

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

ISRAEL MENDOZA, *Applicant*

vs.

**EMERALD TEXTILES, INSOURCE EMPLOYER SOLUTIONS, INC.;
UNITED WISCONSIN INSURANCE COMPANY,
administered by NEXT LEVEL ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ16963666
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order (F&O) issued on January 26, 2026, by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ determined that defendant is not entitled to a replacement panel.

Defendant contends that the WCJ erred by not issuing a replacement panel in the field of orthopedic surgery and by not deeming inadmissible the medical reporting of the panel qualified evaluator (PQME), James Esch, M.D.

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

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, and for the reasons discussed below, we will deny reconsideration.

FACTUAL BACKGROUND

We will briefly review the relevant facts.

Applicant claims to have sustained injury to multiple body parts arising out of and during the course of employment with defendant as a mechanic on October 23, 2022. Defendant accepted

the claim as to the lumbar spine, shoulders, psyche, and head, but disputed the claim as to urinary incontinence, cervical spine, low blood pressure, jaw, vision, and hearing.

In connection with the claim, Dr. Esch was selected as the PQME in the specialty of orthopedics. Dr. Esch issued reports dated July 11, 2023 and February 5, 2024. (App. Exhs. 5; 6.)

On January 12, 2026, the parties proceeded to an expedited hearing on the issue of whether defendant was entitled to a replacement panel. Defendant claimed Dr. Esch had an expired physician and surgeon license and was not permitted to practice medicine during the course of applicant's claim. Defendant proffered evidence included a June 6, 2025 Replacement Panel Request to the DWC Medical Unit (Def. Exh. B), and a denial of the request by the Medical Unit on June 27, 2025. (Joint Exh. 1.)

Applicant objected to defendant's claim, asserting that Dr. Esch was permitted to practice during the relevant time period of the case. In support of his position, applicant submitted printouts of Medical Board of California licensing details for Dr. Esch, dated August 28, 2025 and January 8, 2026, reflecting his license was renewed and current with an expiration date of November 30, 2026. (App. Exhs. 1; 2.)

All exhibits were admitted into evidence without objection. No testimony was taken and the matter was submitted on the record. Defendant's attorney attempted to testify on his own behalf as to the authenticity of evidence, but the WCJ denied the request.

On January 26, 2026, the WCJ issued the F&O that is the subject of the Petition for Reconsideration herein.

On February 2, 2026, defendant sought reconsideration of the F&O.

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

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

(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 February 11, 2026 and 60 days from the date of transmission is Sunday, April 12, 2026. The next business day that is 60 days from the date of transmission is Monday, April 13, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, April 13, 2026, so that we have timely acted on the petition as required by Labor Code 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. Labor Code 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 February 11, 2026, and the case was transmitted to the Appeals Board on February 11, 2026. 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 Labor Code 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 February 11, 2026.

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.

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 decisions include findings stipulated to by the parties regarding threshold issues as to the existence of an employment relationship between applicant and defendant, that applicant sustained injury arising out of and in the course of employment to his lumbar spine, shoulders, psyche, and head on October 23, 2022, and at the time of injury, defendant employer was insured by United Wisconsin Insurance Company. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, petitioner is only challenging the interlocutory order that defendant is not entitled to a replacement panel. Therefore, we will apply the removal standard to our review. (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, based on the WCJ’s analysis of the merits of petitioner’s arguments in the Report, and as discussed below, we are not 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 petitioner.³

Preliminarily, we note that the WCJ accurately observes in the Report that defendant’s Petition attributes a different document as being Exhibit A. (Report, February 9, 2026, p. 3, ¶¶ 4-5.). This is a violation of WCAB Rule 10945(b), which requires that “[e]very petition and answer shall support its evidentiary statements by specific references to the record.” (Cal. Code Regs., tit. 8, § 10945(c).) Although the WCJ provides a possible explanation for the discrepancy in the Report (Report, February 9, 2026, p. 3, ¶¶ 4-5.), defendant’s failure to raise or address the issue in the Petition, that the Exhibit A that was admitted into evidence at the January 12, 2026 expedited hearing and the Exhibit A cited to by defendant in the Petition are different documents, constitutes a waiver of the issue pursuant to Labor Code section 5904. (Lab. Code, § 5904 [“The petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration.”].)

In determining whether we may consider defendant’s attachments to the Petition, we note WCAB Rule 10945(c) provides the following:

- (1) Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration, removal, or disqualification or answers. Documents attached in violation of this rule may be detached from the petition or answer and discarded.
- (2) A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence.

³ Although the WCJ correctly articulates that the standard applicable in this case is the removal standard because defendant is contesting a non-final order (Report, February 9, 2026, p. 1, ¶ 2-p. 2, ¶ 2), we do not dismiss defendant’s Petition on procedural grounds but, instead, consider the merits of defendant’s Petition.

(3) A document shall not be attached to or filed with a petition for removal or disqualification or answer unless the document is not part of the adjudication file and is relevant to a petition for removal or disqualification.

(Cal. Code Regs., tit. 8, § 10945(c)(1)-(3).)

Here, the exhibits attached to the Petition were either copies of documents already received into evidence or were not part of the adjudication file and did not constitute newly discovered evidence because they predated the expedited hearing date. Thus, those exhibits may be disregarded. (Cal. Code Regs., tit. 8, § 10945(c)(1).) Nevertheless, we note this is harmless error because the outcome of this case relies on evidence that Dr. Esch cured any possible defects to his license and his license is currently valid and up to date, as explained by the WCJ in the Report and as discussed below.

Turning to the merits of defendant's argument, in essence, defendant contends a replacement panel should be granted and Dr. Esch's reporting be deemed inadmissible because Dr. Esch was not permitted to practice medicine at some point after being empaneled in this case.⁴

We first highlight that defendant's emphasis on the WCJ's denial of defense attorney's request to authenticate Exhibit A is misguided. The decision here does not turn on "authentication" (or lack thereof) of Dr. Esch's license delinquency so much as it turns on the documentation that the delinquency has been rectified, as evidenced by printouts of Medical Board of California licensing details for Dr. Esch, dated August 28, 2025 and January 8, 2026, reflecting his license is "renewed and current" (App. Exhs. 1, p. 1; 2, p. 1).

We considered whether a QME's reporting can be challenged due to evidence of discipline in *McKinney v. Workers' Comp. Appeals Bd.* (2014) 79 Cal.Comp.Cases 1456, 1461-1462 (written). *McKinney* involved an allegation that a physician's QME license was suspended by the Medical Unit during the case, rendering the physician's reports inadmissible. There, the Appeals Board, citing the Board in dicta, noted that there is no authority in the Labor Code or in the regulations indicating that reports of a QME are inadmissible during a suspension or probation of the QME's license by the Medical Unit, and Labor Code section 139.2(m) specifies that a report

⁴ Defendant attempts to argue that Dr. Esch should be replaced because he was "unavailable" in violation of various subsections of Labor Code section 139.2. (Petition, February 2, 2026, p. 7, ¶ 5-p. 9, ¶ 2.). There is no evidence nor allegation made that Dr. Esch's physician and surgeon license was delinquent at the time he was selected as the PQME or when he prepared his reports in this case or that the parties attempted to set an appointment with him at the time his license was purportedly delinquent. Thus, we do not consider this argument further.

of a QME is inadmissible if the QME has been suspended or placed on probation by the relevant licensing board. (*Id.* at pp. 1461-1462.)

In this case, there is no allegation or evidence that Dr. Esch was subject to formal discipline by the Medical Board of California, the relevant licensing board, or even by the Medical Unit or administrative director. California statutory law reflects clear distinctions between licenses that are denied, suspended, or revoked (See, e.g. B&P Code, §§ 480-495; 2220; 2429), versus an expired license for failure to pay renewal fees. (See, e.g. B&P Code, §§ 2421-2433.) Denial, suspension, or revocation of a license represents a more serious consequence, typically predicated on a conviction for specified offenses or affirmative misconduct by the practitioner (B&P Code, §§ 480-495.), none of which has been alleged against Dr. Esch.

In contrast, a failure to pay California Medical Board renewal fees, if not subject to suspension due to unprofessional conduct, may be remedied by merely submitting an application and paying the applicable fees.⁵ It is unclear how long Dr. Esch's license may have been "delinquent," but there is no evidence nor allegation that Dr. Esch's physician and surgeon license was delinquent at the time he was selected as the PQME or when he prepared his reports in this case. Moreover, the evidence reflects that by at least August 28, 2025, Dr. Esch's physician and surgeon license was renewed and current, and not scheduled to expire until November 30, 2026, well beyond the date of this decision. (App. Exhs. 1, p. 1; 2, p. 1.) While we may accept that Dr. Esch's physician and surgeon license was "delinquent" for a period of time during the pendency of this claim due to unpaid renewal fees, it appears that Dr. Esch's physician and surgeon license has now been brought current, so there is presently no basis to replace him.

As such, defendant fails to demonstrate the requisite significant prejudice or irreparable harm to justify removal. Accordingly, we deny the Petition as one seeking reconsideration.

⁵ "Except as provided in Section 2429, a license which has expired may be renewed at any time within five years after its expiration on filing an application for renewal on a form prescribed by the licensing authority and payment of all accrued renewal fees and any other fees required by Section 2424. If the license is not renewed within 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Except as provided in Section 2424, renewal under this section shall be effective on the date on which the renewal application is filed, on the date on which the renewal fee or accrued renewal fees are paid, or on the date on which the delinquency fee or the delinquency fee and penalty fee, if any, are paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date set forth in Section 2422 or 2423 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed." (B&P Code, § 2427.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 13, 2026

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

**ISRAEL MENDOZA
THE HOUSE OF WORKERS' COMPENSATION
FINE LAW & ASSOCIATES**

DC/cs

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