

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

JUAN CARLOS GONZALEZ AGUILAR, *Applicant*

vs.

**MARVIN DAVIS CONSTRUCTION; OMAHA NATIONAL CASUALTY COMPANY,
*Defendants***

**Adjudication Number: ADJ21809965
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks removal or in the alternative reconsideration of the Findings and Award (F&A) issued on April 13, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that the Qualified Medical Evaluator (QME) panel request and panel list number 7893809 dated December 17, 2025 requested by defendant was not defective and was the valid QME panel; that applicant is required to be evaluated by a doctor selected from that list pursuant to Labor Code section 4062.2¹; that the QME panel request and list requested by applicant's counsel dated December 23, 2025, panel number 7895678, is defective and is not valid; and that applicant is not entitled to be evaluated by doctors selected from that list.

Applicant contends that defendant's panel request was defective as it was requested prematurely pursuant to section 4062.2 because Code of Civil Procedure section 1013 adds 10 days to the time to act where an out of state party is involved. Applicant contends that the WCJ erred by calculating the time based only on service, and only adding 5 days for service based on service on in state parties only, and not taking into account that the sending party was out of state.

Defendant did not file a response. The WCJ issued a Report and Recommendation (Report) recommending denial of the petition.

¹ Unless otherwise stated, all further statutory reference is to the Labor Code.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, the reasons discussed in WCJ's Report, and for the reasons discussed below, we will treat the Petition as one for reconsideration and deny the Petition.

FACTS

Applicant claimed to have sustained an injury arising out of and in the course of employment on September 2, 2025 to his back, neck, bilateral knees, and lower extremity while employed by defendant as a construction laborer. Applicant filed an Application for Adjudication of Claim on November 17, 2025.

Applicant, his attorney, and defendant's attorneys reside or have business addresses in California. Defendant insurance carrier Omaha National Casualty Company has a business address in Nebraska.

On December 1, 2025, defendant's insurance carrier issued a "Notice Regarding Denial of Workers' Compensation Benefits" to applicant with a copy to his attorney. (Joint Exhibit 102, at p. 8.)

On December 8, 2025, defendant became represented by counsel based in California.

On December 16, 2025, defendant's attorneys requested a QME panel through the online portal in the specialty of Orthopedic Surgery based on the denial letter. Panel number 7893809 issued on December 17, 2025, and defendant's attorneys faxed and mailed the panel to applicant's counsel on December 17, 2025. (*Id.*) Form 106 was attached and noted a compensability dispute pursuant to section 4060 and that the opposing party's preferred QME specialty was unknown. The denial notice was attached.

On December 22, 2025, applicant's attorneys requested a panel in the specialty of Chiropractic. The panel issued on December 23, 2025. (Joint Exhibit 101.) The panel was requested using the same claim number with the addition of AA at the beginning. The panel was served on December 23, 2025.

On December 24, 2025, applicant's attorneys sent a letter to defendant's attorneys objecting to defendant's panel on the grounds that the panel was requested prematurely because the panel was requested prior to 20 days from the objection letter dated October 1, 2025. The letter noted that an objection letter was served on Omaha National Underwriters Omaha. (Joint Exhibit 103.)

On January 8, 2026, defendant's attorneys objected to applicant's panel request by way of a letter, indicating that defendant's panel was properly requested first as the denial letter, which they used to request the panel, was served on applicant and applicant's counsel in California. Defendant contends that the time for service is extended only by 5 days as a result pursuant to WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605.)

On February 2, 2026, the parties proceeded to an expedited trial on the issues of validity of defendant's panel request and whether applicant has a right to obtain their own panel.

On April 13, 2026, the WCJ issued a decision finding that only defendant's panel was valid as the denial letter was served on an in state party, thereby triggering a five day extension pursuant to WCAB Rule 10605.

DISCUSSION

I.

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 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 June 2, 2026 and 60 days from the date of transmission is Saturday, August 1, 2026. The next business day that is 60 days from the date of transmission is Monday, August 3, 2026. (See Cal. Code Regs., tit. 8,

§ 10600(b).)² This decision issued by or on Monday, August 3, 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 workers' compensation administrative law judge, the Report was served on June 2, 2026 and the case was transmitted to the Appeals Board on June 2, 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 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 27, 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

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.

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 of employment. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. 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 upon the WCJ's analysis of the merits of the petitioner's arguments, 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.

Therefore, we will deny the Petition as one seeking reconsideration.

III.

Section 4060 outlines the QME panel process in cases wherein compensability is disputed and applicant is represented, and provides in relevant part that:

(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.

(Lab. Code, § 4060(c).)

Section 4062.2 provides in pertinent part that:

(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(b).)

Here, the qualifying event was service of the denial letter dated December 1, 2025. (Joint Exhibit 102, at p. 8.) There was no other evidence in the record that could be construed as an objection despite the notation in applicant's December 23, 2025 letter served on the out of state carrier.

Here, applicant argues that because the December 1, 2025 denial letter was sent from an out of state address, an extra five days was added to applicant's time to request a panel. Applicant cites to the analysis of triggering events in *Alvarado v. Workers' Comp. Appeals Bd.* (2007) 72 Cal.Comp.Cases 1142 (writ den.). *Alvarado* considered the triggering event to be the date when the panel issued, and not the date when the panel was served. However, the discussion in *Alvarado* is not especially relevant here because applicant's argument is that the date to respond to the letter should be calculated based on the location of an out of state party who mailed the document and not the location of the receiving parties. Applicant is not disputing that service of the denial letter was the triggering event, but is contending that the sender's location is relevant to the calculation of time for response.

Section 4062.2(b) specifically states that the *mailing* of a request or objection begins the 10 day period. That is, when the document is mailed, all of the receiving parties' time to act commences. Thus, the extension in either Code of Civil Procedure 1013 or WCAB Rule 10605 applies to the location of all of the receiving parties, not the serving parties.

WCAB Rule 10605(a) extends the time to exercise or perform "any right or duty to act or respond" by:

- (1) 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...,” and

- (2) Ten 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 outside of California but within the United States...

Under subdivision (b), it states that: “For purposes of this rule, ‘[the] place of address and the place of mailing’ means the street address or Post Office Box of the party, attorney or other agent of record **being served**, as reflected in the Official Address Record at the time of service...” (Cal. Code Regs., tit. 8, § 10605, emphasis added.)

Applicant argues ten days should be added regardless of whether the out of state party is serving or being served, and cites to Code of Civil Procedure section 1013 which states:

Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, **if the place of address and the place of mailing is within the State of California**, 10 calendar days **if either the place of mailing or the place of address is outside the State of California** but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States...

(Code Civ. Proc., § 1013, emphasis added.)

Unlike Code of Civil Procedure section 1013, WCAB Rule 10605 states that the calculation of any time extending the time for a party to exercise or perform “any right or duty to act or respond” depends entirely on the place of mailing **of those being served** and is not dependent on the place of the mailing itself.

At the request of the Appeals Board, in *Trigueros v. Workers’ Comp. Appeals Board* (2022) 87 Cal.Comp.Cases 253 (unpub.), the Court of Appeal annulled the Appeals Board’s decision and remanded the case to the Appeals Board for a new decision.³ Thereafter, in *Trigueros v. Gonzalez Ag.* (Oct. 28, 2022, ADJ13190781) [2022 Cal.Wrk Comp. P.D. LEXIS 296]), the Appeals Board panel stated that pursuant to the en banc decision in “*Messele v. Pitco Foods, Inc.* (2011) 76 Cal.Comp.Cases 956 (Appeals Board en banc), and as established under section 5316, the WCAB’s own rules govern service of process and any applicable extensions of time to act where they differ from the more generally applicable provisions under the Code of Civil Procedure §

³ The appellate case is unpublished and therefore is not citable.

1013.” (*Trigueros, supra*, at *4.)⁴ Thus, *Trigueros* concluded that Code of Civil Procedure section 1013 *does not* apply, but that WCAB Rule 10605 controls for extending time for service in workers’ compensation cases.

Here the triggering event was service of the denial letter dated December 1, 2025, which was only served on applicant and his attorney, both at California addresses. Therefore, the extension of time pursuant to WCAB Rule 10605 for any party to have requested the assignment of a QME panel based on the mailing of the denial letter was 5 days, and the first date that the QME panel could issue was 15 days from December 1, 2025 or December 16, 2025.⁵ This time period is equally extended to both parties. To the extent that applicant alleges that the electronic system would not have allowed them to request a panel on December 16, we cannot address that issue as there is no evidence that applicant attempted to do so and no evidence that a response would have issued that the request was premature. Therefore, we agree with the WCJ’s decision that defendant’s panel is valid.

Accordingly, we deny the Petition as one for Reconsideration.

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, 242, 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 these panel decisions because they considered a similar issue.

⁵ Requests may be made twenty-four hours a day, seven days a week. For determining the timeliness of requests under 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. (Cal. Code Regs., tit. 8, § 30(b)(2).)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 3, 2026

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

**JUAN CARLOS GONZALEZ AGUILAR
LAW OFFICE OF CHRISTINA LOPEZ
ALBERT MACKENZIE**

TF/md

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