

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

JUAN RAMON MUNOZ BARAJAS, *Applicant*

vs.

**AMPAM PARKS MECHANICAL, INC.;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Numbers: ADJ19978293 (MF); ADJ19978355
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Insurance Company of the West (defendant), seeks reconsideration of the March 10, 2026, Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found in relevant part that the reporting of PQME Christopher A. Rapoff, D.C., lacks substantial medical evidence and cannot adequately develop the record and submission is vacated for development of the record. The WCJ then ordered that parties agree to utilization of an agreed medical evaluator (AME) in orthopedics by the next court date, or the court will appoint a regular physician pursuant to Labor Code¹ section 5701.

Defendant contends that it is not necessary to replace Dr. Rapoff as his reporting is substantial medical evidence. Defendant further contends that if Dr. Rapoff's reporting is not substantial medical evidence, the parties should be ordered to return to Dr. Rapoff for further development of the record.

We have not received an answer from applicant. The WCJ prepared 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 contents of

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

the Report. Based on our review of the record, and based on the WCJ's analysis of the merits of defendant's Petition and for the reasons provided below, we will deny the Petition as one seeking reconsideration.

DISCUSSION

I.

Preliminarily, we note that 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 April 15, 2026 and 60 days from the date of transmission is Sunday, June 14, 2026, a weekend. The next business day that is 60 days from the date of transmission is June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on June 15, 2026, so that we have timely acted on the petition as required by section 5909(a).

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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 April 15, 2026, and the case was transmitted to the Appeals Board April 15, 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 April 15, 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 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

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.

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 orders issued by the WCJ in ADJ19978293 and ADJ19978355 included threshold findings on the issues of employment and the liable party. ADJ19978293 included a threshold finding on the issue of 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, defendant is only challenging the interlocutory findings relating to the substantiality of the reporting of PQME, Dr. Rapoff, and further development of the record. 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, we conclude that substantial prejudice or irreparable harm will not 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 based on the WCJ's discretion to order that the parties discuss an AME, or that otherwise he will appoint a section 5701 regular physician.

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

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration/Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 15, 2026

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

**JUAN RAMOS MUNOZ BARAJAS
MVP TRIAL LAWYERS
DAVIDSON, CZULEGER & BLALOCK**

SL/abs

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