

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

WILLIAM ORLANDO ELIAS RAMIREZ, *Applicant*

vs.

GRAND VIA AUTO REPAIR; ZENITH INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ11877438 (MF); ADJ11877439
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION AND
DENYING PETITION FOR REMOVAL**

Defendant seeks reconsideration of the Joint Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 3, 2025, wherein the WCJ found in pertinent part that there is good cause to order development of the record and there is good cause to order an additional panel in internal medicine.

Defendant contends the WCJ erred in ordering further development of the record. Defendant also contends that the WCJ erred in ordering a panel in an additional specialty.

We have not received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or, in the alternative, that it be dismissed. The WCJ correctly notes that defendant seeks review of interim discovery orders, which are not subject to reconsideration, and that defendant should have filed a petition for removal instead.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons provided below, the Petition seeks reconsideration of a non-final order and will be dismissed. We will treat the petition as one for removal, and we will deny removal.

BACKGROUND

We will briefly review the relevant facts.

In case number ADJ11877438, applicant claimed injury to various body parts, including low back, psyche, diabetes, upper extremities, lower extremities, neck, and spine, while employed by defendant as an automobile mechanic, during the period from December 26, 2017 to January 16, 2019 or 2020.

In case number ADJ11877439, applicant claimed injury to various body parts, including low back and upper extremities, while employed by defendant as an automobile mechanic, on March 10, 2018.

Applicant was evaluated by Mohan Nair, M.D., panel Qualified Medical Evaluator (QME) in the specialty of pain management, who issued reports on September 30, 2022 (Exhibit Z), June 8, 2023 (Exhibit Y), September 19, 2023 (Exhibit X), and January 9, 2024 (Exhibit Y).

Dr. Nair's opinions regarding impairment, work restrictions, if any, and whether applicant has reached maximum medical improvement, are limited to orthopedic conditions. Dr. Nair opined that applicant "has industrially caused injuries to his cervical spine, lumbar spine and right elbow. The industrial injury has aggravated and made symptomatic naturally progressing degenerative conditions of the cervical and lumbar spine." (Exhibit Y: QME report of Dr. Nair, dated June 8, 2023, p. 8.) Dr. Nair opined that applicant's "**orthopedic conditions** are now MMI, permanent and stationary." (Exhibit X, QME report of Dr. Nair, dated September 19, 2023, p. 35, emphasis added.)

It is not clear whether Dr. Nair determined whether applicant sustained a specific injury and/or a cumulative injury.

Thirty (30) percent of Mr. Elias Ramirez's lumbar spine impairment is apportioned to the industrial injury of 03/10/2018; 20 percent is apportioned for cumulative trauma injury from 12/16/2017 through 01/16/2018; 25% is apportioned to the 05/2021 nonindustrial MVA; and 25% is apportioned to natural progression.

Fifty (50) percent of the ulnar neuropathy impairment is apportioned to cumulative trauma injury from 12/16/2017 through 01/16/2018; 50 percent of the ulnar neuropathy is apportioned to subsequent employment.

(Exhibit X: QME report of Dr. Nair, dated September 20, 2023, p. 36.)

With respect to other body parts, including diabetes, high blood pressure, and psychological injury, Dr. Nair does not offer opinions as to causation or impairment. Dr. Nair

states in relevant part: “History of obesity, high blood pressure, prediabetes, per records.” (Exhibit Z: QME report of Dr. Nair, dated September 30, 2022, p. 24; Exhibit X: QME report of Dr. Nair, dated September 20, 2023, p. 31.) “Diabetic neuropathy contributing to central pain should be ruled out. Patients with diabetes can develop focal and multifocal neuropathies.” (Exhibit Z: QME report of Dr. Nair, dated September 30, 2022, p. 27.) “Referral to a psychologist/psychiatrist would be helpful.” (Exhibit Z: QME report of Dr. Nair, dated September 30, 2022, p. 31.)

On December 11, 2024, the matter proceeded to trial. Applicant was the only witness to provide trial testimony. In pertinent part, applicant testified as follows:

A physician has told him he has high blood pressure. A physician has told him he is pre-diabetic. He would like to be evaluated in internal medicine. He claims to be depressed and would like to be evaluated.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), December 11, 2024 trial, p. 5.)

The WCJ allowed the parties ten days to submit trial briefs. Petitioner timely filed a trial brief.

On January 3, 2025, the WCJ issued the joint Findings and Order.

DISCUSSION

I.

Former Labor Code section¹ 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.

¹ All statutory references are to the Labor Code unless otherwise stated.

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 January 27, 2025, and 60 days from the date of transmission is March 28, 2025. This decision is issued by or on March 28, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on January 27, 2025, and the case was transmitted to the Appeals Board on January 27, 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 January 27, 2025.

II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” or determines a “threshold” issue that is fundamental to the claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]; *Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, the following: injury AOE/COE,

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].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian, supra*, at 1075 ("interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"); *Rymer, supra*, at 1180 ("[t]he term ['final'] does not include intermediate procedural orders or discovery orders"); *Kramer, supra*, at 45 ("[t]he term ['final'] does not include intermediate procedural orders").) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Section 4060 provides for a medical-legal evaluation to determine compensability of a disputed claim, in accordance with the procedures set forth in section 4062.2.

Turning to whether there is substantial medical evidence of industrial causation, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, and not merely their conclusions. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*.)

Here, Dr. Nair did not opine as to all of applicant's claimed body parts. Dr. Nair's opinions regarding industrial causation are limited to applicant's orthopedic conditions. Dr. Nair recommends that "[d]iabetic neuropathy contributing to central pain should be ruled out. Patients with diabetes can develop focal and multifocal neuropathies." (Exhibit Z: QME report of Dr. Nair, dated September 30, 2022, p. 27.) However, he offers no opinion as to whether applicant's diabetes or high blood pressure are industrial, essentially deferring to a doctor in a different specialty. Dr. Nair also notes that "Referral to a psychologist/psychiatrist would be helpful." (Exhibit Z: QME report of Dr. Nair, dated September 30, 2022, p. 31.)

A medical report predicated upon an incorrect legal theory and devoid of relevant factual basis, as well as a medical opinion extended beyond the range of the physician's expertise, cannot

rise to a higher level than its own inadequate premises. (*Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 801 [33 Cal.Comp.Cases 358] (distinguished on other grounds).) Based on the foregoing, Dr. Nair's opinions are not substantial medical evidence as to applicant's non-orthopedic conditions, nor does he intend them to be.

With limited exceptions, Dr. Nair does not distinguish between the specific injury and the cumulative trauma and for this reason, his opinions require clarification.

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

A WCJ's decision must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' 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].)

Turning to the Petition, defendant contends that the WCJ erred in ordering a panel in an additional specialty, which is an interim procedural and/or discovery order and thus not subject to reconsideration. Therefore, we dismiss the Petition for Reconsideration and we will apply the removal standard to our review. (See *Gaona, supra.*)

The recent en banc decision issued by the Appeals Board² in *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases 549 (Appeals Bd. en banc), affirmed that filing petitions for reconsideration on interlocutory orders may be considered "frivolous and filed for the purposes of delay in violation of section 5813 and WCAB Rule 10421." (*Id.*, at 555.) "The petition for removal is the method to seek review of interlocutory orders, those orders that do not rise to

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

the level of final determinations. Examples include, but are not limited to, discovery orders, orders granting or denying continuances, requests for a trial judge to recuse himself or herself, and any other action that does not finally adjudicate the substantive rights or liabilities of the aggrieved party.” (*Id.*)

We therefore admonish defendant’s attorney Robyn Reed, the Law Offices of Chernow, Pine and Williams, Grand Dia Auto Repair, and Zenith Insurance Company, to comply with the Labor Code and the WCAB Rules as it relates to when a petition for reconsideration may properly be taken, i.e., from a final order, decision, or award, and that failure to comply may result in dismissal of a petition and subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

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*.) Additionally, 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).)

Based on our review of the record, we are not persuaded that substantial prejudice or irreparable harm will result if removal is not granted. On the contrary, it would appear that the WCJ’s findings are consistent with due process. (*Kuykendall, supra*; *McKernan, supra*.)

Here, the WCJ’s decision solely resolves intermediate procedural or evidentiary issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision and we dismiss the petition to the extent that it seeks reconsideration. We will treat the petition as one for removal, and we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 28, 2025

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

**WILLIAM ORLANDO ELIAS RAMIREZ
CLAYTON PERRY LAW
CHERNOW, PINE & WILLIAMS
GRAND VIA AUTO REPAIR
ZENITH INSURANCE COMPANY**

JB/pm

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

CS