

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

DESIREA GRANADOS, *Applicant*

vs.

TD SYNnex CORPORATION; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, administered by TRAVELERS, *Defendants*

**Adjudication Number: ADJ20938147
Pomona District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR RECONSIDERATION AND
GRANTING PETITION FOR REMOVAL
AND DECISION AFTER REMOVAL**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on March 2, 2026, wherein the workers' compensation administrative law judge (WCJ) held, in relevant part, that defendant's request for a Qualified Medical Evaluation (QME) panel was not premature, panel 7823574 is valid, and applicant is not entitled to a replacement panel.

Applicant contends that defendant prematurely requested the QME panel by "misrepresenting the date of [their] objection communication as [May 22, 2025] when the proof of service attached to the delay letter shows it was served on [May 23, 2025,]" thus prematurely requesting and obtaining a QME panel on June 9, 2025 rather than waiting until the next day (i.e. after 5:00 p.m. on June 9, 2025) to request the panel. (Petition for Reconsideration (Petition), p. 5.)

We have 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 contents of the Petition, the Answer, and the Report, and we have reviewed the record in this matter. Based on our review of the record, we will dismiss the Petition to the extent that it seeks reconsideration and grant it as one seeking removal. We will also rescind the F&A and substitute it with a Findings and Order (F&O) which finds that panel 7823574 is

invalid and applicant is entitled to the issuance of a replacement QME panel in the specialty of chiropractic.

FACTS

Applicant claims that while employed by defendant as a shipping and receiving clerk during the period from June 12, 2022 through June 12, 2024, she sustained an injury arising out of and in the course of employment (AOE/COE) to the head, neck, back, legs, knee, ankles, feet, stress, psyche, and insomnia.

On May 23, 2025, defendant served upon applicant a notice of delay dated May 22, 2025 informing applicant of a delay in determining liability for workers' compensation benefits. (Exhibit A.)

On June 9, 2025, defendant proceeded to request a QME panel in orthopedic surgery. The request designated May 22, 2025 as the "date of request for comprehensive exam" pursuant to Labor Code section 4060.¹ (Exhibit B, p. 3.) On June 9, 2025, panel 7823574 was issued by the Medical Unit and served upon applicant by defendant. (Exhibit C.)

On the same date, applicant issued a letter to defendant alleging that panel 7823574 was prematurely obtained and thus, invalid. (Exhibit 1.) Thereafter, applicant attempted to request a chiropractic QME panel. The request was denied by the Medical Unit on the basis that a panel with the same claim number, date of injury, and injured worker already issued. (Exhibit 2.)

On August 22, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to a mandatory settlement conference on the QME panel issue.

The matter proceeded to trial on February 2, 2026. At trial, the sole issue set for determination was whether panel 7823574 was premature and if so, whether applicant was entitled to a chiropractic replacement panel. The issues of attorney's fees, sanctions, and costs were deferred. The parties stipulated, in relevant part, to May 23, 2025 as the date of service for the delay notice and the "start date" for purposes of section 4062.2. The parties submitted as joint exhibits, defendant's delay notice, defendant's request for panel, and a proof of service of panel 7823574. Applicant submitted as exhibits, an objection letter and a letter from the Medical Unit denying her panel request.

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

On March 2, 2026, the WCJ issued an F&A which held, in relevant part, that defendant's request for a QME panel was not premature and that panel 7823574 is valid. As a result, the WCJ found that applicant was not entitled to a replacement panel.

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 March 5, 2026, and 60 days from the date of transmission is May 4, 2026. This decision was issued by or on May 4, 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 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 March 5, 2026. 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 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 March 5, 2026.

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.

Here, the WCJ’s decision pertains to an intermediate procedural or evidentiary issue and does not determine any substantive right or liability or a threshold issue. Accordingly, it is not a “final” decision, and the Petition will be dismissed to the extent it seeks reconsideration. We will, however, consider the Petition as one for removal.

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 can show that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a). The petitioner must also demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (*Ibid.*)

In the instant case, we are persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to applicant.

III.

Turning now to the merits of the Petition, section 4060 provides guidance as to the QME panel process in cases wherein compensability is disputed and applicant is represented. It provides in relevant part that:

- (a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.
- (b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.
- (c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

Section 4060(c) avers that if an evaluation with a QME is necessary for determination of compensability, parties are to proceed as per section 4062.2, which provides in pertinent part that:

- (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.
- (b) No earlier than the first working day that is at least 10 days after the date of mailing of a request for a medical evaluation pursuant to Section 4060 or the

first working day that is at least 10 days after the date of mailing of an objection pursuant to Sections 4061 or 4062, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(Lab. Code, § 4062.2(a) - (b).)

Further, when a document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by five calendar days from the date of service if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California. (Cal. Code Regs., tit. 8, § 10605 (a)(1); see, e.g., *Trigueros v. Gonzalez Ag.* (Oct. 28, 2022, ADJ13190781) [2022 Cal.Wrk Comp. P.D. LEXIS 296, *5].)

Here, defendant's notice of delay was served on May 23, 2025 within California on applicant by regular mail. (Exhibit A.) The parties were therefore required to wait until fifteen (15) days after May 23, 2025, or until the after 5:00 p.m. on June 9, 2025 before requesting a panel. In their panel request, however, defendant indicated that the "date of request for comprehensive exam" was May 22, 2025. (Exhibit B, p. 3.) This is contrary to the facts of the case and contrary to the parties' stipulation to a May 23, 2025 "start date per Labor Code 4062.2." (Minutes of Hearing and Summary of Evidence (MOH & SOE), February 2, 2026, p. 2.) We therefore conclude that considering defendant's usage of an incorrect date, defendant's QME panel request was invalid. Accordingly, the issuance of panel 7823574 is similarly invalid.

We also find it important to address the WCJ's finding that, for the purposes of requesting a QME panel "the Workers' Compensation Appeals Board is never closed" and that the concept of the "next business day" as expressed in Rule 10600(b) does not apply to requests for QME panels. (F&A, p. 2.) Pursuant to Cal. Code Regs., tit. 8, § 30(b)(2):

Requests may be made twenty-four hours a day, seven days a week. For determining the timeliness of requests under Labor Code section 4062.2, requests made on Saturday, Sunday or a holiday will be deemed to have been made at 8:00 a.m. on the next business day. Requests made Monday through Friday after 5:00 p.m. and before 12:00 a.m. will be deemed to have been made at 8:00 a.m. on the

next business day, and requests made between 12:00 a.m. and 8:00 a.m. will be deemed to have been made at 8:00 a.m. on the same business day.

Further, Cal. Code Regs., tit. 8, § 10600 states that:

- (a) The time in which any act provided by these rules is to be performed is computed by excluding the first day and including the last.
- (b) 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.

Although it is true parties may make panel requests twenty-four (24) hours a day, seven (7) days a week, the clear language of Cal. Code Regs., tit. 8, § 30(b)(2) indicates that for panel requests “made on [a] Saturday, Sunday, or a holiday[.]” the request “will be deemed to have been made at 8:00 a.m. on the next business day.” Thus, while there are no office “closures” in the literal sense of the word given the electronic nature of QME panel requests, it is clear that said requests will nonetheless be treated as if there were closures.

Accordingly, we dismiss applicant’s Petition to the extent it seeks reconsideration and grant it as one for removal, and as our Decision After Removal, we rescind the March 2, 2026 F&A, and substitute it with a F&O which finds that panel 7823574 is invalid and that applicant is entitled to the issuance of a replacement QME panel in the specialty of chiropractic.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the Findings and Award issued by the WCJ on March 2, 2026, is **DISMISSED**.

IT IS FURTHER ORDERED that applicant’s Petition for Removal of Findings and Award issued by the WCJ on March 2, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers’ Compensation Appeals Board, that the Findings and Award issued by the WCJ on March 2, 2026, is **RESCINDED** and **SUBSTITUTED** with new Findings and Order, as provided below.

FINDINGS OF FACT

1. Defendant’s Notice of Delay dated May 22, 2025 was served by mail on May 23, 2025.

2. Defendant listed the incorrect date of May 22, 2025 as the “date of request for comprehensive exam” in their QME panel request of June 9, 2025.
3. Defendant’s QME panel request of June 9, 2025 is invalid as it was made prematurely.
4. QME Panel 7823574 is similarly invalid as it was prematurely obtained.
5. Applicant’s request to obtain a chiropractic QME panel on June 9, 2025 at 5:01 p.m. was timely.
6. Applicant is entitled to issuance of a chiropractic replacement QME panel.

ORDER

All other issues are deferred.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 30, 2026

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

**DESIREA GRANADOS
LAW OFFICES OF JAMES YANG
TESTAN LAW**

RL/cs

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

CS