WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JIM CAMDEN, *Applicant*

vs.

DON'S AUTO BODY; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ2298079 (STK0187438)
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks removal[1] of the Findings of Fact and Orders (F&O) issued on October 14, 2025 by the workers' compensation administrative law judge (WCJ), which found, in pertinent part, that (1) applicant, while employed by defendant on October 15, 2002 as an auto body technician, sustained injury arising out of and in the course of employment (AOE/COE) to his low back, (2) that Frederic Newton, M.D., is the agreed medical evaluator (AME) in this case and defendant is not currently allowed to unilaterally withdraw from the AME agreement based on the current record. The WCJ ordered further development of the record to determine whether Dr. Newton is still willing to act as the AME in this case with the provision that he is entitled to re-review all of the medical records and bill the lesser of $3.00 per page or $455.00 per hour for review of the medical records, $455.00 per hour for conducting legal research on the issue of causation of schwannoma to be able to provide an opinion on apportionment, and $455.00 per hour to write the supplemental report. The WCJ further ordered that if Dr. Newton insists on an hourly rate of $750.00, parties shall file a Declaration of Readiness to Proceed (DOR) on the issue of whether such rate is reasonable.

[1] Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Defendant contends that it should be allowed to withdraw from the AME with Dr. Newton because despite him having authored five medical reports and being asked in six letters to address the issue of the causation of applicant's schwannoma, work restrictions and apportionment, he refused to answer their questions. Petitioner further contends their due process rights were violated by the WCJ due to lack of notice on unripe issues which were addressed by the court, including the rate of payment to Dr. Newton for services not yet performed.

We have not received an answer from applicant. The WCJ filed a Report and Recommendation (Report) on the Petition for Removal recommending that we deny removal.

We have considered the allegations of the amended Petition for Removal and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant the Petition as one seeking reconsideration, affirm the F&O, and amend Order number 1 by the WCJ to state that the parties are to determine whether Dr. Newton is still willing to act as the AME in this case, with the provision that he is entitled to re-review all of the medical records and bill the lesser of $3.00 per page or $455.00 per hour for review of the medical records, $455.00 per hour for conducting **medical research, (**as opposed to legal research), on the issue of causation of schwannoma to be able to provide an opinion on apportionment and $455.00 per hour to write the supplemental report. (Order number 1, emphasis added.)

I.

Preliminarily, we note that former Labor Code[2] 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] All further references are to the Labor Code unless otherwise noted.

(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 November 6, 2025 and 60 days from the date of transmission is January 5, 2026. This decision was issued by or on January 5, 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 be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report 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 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 November 6, 2025.

II.

BACKGROUND

As stated by the WCJ in his Opinion, this case involves an admitted industrial injury which occurred on October 5, 2002, wherein applicant, while employed by defendant, injured his low back. Discovery commenced and it appears that a DOR to a mandatory settlement conference

(MSC), was filed by defendant on August 29, 2011 on the issue of permanent disability. Per the DOR, applicant had been evaluated for his claimed injury by AME Gilbert Lang, M.D.[3]

At the MSC of September 21, 2011, the parties agreed to utilize Frederic Newton, M.D., as an AME in the field of neurology. (MOH, 9/21/11, at p. 2.).

Applicant was evaluated by Dr. Newton, who evaluated the applicant and thereafter issued several medical reports.

On September 7, 2023, Dr. Newton was deposed. (Jt. Exhibit 6.) Regarding applicant's S1 nerve root lesion, Dr. Newton testified that the June 8, 2023 MRI of the sacrum and coccyx did not show the S1 nerve root. (*Id*. at p. 7:22-24.) A lumbar spine MRI was needed to hone in on the S1 nerve root lesion. (*Id*. at p: 8:2-3.) After he reviewed the lumbar spine MRI and evaluated applicant in person, Dr. Newton hoped he could issue a report addressing apportionment. (*Id*. at p. 11:1-10.)

On September 14, 2023, in anticipation of an upcoming reevaluation scheduled for September 27, 2023, defendant served Dr. Newton with written correspondence, which stated: "Please provide a diagnosis for the spinal mass and explain the possible causes of the mass. Please indicate with reasonable medical probability what you believe to be the cause of the mass, and provide an explanation of the cause along with scientific literature to support the causation you find." (Jt. Exhibit 11, at p. 1.)

On September 27, 2023, Dr. Newton reevaluated applicant but the lumbar spine MRI was still not available. (Jt. Exhibit 3, at p. 29.) Dr. Newton specifically requested a lumbar spine MRI with comparison to the March 19, 2020 and June 8, 2023 studies as necessary for a clear and precise understanding of the underlying pathology. (*Id*. at pp. 29-30.)

On March 5, 2024, applicant underwent the lumbar spine MRI with contrast. (Jt. Exhibit 2, at p. 5.) After reviewing that MRI, Dr. Newton indicated a reevaluation would be useful. (*Id*. at p. 7.)

On August 13, 2024, defendant requested Dr. Newton answer several questions at the upcoming reevaluation including the cause of the S1 mass "along with scientific literature to support the causation;" subjective and objective factors of disability as well as work preclusions pursuant to the 1997 Permanent Disability Rating Schedule (PDRS); work restrictions for each

[3] The earliest documentation date entered into the electronic file for this matter is the DOR stated above, as such events occurred prior to the implementation of the Electronic Adjudication Management System (EAMS).

body part, whether that body part is felt to be industrially injured or not including lumbar spine, neck, headaches, tremors; apportionment for all body parts; the cause of each finding on the newest MRI and whether that finding is causing disability. (Jt. Exhibit 9, at p. 2.)

On August 28, 2024, Dr. Newton reevaluated applicant in person. (Jt. Exhibit 1.) Dr. Newton noted in his report that there is now a causation determination request for cervical spine, headache and tremor; ongoing applicant permanent and total disability pursuant to the 1997 PDRS and his limitation is "no work;" and apportionment is deferred. (*Id*. at p. 8.) Dr. Newton requested authorization for medical literature review and review of the entire medical record as follows:

> This is an exceptionally complicated case in many respects. The patient has an unusual lesion affecting his left S1 root which I previously thought was most likely related to the surgery, but possibly not. Also, there are questions with regard to the cervical spine, headaches, and tremors.
>
> The referral correspondence asked me to explain the cause of the mass lesion affecting the S1 root *"along with scientific literature to support the causation you find."* In order to comply with that request, I would need to undertake literature review for which there is no ML coding available. Please, therefore, provide authorization for additional professional effort, including literature review and review of medical records. This would be at the rate of $750 per hour. Upon receipt of authorization, I will proceed to conduct the necessary research and provide a supplemental report.
>
> In view of the prolonged and unusual nature of this case, I think is not one that can be approached in a piecemeal fashion. Rather, I think it important that I have the opportunity to review the entirety of the medical records at one sitting, so that I have a cohesive picture of the clinical course. That would allow me to provide an analysis that would constitute substantial medical evidence.

(*Id*. at p. 9.)

On October 2, 2024, by correspondence, defendant indicated it would not agree to any billing outside of the medical-legal fee schedule and set parameters for additional billing. (Jt. Exhibit 7, at p. 2.) On April 24, 2025, defendant re-sent Dr. Newton their October 2, 2024 request and indicated that absent a response from him within 30 days, it would request he be removed as AME in this matter. (*Id*. at p. 1.) It does not appear that Dr. Newton responded to the October 2, 2024 or April 24, 2025 requests.

In his Report, the WCJ offered the following observations on the issue of stalled discovery with Dr. Newton:

> Petitioner wants to unilaterally withdraw from the AME agreement to use Dr. Newton and be allowed to obtain their own Defense QME evaluation with a new evaluator under medical legal evaluation rules for pre 1/1/2005 dates of injury. Petitioner is objecting to paying Dr. Newton to rereview medical records he has already reviewed as part of prior evaluations and supplemental reports, and when Dr. Newton has not issued a report after being told he will not be paid for doing work, using that as the basis to request to be relieved from their AME agreement. If Petitioner is allowed to withdraw from their AME agreement at this time, they will have to pay the new Defense QME to review all of the medical records in the case that they are refusing to agree to pay Dr. Newton. Furthermore, if they continue to refuse to pay Dr. Newton to re-review any medical records, Applicant will likely be forced to obtain their own QME evaluation, resulting in a[n] Applicant's QME reviewing all of the medical records. In other words, Petitioner is objecting to paying for Dr. Newton to re-review medical records, and their request will result in them paying 2 medical legal evaluators to review all of the medical records.

(Report, at p. 2.)

The WCJ thus confirmed his rationale as stated in his F&O that defendant is not allowed to withdraw from the AME and ordered the parties to follow-up with Dr. Newton about some alternative billing rates. However, if Dr. Newton is not amenable to alternative billing rates, the parties are to file a DOR on the issue of the reasonableness of his $750.00 per hour demand.

It is from this F&O that defendant seeks removal.

III.

Preliminarily, we address the nature of the petition filed by defendant, which was a petition for removal of the WCJ's F&O. 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" *(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]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Conversely, interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id*. at p. 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, or similar issues and are subject to the removal standard. 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).)

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 on the threshold issues of employment and injury AOE/COE to low back. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Although the decision contains findings that are final, the petition is only challenging an interlocutory finding/order in the decision relating to further record development by the AME. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.

Defendant contends it will suffer irreparable harm and reconsideration will not be an adequate remedy on the issue of AME's continued service as the medical evaluator in this matter. Specifically, defendant asserts that for over five years Dr. Newton has refused to answer their questions about causation of schwannoma, work restrictions and apportionment. Defendant further

asserts that the WCJ addressed unripe issues which were not the subject of the trial then ordered them to pay Dr. Newton $455.00 per hour or $3.00 per page to re-review records and $455.00 per hour for legal research and report writing. Finally, defendant asserts that parties were erroneously burdened to rebut the medical-legal fee schedule on behalf of Dr. Newton should he continue to insist on the hourly rate of $750.00.

In response to defendant's August 13, 2024 questions, Dr. Newton indicated that applicant has permanent and total disability pursuant to the 1997 PDRS and his work limitation is "*no work*." (Jt. Exhibit 1, at p. 8.) Ongoing, there are causation and other issues regarding the S1 mass likely a schwannoma, the cervical spine, headache and tremor.[4] (*Id*.) Dr. Newton deferred apportionment including each finding, and degenerative changes, on the newest lumbar spine MRI. (*Id*.) Hence, Dr. Newton is responding to defendant's repeat and new subject matter questions. Next, the only issue decided at trial, outside of the Admitted Facts, was that defendant was not entitled to withdraw from the AME. Lastly, defendant seems to interpret the order to inquire of Dr. Newton as to whether he will accept a specific rate listed by the WCJ, $455.00 per hour, or whether he is insists on a higher hourly rate, $750.00, to be an order to pay Dr. Newton. There is no order to pay Dr. Newton any amount. Rather, there is an order to inquire and develop the record on this ongoing issue. If there is no rate agreement with Dr. Newton, either party can file a DOR on the issue of rate reasonableness.

Thus, defendant has not been ordered to pay Dr. Newton any amount of money at this time and 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. Once clarification is received from Dr. Newton, the parties can proceed to trial and they will have an opportunity to create a record, raise all relevant issues, and submit evidence. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed. Hence, to the extent that defendant challenges the interlocutory issue of following-up with Dr. Newton to obtain more information, we find no significant prejudice or irreparable harm and will not disturb the WCJ's decision in that regard.

[4] Dr. Newton indicates that the new body parts and/or conditions at issue, cervical spine, headache and tremor are per the referral correspondence from defendant. (Jt. Exhibit 1, at p. 8.)

IV.

Finally, a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. I.A.C.* (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. I.A.C.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Here, defendant specifically requested Dr. Newton cite to scientific literature supporting his causation determinations on the S1 mass. Dr. Newton states the S1 mass is "unusual" and requested authorization to bill for the medical research about it. The parties presumably chose Dr. Newton to serve as AME because of his expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Dr. Newton's determination that the S1 mass is out of the ordinary does not seem to be in dispute. Furthermore, Dr. Newton has been requested to conduct analyses on the following body parts/conditions: cervical spine, headache and tremor.

Accordingly, we will affirm the F&O of the WCJ, and grant the Petition as one seeking reconsideration solely to amend Order number 1 to state that the parties are ordered to determine Dr. Newton is still willing to act as the AME in this case with the provision that he is entitled to re-review all of the medical records and bill the lesser of $3.00 per page or $455.00 per hour for review of the medical records, $455.00 per hour for conducting **medical research,** versus legal research, on the issue of causation of schwannoma to be able to provide an opinion on apportionment, and $455.00 per hour to write the supplemental report.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders of October 14, 2025, is **AFFIRMED** except that it is **AMENDED** as follows:

***

ORDER

1. The parties are hereby ordered to develop the record to determine whether Dr. Newton is still willing to act as the AME in this case with the provision that he is entitled to re-review all of the medical records and bill the lesser of $3 per page or $455.00 per hour for review of the medical records, $455.00 per hour for conducting medical research on the issue of causation of schwannoma to be able to provide an opinion on apportionment, and $455.00 per hour to write the supplemental report.

***

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

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.

JIM CAMDEN
KELLY, DUARTE, URSTOEGER & RUBLE
STATE COMPENSATION INSURANCE FUND

SL/abs

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