**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**WILLIAM AREY, *Applicant***

**vs.**

**MAGIC MOUNTAIN, LLC;**
**HARTFORD ACCIDENT AND INDEMNITY COMPANY,**
**administered by BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ10266237; ADJ10401171**
**Van Nuys District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Hartford Accident & Indemnity Company (defendant) seeks reconsideration of the April 22, 2025 Joint Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found in Case No. ADJ10266237 that applicant, while employed as a ride mechanic on September 10, 2015, sustained industrial injury to his brain and head. The WCJ found in Case No. ADJ10401171 that applicant, while employed as a ride mechanic from September 10, 2005 to September 10, 2015, sustained industrial injury to his head, nervous system, and circulatory system. The WCJ further determined that the reporting of Agreed Medical Evaluator (AME) Roger Bertoldi, M.D., constituted substantial medical evidence, and that there was no ex parte contact with the AME as contemplated under Labor Code[1] section 4062.3(g).

Defendant contends that the reporting of Dr. Bertoldi is not substantial medical evidence. Defendant also contends that principles of res judicata or collateral estoppel do not prevent defendant from raising the issue of ex parte contact, and that applicant's sister's participation in the AME evaluation constituted ex parte contact with the AME.

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

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

**FACTS**

Applicant has two pending applications for adjudication. In Case No. ADJ10266237, applicant claimed injury to the brain, head and "other" body parts/systems while employed as a ride mechanic by defendant Six Flags Magic Mountain, LLC, on September 10, 2015. In Case No. ADJ10401171, applicant claimed injury to his head, circulatory system and nervous system while similarly employed from September 10, 2005 to September 10, 2015. (Minutes of Hearing (Further) and Order of Consolidation, dated October 2, 2024, at p. 2:10.)

The parties selected Jeffrey Caren, M.D., as the Qualified Medical Evaluator (QME) in internal medicine/cardiology, and on November 10, 2017, Dr. Caren issued an initial report.

On December 28, 2018, defendant filed a Motion to Strike Dr. Caren as the Panel QME, averring applicant's sister accompanied applicant to the evaluation with Dr. Caren and provided a medical history and other information on applicant's case to the QME. (Motion to Strike Dr. Caren as the Panel QME, dated December 28, 2018, at 4:3.)

On February 12, 2019, the parties appeared at Priority Conference, and the WCJ issued an order determining there to be good cause to strike the existing panel on the grounds that there was "a dispute" as to whether applicant's sister can attend the QME evaluation and provide information. The WCJ ordered the reporting of Dr. Caren of November 10, 2017 stricken and inadmissible, and ordered the issuance of a replacement panel. (Minutes of Hearing, dated February 12, 2019.)

The parties subsequently reached an accord to utilize Roger Bertoldi, M.D. as an Agreed Medical Evaluator (AME) in neurology. AME Dr. Bertoldi evaluated applicant and issued a report dated January 20, 2020.

On June 7, 2022, defendant filed a Motion to Strike Dr. Bertoldi as the "Panel AME," averring that applicant's sister had accompanied applicant to the evaluation with Dr. Bertoldi and

had provided medical history and an account of applicant's symptoms to the AME. (Motion to Strike Dr. Bertoldi as the Panel AME, dated June 7, 2022.)

On September 8, 2022, the parties proceeded to trial on the sole issue of "Defendant's motion to strike Dr. Bertoldi." (Minutes of Hearing, dated September 8, 2022, at 2:16.) The parties submitted the matter for decision without witness testimony.

On December 29, 2022, the WCJ issued his Findings and Order, determining in relevant part that "there was no ex-parte communication as contemplated under California Labor Code §4062.3(g)." (F&O, dated December 29, 2022, Findings of Fact No. 1.) The WCJ denied defendant's June 7, 2022 Motion to Strike AME Dr. Bertoldi, accordingly. (*Id.*, Order No. 1.)

On January 18, 2023, defendant filed a petition seeking reconsideration or removal in response to the December 29, 2022 Findings and Order.

On May 16, 2023, we granted reconsideration for the limited purpose of clarifying that The Hartford was the insurer for employer Six Flags, not applicant's employer, but otherwise affirmed the December 29, 2022 Findings of Fact and Order. In response to defendant's contentions of ex parte contact we concluded that "the participation of applicant's sister in the evaluation by AME Dr. Bertoldi was both necessary and permissible under the circumstances, as the failure to obtain an appropriate medical history would have invalidated any resulting reporting from the AME, and because applicant's sister was communicating on applicant's behalf during the course of the medical-legal evaluation." (Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, at p. 7.)

On October 2, 2024, the parties proceeded to trial and framed for decision issues of injury arising out of and in the course of employment as to both cases. The parties also raised the issues of the substantiality of the reporting of AME Dr. Bertoldi and defendant's June 7, 2022 motion to strike the reporting of Dr. Bertoldi. The WCJ conducted trial proceedings across multiple dates and heard witness testimony including that of applicant and defense witnesses Jared Case, Bradford Jordan, Justin Miyahara, and Rudie Baldwin.

On April 22, 2025, the WCJ issued his F&O, determining in relevant part that on September 10, 2015, applicant sustained a specific injury to his brain and head. (F&O, Case No. ADJ10266237, Finding of Fact No. 1.) The WCJ further determined that applicant sustained a cumulative injury from September 10, 2005 to September 10, 2015, to his head, nervous system, and circulatory system. (Case No. ADJ10401171, Finding of Fact No. 1.) The WCJ denied

defendant's motion to strike the reporting of AME Dr. Bertoldi and ordered defendant to administer applicant's workers' compensation benefits. (Joint Orders Nos. 1-2.)

Defendant's Petition contends the reporting of AME Dr. Bertoldi is not substantial evidence because he did not review relevant CT imaging and did not consider the testimony of the attending neurosurgeon that applicant's brain hemorrhage was only hours old when applicant was admitted to the hospital. (Petition, at p. 6:2.) Defendant further contends that the AME reporting does not adequately describe industrial causation, and is based on the account of applicant's sister, who was not present at the time of the alleged industrial specific injury. (*Id.* at p. 13:10.) Defendant further contends that principles of res judicata would not bar defendant seeking to strike the AME reporting for alleged ex parte contact because there is no final order as to the issue. (*Id.* at p. 20:7.) Defendant asserts that the participation of applicant's sister in the AME evaluation with Dr. Bertoldi amounts to ex parte contact, and that similar cases have only allowed for family participation at medical-legal evaluations in cases where the injured worker experienced profound cognitive or communication limitations. (*Id.* at p. 23:15.)

Applicant's Answer responds that the AME has described a detailed analysis of the issue of causation. (Answer, at p. 6:5.) Applicant also contends the parties previously litigated defendant's June 7, 2022 motion to strike the reporting of AME Dr. Bertoldi, and that the motion was denied by the WCJ and affirmed by the WCAB. (*Id.* at p. 9:9.)

The WCJ's Report observes that the issue of whether there was ex parte contact with the AME has previously been decided by the WCAB, and that principles of res judicata bar defendant's renewed litigation of the issue. (Report, at p. 4.)

## 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.

(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 June 17, 2025, and 60 days from the date of transmission is Saturday, August 16, 2025. The next business day that is 60 days from the date of transmission is Monday, August 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on August 18, 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 June 17, 2025, and the case was transmitted to the Appeals Board on June 17, 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 June 17, 2025.

[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.

**II.**

We first address the sufficiency of the medical-legal evidence. The WCJ has determined that applicant sustained two industrial injuries, a specific injury of September 10, 2015, and a cumulative injury from September 10, 2005 to September 10, 2015. In both instances, the WCJ has based his findings on applicant's credible testimony and the reporting of AME Dr. Bertoldi. (Opinion on Decision, at p. 2.)

The burden of proving industrial injury rests with the applicant. (Lab. Code, §§ 3202.5, 5705; *LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 650 [63 Cal.Comp.Cases 253].) Where the question of industrial causation is beyond the bounds of ordinary knowledge, proof in the form of expert medical evidence is required. (*State Comp. Ins. Fund v. Industrial Acc. Com.* (*Willson*) (1924) 195 Cal.174, 184 [11 IAC 277]; *Ins. Co. of North America v. Workers' Comp. Appeals Bd.* (*Kemp*) (1981) 122 Cal.App.3d 905, 911 [46 Cal.Comp.Cases 913].) In order to constitute substantial evidence on industrial causation, a reporting physician must state his or her opinion in terms of reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416, 419 [33 Cal.Comp.Cases 660]; *LaTourette, supra,* 17 Cal.4th at p. 650.)

In his report of January 20, 2021,[3] Dr. Bertoldi noted that the relevant history of applicant's injury began with a trip and fall incident on September 10, 2015. Applicant was stepping over a pallet at work when he lost his balance and fell face first onto the cement floor. Applicant reported to the first aid center and was observed for two hours before being released in stable condition. (Ex. 4, Report of AME Roger Bertoldi, M.D., dated January 20, 2021, at p. 2.) Approximately four days later, applicant described "severe and worsening" headaches and was taken by ambulance to the hospital where imaging studies confirmed severe bleeding in applicant's brain. (*Ibid*.) Applicant underwent neurosurgery the same night, followed by a complicated post-surgical course of recovery. Applicant also reported a history of cumulative workplace injury involving stress and hypertension arising out applicant's performing maintenance and repairs at significant heights. (*Ibid*.) Dr. Bertoldi concluded that when applicant was initially hospitalized, he had developed both an intracranial hemorrhage (ICH) as well as a tentorial subdural hematoma (SDH).

[3] Although the report is nominally dated January 20, 2020, the report's introductory statement reflects an evaluation taking place on December 9, 2020, and the attached proof of service reflects service on January 22, 2021. It thus appears the report issued on January 20, 2021.

Dr. Bertoldi evaluated the different potential causes for both the SDH and ICH conditions and concluded that applicant's work fall three to four days earlier caused the ICH. (*Id.* at p. 33.) Accordingly, Dr. Bertoldi made formal diagnoses including an intraparenchymal hemorrhage in the right cerebellar hemisphere and a right tentorial subdural hematoma, wherein the "CT scan of the head confirms that anterior blunt force to Mr. Arey's head on 9/10/15 work fall injury, as the probable cause of both." (*Id.* at p. 28.)

Defendant challenges the substantiality of the reporting of the AME, contending that Dr. Bertoldi failed to consider treating neurosurgeon Dr. Mortazavi's deposition testimony that applicant's brain bleed was hours old, rather than four days old. (Petition, at p. 13:4.) However, Dr. Bertoldi specifically reviewed and considered the January 29, 2020 deposition testimony of Dr. Mortazavi. (Ex. 4, Report of AME Roger Bertoldi, M.D., dated January 20, 2021, at p. 27.) Therein, Dr. Mortazavi testified that while the ICH likely began hours before applicant's hospital admission on September 14, 2015, the imaging studies also reflected the presence of subdural hematoma and that "a subdural hematoma in the right tentorium … is usually traumatic." (*Ibid*.) The record thus reflects a review of the records of the treating neurosurgeon and incorporates Dr. Mortazavi's clinical observations of the relationship between head trauma and the development of SDH in the final analysis of causation.

Defendant further contends that Dr. Bertoldi "did not make any attempt to explain how striking the front of his head caused a bleed near the back of his skull," and that the reporting "did not address the fact that there was no objective injury related to the work fall (cut, abrasion, bruise, etc. to the front of Applicant's face/head), and how such a seemingly benign fall could have caused a sudden massive bleed 4 days later." (Petition, at p. 9:3.) However, here again, the reporting of Dr. Bertoldi engages in a careful analysis:

> Mr. Arey's work fall caused his ICH. The ICH coincides with onset of Mr. Arey's severe headaches, not the fall which occurred 3 days earlier. Despite the 3-day delay, the fall was the cause of ICH, as correctly pointed out by Dr. Marvin Pietruszka on p. 11 in his 9/3/19 deposition. When asked if the fall hastened-was it caused or hastened by the intracerebral hemorrhage, he stated "it caused it."
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> With Mr. Arey' s history of hypertension, another possibility is a spontaneous ICH occurred, but this is a less likely cause than the 9/10/15 work fall. This is because Mr. Arey's admitting head CT, prior to surgery, identified a tentorial subdural hematoma (SDH), in addition to ICH. While spontaneous ICH in hypertensive patients is not uncommon, cerebellar (or posterior fossa as opposed

> to convexity location of) ICH, when seen together with tentorial SDH in the absence of history of head trauma, is unheard of.
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> There is a strong association between head trauma and SDH. In particular, tentorial SDH are usually associated with anterior (i.e. face) head trauma, as is the history with Mr. Arey. Mr. Arey hit his head on 9/10/15 when he fell face forward onto concrete. Tentorial SDH when seen with cerebellar ICH, requires urgent medical care. This is because both bleeds are with the posterior fossa of the brain. A small limited space, where increased intracerebral presence from the blood, if not quickly released surgically, will result in brain herniation and death. Neurosurgeon D. Mortazavi, who performed all 3 of Mr. Arey's brain surgeries, and who recently passed his Neurosurgery Board examination, is well versed in this urgent surgical association. In his 1/29/20 deposition, "upon reviewing the first imaging. It says there is a layer of subdural hematoma in the right tentorium" (p. 28). He quickly adds ''tentorial subdural is usually traumatic" (p. 29).
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> Understanding the underlying mechanism by which tentorial SDH and ICH are caused by anterior head trauma, requires detailed understanding of brain pathology. It is therefore understandable that Dr. Pietruszka, who is a pathologist, recognized the traumatic association here. By the ICH and the SDH, both occurring in the same posterior fossa location, it is probable that the ICH occurred to the area of Mr. Arey' s brain directly-traumatized brain by his 9/10/15 fall. Furthermore, it is usually the case that ICH does not occur immediately after head trauma, but takes a few days to manifest. Therefore, the occurrence of Mr. Arey's posterior fossa ICH 3 days after traumatic injury to some area of brain in the work fall is a[n] expected scenario.

(Ex. 4, Report of AME Roger Bertoldi, M.D., dated January 20, 2021, at pp. 33-34.)

Dr. Bertoldi further addressed applicant's simultaneous and overlapping brain pathology in his deposition testimony. When asked if ICH is causally linked to trauma occurring up to a month earlier, the AME responded that, "there's no doubt that the ICH is related to the head injury … You just don't know if it was directly or indirectly, that's all." (Ex. 4, Transcript of the Deposition of AME Roger Bertoldi, M.D., dated November 19, 2021, at p. 73:11.) In subsequent deposition testimony, Dr. Bertoldi emphasized the relationship between the head trauma sustained in applicant's trip and fall at work and the subsequent development of the intracerebral hemorrhage, stating, "once you recognize the significance of the transtentorial layering of the blood … trauma becomes your most -- most reasonably medically probable reason at that point in time, and not blood pressure." (Ex. 3, Transcript of the Deposition of AME Roger Bertoldi, M.D., dated August 23, 2022, at p. 100:2.)

The reporting and deposition testimony of AME Dr. Bertoldi links applicant's workplace injury on September 10, 2015, and the development of his ICH and SDH conditions four days later. The analysis reflects the considered opinions of both treating neurosurgeon Dr. Mortazavi as well as internist and pathologist Dr. Pietruszka and is stated to a reasonable degree of medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416, 419 [33 Cal.Comp.Cases 660]; *LaTourette, supra,* 17 Cal.4th at p. 650.)

We also observe that Dr. Bertoldi is the Agreed Medical Evaluator in this matter. As the AME, Dr. Bertoldi has presumably been chosen by the parties because of his expertise and neutrality. Therefore his opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Here, and following our independent review of the entire record, we discern no good cause to depart from the considered opinions of the AME. Dr. Bertoldi's reports and deposition testimony are framed in terms of reasonable medical probability, are based on pertinent facts and on an adequate examination and history and set forth the reasoning in support of the AME's conclusions. (*Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc).)

We therefore agree with the WCJ's determination that the reports of Dr. Bertoldi constitute substantial medical evidence that support a finding of industrial injury. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

**III.**

Defendant further contends that applicant engaged in impermissible ex parte contact with Dr. Bertoldi because applicant's sister accompanied him to the AME evaluation and assisted with filling out forms and providing applicant's medical history. Defendant asserts it is aggrieved thereby and pursuant to section 4062.3(g) seeks to terminate the AME evaluation and seek a new medical-legal evaluation. (Petition, at p. 23:9.)

We have previously addressed this issue in our May 16, 2023 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O). Therein, we denied defendant's petition insofar as it sought to replace the AME for alleged ex parte contact but granted defendant's petition insofar as it sought to amend the WCJ's determination of the correct employer, which was a threshold issue. Our determination that there has been no impermissible ex parte contact between applicant and AME was an interim order, however, as confirmed by the Court of Appeal's Order dismissing defendant's petition for writ of review for want of a "final decision or award." (Order, dated November 28, 2023.) Accordingly, defendant may now raise the issue in connection with its petition for reconsideration of the WCJ's April 22, 2025 F&O, which is a final order. (See *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650]; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410].)

Defendant asserts that applicant's sister's participation in the AME evaluation with Dr. Bertoldi was substantive and constituted impermissible ex parte contact pursuant to section 4062.3(g). (Petition, at p. 21:10.)

The WCJ's December 28, 2022 Findings of Fact and Order rejected this argument, noting that the analysis described in a WCAB panel decision[4] of *Belling v. United Parcel Service, Inc.* (December 21, 2015, ADJ944426 (VNO 0538295) [2015 Cal. Wrk. Comp. P.D. LEXIS 738]) was both relevant and persuasive on this issue. In *Belling*, applicant suffered a significant cerebrovascular accident that left him with severe neurocognitive deficits. Applicant's spouse accompanied him to his medical-legal evaluations and provided the evaluators with a history of the injury, as well as her husband's current complaints. (*Belling, supra*, at p. 11.) We held that such conduct was reasonable and necessary, because to prohibit such assistance would effectively deprive applicant of the Qualified Medical Evaluator dispute resolution process. (*Id*. at p. 13; Lab. Code, § 4060, et seq.)

[4] 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 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

Defendant's Petition contends, however, that unlike the profound communication issues suffered by applicant in *Belling*, applicant's trial testimony in the instant matter establishes that he can "talk and communicate on his own behalf." (Petition, at p. 24:9.)

We addressed this contention in our May 16, 2023 O&O as follows:

> Defendant avers that the applicant in *Belling* had profound limitations in his ability to communicate, and that in the absence of similarly profound limitations, applicant in the present matter has not established the necessity of having a family member attend and participate in the AME evaluation with Dr. Bertoldi. (Petition, at 7:16.) However, in *Belling* we likened applicant's spouse's conveyance of his symptoms and medical history to the assistance provided by a language interpreter:
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> > Since applicant is unable to talk or otherwise communicate, he would be deprived of the opportunity of a PQME without the assistance of someone to transmit the required information (history of injury, complaints, medical history) on his behalf. The assistance applicant's wife provided in this case is akin to the assistance provided by a language interpreter on behalf of a non-English speaking injured employee during such an evaluation. Interpretive services clearly come within the exception set forth in subsection (i) of section 4062.3 in that they are merely transmissions of information on the injured employee's behalf and, thus, communications by the employee. Any other conclusion is contrary to Civil Code section 3531. Further, our conclusion is consistent with the Court of Appeal's acknowledgement that section 4062.3(g)'s prohibition of ex-parte communications between a party and the PQME should not be interpreted or applied "… in a manner that will lead to absurd results." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 590 [114 Cal. Rptr. 3d 429, 75 Cal.Comp.Cases 817].) (*Belling, supra*, at 14.)
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> Our decision in *Belling* thus acknowledged that the ability to transmit necessary medical information to a medical-legal evaluator, including symptoms and medical history, is an essential component to a medical-legal examination. (See also Labor Code § 4628(a)(1); Cal Code Regs., tit. 8, § 10682(a)(2)-(5); *West v. Industrial Acci. Com.* (1947) 79 Cal.App.2d 711 [12 Cal.Comp.Cases 86].) We concluded that a family member conveying this type of essential information at a QME evaluation under circumstances that would otherwise limit or even prevent the transmission of such information, was properly understood to be the transmission of information *on behalf of the employee*. As such, the conveyance of this information would be considered communication *by the employee*, and would not constitute either *ex parte* or otherwise prohibited communication under section 4062.3.

Our subsequent decision in *Trujillo v. TIC - The Industrial Company* (March 11, 2019, ADJ8531754) [2019 Cal. Wrk. Comp. P.D. LEXIS 90] involved an applicant who sustained a traumatic brain injury, and whose wife accompanied him to the AME evaluation and offered information relating to his condition, symptoms and medical history. We held that:

> If an injured employee has memory issues, the employee may be unable to provide the medical-legal evaluator with an accurate and adequate history during the examination. In the absence of an accurate and adequate history, the resulting medical-legal report may not be substantial evidence. Medical-legal evaluators are entrusted to utilize their judgment, experience, training and skill in evaluating an employee. (See e.g., *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808 [115 Cal. Rptr. 3d 112, 75 Cal.Comp.Cases 837]; see also *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II*) (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc).) Medical-legal evaluators may be trusted to exercise that judgment to identify and interview collateral sources only when necessary to obtain an accurate and adequate history as part of the employee's examination. (*Trujillo, supra*, at 20.)

Here, the AME has testified that applicant's ability to recall his medical history was significantly compromised, and that the assistance of applicant's sister was "essential" to the medical-legal evaluation. (Ex. B, Transcript of the Deposition of Roger V. Bertoldi, M.D., dated November 19, 2021, at 56:3.) Moreover, the AME was aware of the participation of applicant's sister in the preparation of the medical history and applicant's symptoms and complaints, and exercised his judgement to determine that her assistance was timely and necessary. (*Ibid.*) Pursuant to the reasoning in *Belling, supra*, and *Trujillo, supra*, we are persuaded that the participation of applicant's sister in the evaluation by AME Dr. Bertoldi was both necessary and permissible under the circumstances, as the failure to obtain an appropriate medical history would have invalidated any resulting reporting from the AME, and because applicant's sister was communicating on applicant's behalf during the course of the medical-legal evaluation. (Lab. Code § 4628; *Hegglin v. Workers' Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93].)

To prohibit applicant from effectively conveying his symptoms or medical history as part of the medical-legal evaluation process would risk the "absurd results" the California Court of Appeal has cautioned against. (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 590 [114 Cal. Rptr. 3d 429, 75 Cal.Comp.Cases 817].)

(O&O, dated May 16, 2023, at pp. 6-8.)

Defendant's Petition responds that the panel decision in *Trujillo* is not a significant panel decision and is not binding precedent on this panel. (Petition, at p. 24:16.) While it is true that panel decisions are not mandatory authority on this panel, we may nonetheless consider these decisions to the extent that we find the underlying reasoning to be persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

Here, and for the reasons set forth in our May 16, 2023 O&O, we continue to believe that the participation of applicant's sister in the AME evaluation was necessary to allow applicant to communicate his medical history, both as a necessary predicate to a report that constitutes substantial medical evidence, and in furtherance of principles of due process. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) In addition, we also note that applicant's mini-mental state examination accomplished as part of the initial AME evaluation reflects that while applicant was oriented to time and place, his scores for attention, calculation, and recall all reflected significant impairment. (Ex. 7, Report of Roger Bertoldi, M.D., dated December 11, 2020.) The degree to which applicant's memory was compromised was sufficient for the AME to conclude that a family member was necessary to corroborate the medical history to the extent possible. (Ex. 4, Transcript of the Deposition of AME Roger Bertoldi, M.D., dated November 19, 2021, at p. 72:1.) The AME thus concluded that the assistance from applicant's sister was "essential," because "Mr. Arey did not have clear recollection for, you know, anything, and it was all three of us going over the events that pieced together what's written in the report." (*Id.* at p. 56:3.)

Because the ability to transmit necessary medical information to a medical-legal evaluator, including symptoms and medical history, is an essential component to a medical-legal examination, we discern no violation of section 4062.3. (*Belling, supra*, at p. 14; *Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 590 [75 Cal.Comp.Cases 817].)

In summary, based on our independent review of the entire record, we conclude that the reports of AME Dr. Bertoldi are framed in terms of reasonable medical probability, are based on pertinent facts and on an adequate examination and history and set forth the reasoning in support of the AME's conclusions. Accordingly, we find the reporting to constitute substantial medical evidence. (*Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th

922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc).) In addition, we discern no impermissible ex parte contact as between applicant and the AME, because applicant's memory and recall were significantly impaired and because a medical history is necessary to a substantial medical-legal evaluation.

We will deny defendant's Petition, accordingly.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 15, 2025**

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

**WILLIAM AREY**
**ODJAGHIAN LAW GROUP**
**AMARO BALDWIN LLP**

**SAR/abs**

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