WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAISY AMAYA, *Applicant*

vs.

JALSON CO. dba BERSON BAKAR; NORTH RIVER INSURANCE COMPANY; administered by CRUM AND FORSTER, *Defendants*

Adjudication Number: ADJ13002614
San Francisco District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Applicant seeks reconsideration, or in the alternative, removal of the Findings and Order (F&O) issued on October 1, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant on January 11, 2020 as a rental leasing consultant, applicant sustained an injury arising out of and in the course of employment (AOE/COE) to the cervical spine, lumbar spine, bilateral shoulders, bilateral wrists (carpal tunnel syndrome), and psyche. The WCJ further held that panel 3448334 is valid; applicant's December 9, 2024 selection of Hosein Tahami, D.O. as the psyche panel Qualified Medical Evaluator (PQME) from said panel was premature; the parties April 3, 2024 agreement to continue use of Jeffrey Gould, M.D. as the psyche PQME was in effect until its termination on December 6, 2024; and the time frame during which the parties were to commence the striking process for panel number 3448334 was October 1, 2025—the date of service of the F&O.

Applicant contends that the WCJ incorrectly applied Labor Code[1] section 4062.2(f) to support his decision, and that applicant was not premature in selecting Dr. Tahami as the replacement psyche QME in this matter. (Petition for Reconsideration (Petition), pp. 2-3.)

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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

FACTS

Applicant filed an Application for Adjudication claiming that, while employed by defendant on January 11, 2020 as a rental leasing consultant, she sustained an injury AOE/COE to the head, cervical spine, lumbar spine, bilateral shoulders, bilateral arms, other body systems, and psyche.

The parties proceeded with discovery and on March 7, 2022, the WCJ issued an order indicating that, per the April 19, 2021 report of pain medicine PQME, Timothy Lo, M.D., a second panel in the specialty of psychiatry was needed to address applicant's suspected post-traumatic stress disorder. Thereafter, a panel in psychiatry was issued and Dr. Gould was selected as the psyche PQME.

The evidentiary record lacks reporting from Dr. Gould, but it appears that applicant was evaluated on at least one occasion. Thereafter, defendant emailed ExamWorks seeking a reevaluation, and in a March 1, 2024 email to both parties, ExamWorks requested a signed agreement that the reevaluation be conducted via telemedicine. (Exhibits 1, A.)

On March 12, 2024, defendant emailed ExamWorks objecting to the telemedicine examination and noting that if an in-person evaluation was unavailable, a replacement panel would be sought. (*Ibid*.) Examworks responded by stating that the reevaluation would be cancelled since Dr. Gould was no longer conducting in-person evaluations. (*Ibid*.)

On March 13, 2024, defendant sought a replacement psychiatry panel pursuant to California Code of Regulations (CCR) Rule 31.5(a)(6) due to Dr. Gould's inability to conduct in-person evaluations. (Exhibits 2, B.)

Thereafter, in a March 29, 2024 email to ExamWorks, applicant's attorney indicated as follows in his request for an in-person reevaluation:

> Today Dr. Gould participated in a deposition in another case. I asked him whether he would do an in-person evaluation of the Applicant and he indicated that he would do so if asked. **Defense counsel is insisting on an in-person evaluation.** Please

> reach out to Dr. Gould and let him know that so we can set this up at the SF location for QME.
>
> (Exhibits 3, C.)

On April 3, 2024, ExamWorks responded with confirmation of an in-person reevaluation scheduled for June 7, 2024 at 10:00 a.m. with testing to occur one week earlier. ExamWorks requested confirmation from both parties, and applicant's attorney and the defense attorney sent confirmation emails on April 3, 2024, and April 4, 2024, respectively. (Exhibits 5, F.) The exam time was later rescheduled to 11:00 a.m. and formal notice was issued by ExamWorks to both parties. (Exhibits 6, 7, D, G.)

Thereafter, on April 10, 2024, replacement psychiatry panel 3448334 was issued by the Medical Unit. (Exhibits 8, H.)

It is unclear from the existing record whether the June 7th examination with Dr. Gould took place, but in a December 6, 2024 email, ExamWorks notified the parties that Dr. Gould was requesting a telemedicine reevaluation in lieu of an in-person evaluation. (Exhibit 10.) The email further advised that if the parties did not sign the agreement form, a new QME would need to be selected. (*Ibid*.) The email appears to have been sent to applicant's attorney but not the assigned defense attorney. (Exhibit N.)

Based upon the December 6, 2024 email, applicant's attorney issued a letter to defendant dated December 9, 2024 alleging that defendant failed to timely strike from panel 3448334 and as a result, applicant would strike both Julie B. Stahl, M.D. and Raja Dutta, M.D., and select Dr. Tahami as the new psyche QME. (Exhibits 11, K.)

In a letter dated December 12, 2024, defendant objected to applicant's strike and asserted that they were not made aware of the scheduling issue with Dr. Gould until December 10, 2024, and designation of Dr. Tahami as the new psyche QME was therefore invalid. (Exhibit L.)

On December 13, 2024, applicant's attorney emailed Dr. Tahami's office requesting an evaluation. (Exhibit 12.) The defense attorney was copied in the email.

On December 17, 2024, defendant emailed Dr. Tahami and applicant's attorney with an attached formal objection letter dated December 12, 2024 detailing the timeline of events leading up to the current dispute. (Exhibits 13, L, M.)

On December 18, 2024, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the QME panel dispute. The matter was set for, and proceeded to, a hearing on February 10, 2025, wherein the matter was set for trial.

At the July 23, 2025 trial, the sole issue set for determination was "whether the applicant had the right to select Dr. Tahami from QME Panel Number 344334 and set an evaluation with Dr. Tahami." (Minutes of Hearing and Summary of Evidence (MOH/SOE), p. 2.)

On October 1, 2025, the WCJ issued an F&O which held, in relevant part, that while employed as a rental leasing consultant by defendant on January 11, 2020, applicant sustained an injury AOE/COE to the cervical spine, lumbar spine, bilateral shoulders, bilateral wrists (carpal tunnel syndrome), and psyche; replacement panel 3448334 is valid; and applicant was premature in her selection of Dr. Tahami as a replacement QME, since the parties' agreement on April 3, 2024 to continue using Dr. Gould as the psyche PQME, was not terminated until December 6, 2024. The WCJ indicated that the service of the F&O would "serve as the equivalent of the assignment of a panel by the administrative director" thereby triggering the striking timeframes set forth in section 4062.2(c) with respect to panel 3448334. (F&O, p. 3.)

It is from this F&O that applicant seeks reconsideration and/or removal.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 6, 2025, and 60 days from the date of transmission is January 5, 2025. This decision was issued by or on January 5, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on November 6, 2025, and the case was transmitted to the Appeals Board on November 6, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on November 6, 2025.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a 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 [43Cal.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, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (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 p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 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, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether 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 Bd. 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 findings regarding employment, injury AOE/COE, and parts of body injured, which are threshold issues. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Defendant, however, only challenges the WCJ's

findings pertaining to the QME panel issue, which is an interlocutory issue. Thus, we will apply the removal standard to our review of that issue. (See *Gaona, supra*.)

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).)

Here, applicant alleges that she is severely prejudiced since the parties must start the striking process anew. (Petition, p. 3.) Applicant also alleges that Dr. Tahami is the "only QME on the [new] panel performing in-person evaluations" and, as a result, "yet another panel must be obtained." (*Ibid*.)

We disagree. As stated by the WCJ in his Report:

> I am also not persuaded by applicant's contention that she will be prejudiced because my decision will necessarily result in the need for another replacement panel. Applicant based this assertion on contact with the three providers on QME panel number 3448334 indicating that only Dr. Tahami performs in person evaluations. This is based on Applicant's Exhibit 9 which contains notes from contact with the three doctors' offices in April 2024 that only Dr. Tahami was scheduling in-person evaluations. That may still be the case, but I am not persuaded that contact with the QMEs' offices 15 months prior to the trial date is sufficient evidence to establish that Dr. Dutta and Dr. Stahl continue to only do evaluations via telehealth. Additionally, filing a petition for removal does not represent a path to a more expeditious evaluation than striking providers and requesting another replacement panel if needed. It would appear then that the goal in disputing the 10/1/2025 Findings & Order is not an expeditious evaluation of the applicant, but rather that Dr. Tahami serve as the QME in this matter. Therefore, I do not find that applicant has established that a further replacement panel is required, or the existence of the accompanying substantial prejudice the applicant alleges would result.
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> (Report, pp. 9-10.)

Taking into consideration the above, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

III.

Further, it is well-settled that the Appeals Board has broad equitable powers and the doctrine of equitable tolling applies to workers' compensation cases. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd.* (*Kwok*) (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) Analysis of the issue of equitable tolling turns on a factual determination of whether the opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) Only the Appeals Board, however, is empowered to make this factual determination.

In the instant case, the WCJ argues that the section 4062.2(c) process began anew on December 6, 2024, when ExamWorks sent an email requesting written agreement to a telemedicine evaluation and suggesting that the parties obtain a new QME if the form could not be returned. (Report, p. 6; Exhibit 10.) As explained by the WCJ:

> The applicant's selection of Dr. Tahami as the QME on December 9, 2024 was therefore premature since the period to strike a physician from the QME panel, as provided by Labor Code section 4062.2(c), started anew on December 6, 2024[, upon receipt of the ExamWorks email,] and had not yet run by December 9, 2024. Because strike period had not yet run … the applicant did not have the legal right to select a QME from the remaining names on the panel on December 9, 2024. There also was not a right to schedule an appointment with Dr. Tahami on December 12, 2025[.]

Defendant alleges that the assigned defense attorney was not copied in the December 6, 2024 email (Exhibit O.) As such, defendant may not have received notice of initiation of the striking process altogether. Given the above, we agree with the WCJ that equitable tolling should be applied herein.

Further, the fact that "neither party made a strike supports that the parties were effectively agreeing not to proceed with [the] pending QME panel[.]" (Report, p. 8.)

As explained in the Report, the new time frame during which the parties are to commence striking under section 4062.2(c) began on October 1, 2025, the date of service of the subject F&O. (Report, p. 9.)

Accordingly, we deny applicant's Petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order, issued on October 1, 2025, is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 5, 2026

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

DAISY AMAYA
GIMBEL LAW FIRM PC
MULLEN & FILIPPI, LLP

RL/*cs*

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