeals Board on August 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 August 12, 2025.

II.

Preliminarily, we observe that 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 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

²WCAB 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.

the WCAB or court of appeal. (See § 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 a threshold issue, i.e., applicant's employment with defendant during the period of claimed industrial injury to his shoulders, elbows, wrists, hands, fingers, thoracic spine, lumbar spine, cervical spine, hips, feet, ankles, knees, and head. It follows that the WCJ's decision is a final order subject to reconsideration; and since the Petition only challenges the interlocutory finding that a conflict of interest exists which warrants disqualification of Dr. Kim, the removal standard applies to our evaluation of its merits. (See *Gaona, supra.*)

Turning to the merits of the Petition, we observe that 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; see also *Cortez, supra*; *Kleemann, supra.*) In addition, 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.)

In this regard, applicant argues that the WCJ erroneously found a disqualifying conflict of interest based upon Dr. Kim's violation of AD Rule 41(a)(4), causing substantial prejudice and irreparable harm to applicant by precluding the use of Dr. Kim's reporting in the case and delaying the proceedings.

We observe that AD Rule 31.5(a) authorizes a party to seek removal of a QME and a replacement QME panel on various grounds, including that the QME has a disqualifying conflict of interest as defined by AD Rule 41.5. (Cal. Code Regs., tit. 8, § 31.5(a)(13).)

A disqualifying conflict of interest as defined by AD Rule 41.5(d)(4) exists, *inter alia*, where a QME has any relationship or interest which would cause a person aware of the facts to reasonably entertain a doubt that the QME would be able to act with integrity and impartiality. (See Cal. Code Regs., tit. 8, § 41.5(b)-(d)(4).)

Under AD Rule 41(a)(4), all QMEs “shall . . . [r]efrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured worker.” (Cal. Code Regs., tit. 8, § 41(a)(4).)

In *Abraham v. Ramco Enterprises*, 2018 Cal. Wrk. Comp. P.D. LEXIS 320,³ an Appeals Board panel ordered that the QME be removed and a replacement QME panel be obtained because the QME had recommended that the injured worker receive 12 treatments at his office. The Appeals Board panel found that this treatment recommendation amounted to solicitation to provide medical treatment in violation of AD Rule 41(a)(4)—and that the solicitation constituted a disqualifying conflict of interest because it “raised[] reasonable doubts as to the physician's ability to act with integrity and impartiality” within the meaning of AD Rule 41.5(d).

In this case, Dr. Kim prescribed narcotic pain medication to applicant, conduct constituting a violation of AD Rule 41(a)(4). (Report, p. 2.) We agree with the WCJ that this violation, along with the failure to disclose or explain it in the medical reporting, would cause a person to reasonably doubt Dr. Kim’s ability to act with integrity and impartiality. (Report, p. 3.)

Accordingly, we are unable to discern error in the finding that Dr. Kim is disqualified as QME.

We also agree with the WCJ that the Petition fails to allege how significant prejudice or irreparable harm could result from the disqualification of Dr. Kim. (Report, p. 4.) Specifically, the Petition fails to state how applicant could be precluded from using Dr. Kim’s reporting in light of the WCJ’s finding that the reporting may be considered by a subsequent QME. Similarly, the Petition fails to state how a delay of proceedings to obtain a new QME and any reporting therefrom could cause significant prejudice or irreparable harm to applicant.

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [118 Cal. Rptr. 2d 105, 67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we may consider them to the extent that we find their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

Accordingly, we will treat the Petition for Removal as one for reconsideration and deny reconsideration under the removal standard.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order issued on July 22, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 10, 2025

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

**RICHARD ALDRIDGE
LEVITON, DIAZ & GINOCCHIO, INC.
BOBER, PETERSON & KOBY, LLP**

SRO/bp

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