WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AMADO MUNOZ, *Applicant*

vs.

YAMAHA CORPORATION OF AMERICA;
SENTINEL INSURANCE COMPANY, LTD., administered by THE HARTFORD,
Defendants

Adjudication Numbers: ADJ22129016, ADJ22129017
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Joint Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on April 27, 2026.

The WCJ found in case number ADJ22129016, that from November 1, 2008 to June 13, 2025 (alleged), while employed by defendant as a sales manager, applicant claims to have sustained injury arising out of and occurring in the course of employment (AOE/COE) to his hips, knees, back, hands, and neck. The WCJ also found in case number ADJ22129017, that from November 2, 2008 to June 12, 2025 (alleged), while employed by defendant as a sales manager, applicant claims to have sustained injury AOE/COE to "his stress, psyche, nervous (unspecified), other body systems, and digestive systems."[1] The WCJ found applicant filed Applications for Adjudication of Claim (Applications) for both injuries on January 27, 2026 and defendant denied both claims on February 9, 2026. The WCJ further found that on February 18, 2026, applicant's attorney obtained panel #7915258 in the specialty of psychology, using claim number Y4WC76282, which correlates to ADJ22129017 and that on February 19, 2026, applicant's

[1] The parties and the WCJ are reminded that "stress" is not a body part; it is a cause of injury. In addition, "nervous (unspecified)" and "other body systems" are not properly identified as body parts.

attorney also obtained panel #7915731 in the specialty of chiropractic, using claim number Y4WC76288, which correlates to ADJ22129016. The WCJ found both panel requests used the dispute date of January 26, 2026, the day before the Applications were filed. As both Applications and the DWC-1 forms were filed on or about the same time, the WCJ found that *Navarro v. City of Montebello* (2014) 79 Cal.Comp.Cases 418 (en banc) controlled and ordered panel #7915731 in the specialty of chiropractic struck.

Applicant contends, in essence, that the WCJ's F&O should be rescinded as it is contrary to law, unsupported by adequate analysis, and improperly expands the holding of *Navarro*. Applicant further contends that substantial justice favors allowing both panels to proceed.

We have received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the Petition.

We have considered the allegations of the Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion.

FACTS

As the WCJ stated in her Report:

> On January 27, 2026, Applicant, Amado Munoz, filed an Application for Adjudication and DWC-1 alleging a cumulative trauma of November 1, 2008 to June 13, 2025, to the Hips, Knee, Back, Hand and Multiple and ADJ22129016 was assigned. That same day, Applicant also filed an Application for Adjudication and DWC-1 alleging a cumulative trauma of November 2, 2008 to June 12, 2025, to the Stress, Psychiatric, Nervous, Other Body Systems, and Digestive System, and ADJ22129017, was assigned. Defendant denied both claims on February 9, 2026.
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> On February 18, 2026, Applicant's Attorney obtained panel #7915258 in the specialty of Psychology, using claim number Y4WC76282, which correlates to ADJ22129017. The next day, February 19, 2026, Applicant's Attorney obtained panel #7915731 in the specialty of Chiropractic, using claim number Y4WC76288, which correlates to ADJ22129016. Both panel requests used the dispute date of January 26, 2026, the day before the applications were filed.

DISCUSSION

I.

Former Labor Code section 5909[2] 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 cases were transmitted to the Appeals Board on May 6, 2026, and 60 days from the date of transmission is Sunday, July 5, 2026. The next business day that is 60 days from the date of transmission is Monday, July 6, 2026. (See Cal. Code. Regs., tit. 8, § 10600(b).[3] This decision is issued by or on Monday, July 6, 2026, 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

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[2] All further statutory references are to the Labor Code unless otherwise stated.

[3] 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 May 6, 2026, and the cases were transmitted to the Appeals Board on May 6, 2026. Service of the Report and transmission of the cases 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 May 6, 2026.

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, the following: 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 a threshold issue. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. And, as discussed below, since the underlying issue must first be determined of whether there are properly one or two claims of injury, we grant the Petition as one for reconsideration. We note however, that as also discussed below, even under the factual circumstances as alleged here, the WCJ did not

correctly apply *Navarro*, and applicant could have successfully shown that he suffered substantial prejudice and/or irreparable harm and that reconsideration would not be an adequate remedy.

III.

We now turn to the merits.

Workers' Compensation Appeals Board (WCAB) Rule 10396 allows a WCJ to order that two or more cases be consolidated. (Cal. Code Regs., tit. 8, § 10396.) Consolidation is necessary and appropriate when there are common issues of fact and there is a need to avoid inconsistent orders and to efficiently utilize judicial resources. Here, applicant has filed two separate cases against the same employer, alleging cumulative injury from November 1, 2008 to June 13, 2025 to orthopedic body parts and from November 2, 2008 to June 12, 2025 to psyche and the digestive system. Thus, the WCJ properly consolidated the two cases. Nonetheless, as discussed below, if the evidence demonstrates that applicant's alleged injuries should have been pled as a single injury, the WCJ also has the authority to amend the pleadings according to proof. (Cal. Code Regs., tit. 8, § 10517.)

Applicant contends that the WCJ erred by finding *Navarro* controls and striking panel #7915731 in the specialty of chiropractic. Applicant further contends that the WCJ's decision was contrary to law, misapplied and improperly expanded the holding of *Navarro*, and was unsupported by adequate analysis. (Petition, at p. 2.)

As an initial concern, since the application of *Navarro* is necessarily based on circumstances where there is more than one claim of injury, we must first consider whether applicant properly filed two claims of injury.

In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events. (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1990) 219 Cal.App.3d 1265, 1271 [55 Cal.Comp.Cases 107].) Section 3208.1 defines a "cumulative" injury as one "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. . . ." The issue of how many cumulative injuries an employee sustained is a question of fact for the WCAB. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579]; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 233-241

[58 Cal.Comp.Cases 323]; *Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd.* (*Coltharp*) (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720].)

"The general rule is that where an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury." (*Gravlin v. City of Vista* (Sept. 22, 2017, ADJ513626) 2017 Cal.Wrk.Comp. P.D. LEXIS 413, *16.)[4] Moreover, it has long been the law that separate disabilities arising out of a single injury are rated together, even if those disabilities do not become permanent and stationary at the same time. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Morgan v. Workers' Comp. Appeals Bd.* (1978) 85 Cal.App.3d 710 [43 Cal.Comp.Cases 1116]; *Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 1 Cal.App.3d 720 [41 Cal.Comp.Cases 81].)

For example, in *Norton v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 618 [45 Carl.Comp.Cases 1098], a deputy sheriff suffered trauma to his back from July 22, 1968 through November 9, 1977, and trauma to his esophagus and stomach from 1974 to November 1977. The court found a single cumulative injury, stating among other things: "we conclude that the cumulative back injury and cumulative esophagus and stomach injury cannot be said to be truly successive injuries, they must be treated as contemporaneous and therefore rated as multiple factors of disability from one injury." (*Id*. at p. 629.) Similarly, in *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd*. (*Hurley*) (1977) 70 Cal.App.3d 599 [42 Cal.Comp.Cases 481], a welder employed from April 30, 1959 to January 5, 1973 suffered trauma to his eyes due to the heat and flashes of the welding torches, to his ears due to the noises of the shop, and to his lungs due to exposure to dust and fumes he inhaled. The court found a single cumulative injury, stating among other things: "From all of the foregoing we conclude that Hurley suffered repetitive physically traumatic experiences extending throughout his employment, ..., the combined effect of which resulted in bodily injury, and permanent disability. (See Lab. Code, § 3208.1.)." (*Id.* at p. 606.) The court further held that the disabilities had to be rated together because the various

[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, 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, we refer to *Gravlin* because it considered a similar issue.

traumas the employee had suffered were not "separate and independent," but "instead suffered contemporaneously." (*Id.* at p. 605.)

When the holdings of *Austin* and *Coltharp* are harmonized and read in conjunction with the section 3208.1 definition of "cumulative injury" and the anti-merger provisions of sections 3208.2 and 5303, the following principles are revealed:

(1) if, after returning to work from a period of industrially-caused disability and a need for medical treatment, the employee's repetitive work activities again result in injurious trauma - i.e., if the employee's occupational activities after returning to work from a period of temporary disability cause or contribute to a new period of temporary disability, to a new or an increased level of permanent disability, or to a new or increased need for medical treatment - then there are two separate and distinct cumulative injuries that cannot be merged into a single injury (Lab. Code, §§ 3208.1, 3208.2, 5303; *Coltharp*, *supra*, 35 Cal.App.3d at p. 342); and

(2) if, the employee's occupational activities after returning to work from a period of industrially-caused disability are not injurious - i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury - then there is only a single cumulative injury and no impermissible merger occurs. (Lab. Code, §§ 3208.1, 3208.2, 5303; *Austin*, *supra*, 16 Cal.App.4th at p. 235.)

Here, applicant has alleged two cumulative injuries against the same employer while working in the same position during a continuous period of employment from November 1, 2008 to June 13, 2025. Determination of whether applicant sustained a single cumulative injury or multiple injuries requires substantial evidence such as a medical opinion and testimony. Yet, applying the legal principles above, it appears that even though applicant has alleged injury to different body parts, the alleged injuries are contemporaneous and occurred within the same extended period of employment. Consequently, it appears that here there is only a single period of cumulative exposure, or one claimed cumulative injury.

If there is only one injury, *Navarro* does not apply.

It is important to recognize that *Navarro applies to the specific factual circumstances where:* (1) *an applicant has already been evaluated by a QME* and (2) *then files a new claim of injury.* A *Navarro* issue is then presented *because the question is whether applicant should return to the same QME or whether the parties can seek a different QME in the same specialty.*

Here, applicant sought panels in different specialties for different body systems. *Therefore, even if we accepted applicant's allegation that there are properly two claims of injury, Navarro does not apply.*

That said, because the record is not clear as to whether there are properly two claims of injury or whether one should be dismissed, we rescind the F&O. Upon return, the WCJ should first consider whether the two cases should be merged into one case based on one period of cumulative exposure up to June 13, 2026.

IV.

The party first requesting a qualified medical evaluator (QME) panel has the legal right to designate the panel specialty pursuant to section 4062.2(b). (See also Cal. Code Regs., tit. 8, § 30.5 ["Medical Director shall utilize in the QME panel selection process the type of specialist(s) indicated by the requestor"].) In this case, that party was the applicant. Applicant's attorney requested a psychology panel one day prior to requesting a chiropractic panel. If there is actually only one alleged cumulative injury, panel #7915258 in the specialty of psychology, which was obtained first in time, is the appropriate panel and panel #7915731 in the specialty of chiropractic was appropriately stricken.

If a QME cannot opine on a dispute or body parts, there are procedures by which the parties may seek another opinion to resolve the dispute. Administrative Director (AD) Rule 31.7 provides the specific procedure by which an additional panel in a different specialty may be obtained. (Cal. Code Regs., tit. 8, §31.7). AD Rule 31.7 provides, in relevant part:

> (a) Once an Agreed Medical Evaluator, an Agreed Panel QME, or a panel Qualified Medical Evaluator has issued a comprehensive medical-legal report in a case and a new medical dispute arises, the parties, to the extent possible, shall obtain a follow-up evaluation or a supplemental evaluation from the same evaluator.
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> (b) *Upon a showing of good cause that* a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:
>
> ...
>
> (3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected

> and the residential or employment-based zip code from which to randomly select evaluators.
>
> ...

(Cal. Code Regs., tit. 8, § 31.7, emphasis added.)

Here, since applicant claims injury to body parts that are likely not within the specialty of a psychology QME, it appears that additional QME panels will likely be required to fully address the claimed injury. That is, if there is actually only one claim of injury, and the psychologist is unable to opine on whether applicant sustained injury to orthopedic body parts or to the digestive system, additional panels may be required. An additional QME panel in another specialty is warranted if there is good cause as defined in AD Rule 31.7(b), and an applicant need not establish causation to a disputed body part before requesting a QME for that body part. However, without knowing whether applicant properly filed one or two claims of injury, and without any medical evidence or testimony, the record is incomplete for a determination of whether good cause is shown for an additional panel in a different specialty.

Accordingly, we grant applicant's Petition, rescind the F&O, and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the F&O issued by the WCJ on April 27, 2026 is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 27, 2026 F&O is **RESCINDED** and that the matter is **RETURNED** to the WCJ for further proceedings consistent with the opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 6, 2026

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

AMADO MUNOZ
SOLIMON RODGERS
LAW OFFICES LAKEESHA T. JEMERSON

JL/abs

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