

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

**NATRAVIS CLAYBROOKS, *Applicant***

**vs.**

**SAN FRANCISCO 49ers,  
insured by TRAVELERS INDEMNITY COMPANY, *Defendants***

**Adjudication Number: ADJ16089982  
Santa Ana District Office**

**OPINION AND ORDERS  
DISMISSING PETITION FOR RECONSIDERATION AND  
DENYING PETITION FOR REMOVAL**

Defendant seeks both reconsideration of, and removal in response to, the November 21, 2025 Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant's medical reports obtained pursuant to former Labor Code<sup>1</sup> section 4060 were admissible in trial proceedings and could be submitted to the Qualified Medical Evaluator (QME) obtained by parties pursuant to current sections 4060 and 4062.2.

Defendant contends that the medical reports obtained by applicant are inadmissible under both statutory and decisional authority, and that the WCJ's decision abrogates defendant's due process rights.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that both defendant's Petition for Reconsideration and Petition for Removal be denied.

We have considered the Petition for Reconsideration, the Petition for Removal, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition for Reconsideration and deny the Petition for Removal.

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

## FACTS

Applicant claimed injury to his orthopedic, neurological, internal and psychological systems, as well injury to the “ENT/TMJ” body parts/system, while employed as a professional athlete by defendants Green Bay Packers, Tampa Bay Buccaneers, Cleveland Browns, San Francisco 49ers, Atlanta Falcons, Dallas Cowboys, Arizona Cardinals, Montreal Alouettes, and Calgary Stampeders, from May 18, 2001, to January 18, 2012. Defendant denies all liability for applicant’s alleged injuries.

Applicant’s claim was initially limited to the period December 25, 2002, to December 24, 2003, while playing for the San Francisco 49ers. (Application for Adjudication, dated April 25, 2022.) Based on the pleaded injury dates, applicant obtained medical reporting from Michael Einbund, M.D., on August 1, 2022, Koruon Daldalyan, M.D., on August 2, 2022, Michael Wells, M.D., on August 3, 2022, and Rosabel Young, M.D., on December 8, 2022. In each instance, defendant objected to the admissibility of the reports, asserting that the reports were not obtained in compliance with current sections 4060 and 4062.2. (Exhibits A-G, various dates.)

Following defendant’s objections, applicant amended his claimed dates of injurious exposure to extend from May 18, 2001, to January 18, 2012, along with his corresponding employers during this period. (Minutes of Hearing, dated August 28, 2025, at p. 2:5.) Although not reflected in the record herein, the pleadings of both defendant and applicant agree that in approximately 2024, the parties obtained QMEs through the current section 4060 and 4062.2 medical-legal process. (See Petition for Reconsideration at p. 2:8; Petition for Removal, at p. 2:8; Answer, at p. 3:17.)

On August 28, 2025, the parties proceeded to trial and stipulated that the issues for trial were limited to “discovery issues only.” (Minutes, at p. 2:4.) The parties placed in issue whether “Applicant’s AQME reports may be provided to the PQMEs,” and “[w]hether Dr. Einbund can be retroactively designated a [Primary Treating Physician].” (*Id.* at p. 2:16.) Neither party offered witness testimony, and the WCJ ordered the matter submitted on the documentary record.

On November 21, 2025, the WCJ issued her F&O, determining in relevant part that applicant’s self-procured reports were admissible in proceedings before the Workers’ Compensation Appeals Board (WCAB), and that applicant could submit the reports to the QMEs obtained by the parties under current sections 4060 and 4062.2 for review. (Findings of Fact Nos. 1 & 2.) The WCJ’s Opinion on Decision noted the WCAB panel decision in *Tanksley v. City of*

*Santa Ana* (January 25, 2010, ADJ2005173) [2010 Cal. Wrk. Comp. P.D. LEXIS 74], wherein the panel concluded that the parties to a pre-2005 cumulative injury claim were not required to obtain a legal determination of the section 5412 date of injury in order to identify the applicable medical-legal procedure necessary to obtain a QME.

Defendant has filed concurrent petitions seeking both reconsideration and removal. Defendant contends that as confirmed by recent appellate authority, the section 5412 date of injury for cumulative injury claims controls the applicable medical-legal process. (Petition for Reconsideration, at p. 2:23.) Because applicant's date of injury invokes the medical-legal evaluation process as set forth under current sections 4060 and 4062.2, applicant's reporting obtained under *former* section 4060 is inadmissible. (Petition for Reconsideration, at p. 3:18; Petition for Removal, at p. 3:15.) Defendant further asserts that section 4061, subd. (i) precludes the admissibility of applicant's reports obtained under former section 4060, and that the date of injury if determined, or the last date of the claimed injury period if the date of injury has not yet been determined, controls the applicable medical-legal process. (*Ibid.*)

Applicant's Answer explains the ostensible "AQME" reports (i.e., Applicant's Qualified Medical Evaluator reports obtained under former section 4060) were obtained when the claimed injury only extended through December 24, 2003. Because applicant's claimed injury occurred prior to the amendment of section 4060 as part of SB899 in 2005, the medical-legal process in effect in 2005 applied. However, following applicant's claim amendment to extend the period of injurious exposure through 2011, applicant engaged the panel QME selection process under current sections 4060 and 4062.2. Nonetheless, applicant avers the reports obtained under former section 4060 are admissible under section 4064(d) as they were not obtained solely to rebut a QME report. (Answer, at p. 5:3.)

## 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 December 19, 2025, and 60 days from the date of transmission is February 17, 2026. This decision is issued by or on February 17, 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 December 19, 2025, and the case was transmitted to the Appeals Board on December 19, 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 December 19, 2025.

## II.

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].) 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.

Here, the parties have stipulated that trial was held “on discovery issues only.” (Minutes, at p. 2:14.) Moreover, the F&O addresses interim procedural issues involving the admissibility of medical reporting obtained by applicant and whether such reporting may be reviewed by the QMEs obtained pursuant to current sections 4060 and 4062.2. Because the F&O addresses only interlocutory issues, we will dismiss defendant’s Petition for Reconsideration as challenging a non-final order. (*Maranian, supra*, 81 Cal.App.4th 1068.)

In addition, and based on the parties’ trial stipulation acknowledging that the issues being submitted were limited to “discovery issues only,” we find it necessary to remind the parties that seeking reconsideration of non-final orders is improper and may result in the imposition of monetary or other sanctions. (*Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases 462, 475 (Appeals Board en banc).)

### III.

Turning to defendant's concurrently filed petition seeking removal, we observe in the first instance that 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 substantial 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).)

Defendant contends that applicant improperly utilized the medical-legal process that was available to parties prior to legislative reforms in 2005, self-procuring AQME reporting outside the current medical-legal dispute resolution process. Because the reports were improperly obtained, defendant contends applicant's reporting is wholly inadmissible in these proceedings and may not be reviewed by the properly selected QMEs.

Prior to the legislative amendments of Senate Bill 899 (SB899) in 2005, former section 4060 provided:

If a medical evaluation is required to determine compensability at any time after the period specified in subdivision (b), and the employee is represented by an attorney, each party may select a qualified medical evaluator to conduct a comprehensive medical-legal evaluation. Neither party may obtain more than one comprehensive medical-legal report, provided, however, that any party may obtain additional reports at their own expense. The parties may, at any time, agree on one medical evaluator to evaluate the issues in dispute.

(Lab. Code, § 4060(c) (2003).)

Thus, prior to 2005, each party to a medical-legal dispute involving a represented applicant could obtain their own QME. Here, applicant originally alleged a cumulative injury for the period December 25, 2002 to December 24, 2003. Accordingly, applicant obtained his own AQME evaluations with Drs. Einbund, Daldalyan, Wells, and Young in 2022. (Exhibits 1-7, various dates.)

In 2005, however, the legislature amended section 4060 and implemented a new medical-legal process for resolving compensability disputes in workers' compensation claims. Section

4060 currently provides that “[i]f 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 that for injuries occurring on or after January 1, 2005 in represented cases, “the evaluation shall be obtained only as provided in this section,” and goes on to prescribe the current “strike” process by which parties select a single QME from a panel of three QMEs. (Lab. Code, § 4062.2.)

Following receipt of the reports generated by applicant’s self-procured QME evaluations obtained pursuant to former section 4060, defendant objected to the reporting as impermissibly obtained and inadmissible before the WCAB. (Exhibits A-G, various dates.) Thereafter, applicant amended his claimed period of injury from May 18, 2001, to January 18, 2012. (Minutes of Hearing, dated August 28, 2025, at p. 2:5.) The parties appear to have subsequently obtained QMEs pursuant to the current provisions of section 4060 and 4062.2.

The parties proceeded to trial on the question of whether the reports obtained by applicant ostensibly under the auspices of former section 4060 may be submitted to the current QMEs obtained by the parties pursuant to current sections 4060 and 4062.2. (Minutes, at p. 2:16.)

The WCJ determined that applicant’s AQME reports, i.e., reports obtained pursuant to former section 4060, are admissible in proceedings before the WCAB and may be submitted for review by the QMEs obtained by parties pursuant to current sections 4060 and 4062.2. (Findings of Fact Nos. 1 & 2.)

Defendant contends that “all post-2005 dates of injury must follow [section] 4062.2 requirements,” and that applicant’s reports obtained pursuant to former section 4060 are inadmissible. (Petition for Removal, at p. 2:17.) Defendant contends that applicant “abused the process by knowingly alleging a limited CT period to avoid statutory requirements for obtaining medical legal evidence and to use his chosen AQME reports.” (*Id.* at p. 3:7.) Defendant asserts that pursuant to our significant panel decision<sup>2</sup> in *Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 [2006 Cal. Wrk. Comp. LEXIS 313 (writ den.) (*Ward*), disputes regarding

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<sup>2</sup> A significant panel decision is a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers’ compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers’ compensation community. (Cal. Code Regs., tit. 8, § 10305(u).)

compensability with respect to claimed cumulative injury on or after January 1, 2005, are subject to the medical-legal procedure set forth in section 4062.2 and reports obtained pursuant to section 4064(d) are inadmissible. (*Id.* at p. 1314; Petition for Removal, at p. 3:27.)

Section 4061, subd. (i), provides:

No issue relating to a dispute over the existence or extent of permanent impairment and limitations resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician and by either an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations resulting from the injury shall be obtained, except in accordance with Section 4062.1 or 4062.2. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board.

(Lab. Code, § 4061(i).)

Section 4604(d) further provides:

The employer shall not be liable for the cost of any comprehensive medical evaluations obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062. However, no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense. In no event shall an employer or employee be liable for an evaluation obtained in violation of subdivision (b) of Section 4060. All comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in Section 4060, 4061, 4062, 4062.1, or 4062.2.

(Lab. Code, § 4064, subd. (d).)

In addition, section 4605 provides:

Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.

(Lab. Code, § 4605.)

In *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231 [78 Cal.Comp.Cases 1209] (*Valdez*), the California Supreme Court analyzed the admissibility of medical reports in workers' compensation proceedings and opined in pertinent part:

[T]he comprehensive medical evaluation process set out in section 4060 et seq. for the purpose of resolving disputes over compensability does not limit the admissibility of medical reports ... Under section 4064, subdivision (d), "no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense," and "[a]ll comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board ..." except as provided in specified statutes. The Board is, in general, broadly authorized to consider "[r]eports of attending or examining physicians." (§ 5703, subd. (a).) These provisions do not suggest an overarching legislative intent to limit the Board's consideration of medical evidence.

(*Valdez, supra*, at p. 1239.)

As acknowledged by the Court in *Valdez*, sections 4060, 4064(d) and 5703 suggest an expansive, rather than limiting, approach by the Legislature regarding the admissibility of medical evidence. The Court recognized that section 4060 "does not limit the admissibility of medical reports." Seen in this light, section 4060(c) requires the parties to follow the prescribed *procedure* in order to obtain compensability evaluations in represented cases. With respect to reports privately obtained from doctors by the employee pursuant to section 4605, the *Valdez* Court added:

... when we consider the reforms enacted by Senate Bill 863 ... [t]he Legislature did not ... narrow employees' right to seek treatment from doctors of their choice at their own expense, or bar those doctors' report admissibility in disability hearings. Rather, it provided that privately retained doctors' reports "shall not be the sole basis of an award of compensation." (§ 4605.) The clear import of this language is that such reports may provide some basis for an award, but not standing alone.

(*Valdez, supra*, 57 Cal. 4th at p. 1239.)

Thus, the limiting language in section 4605 proscribes self-procured reports from forming the sole evidentiary basis for an *award* but does not necessarily limit the admissibility of those reports as *evidence*. The Court further recognized that "[s]ection 4605 has long permitted employees to consult privately retained doctors at their own expense, and the amendments enacted by Senate Bill 863 maintain that right." (*Id.* at p. 1240.)

After *Valdez*, the Court of Appeal issued its decision in *Batten v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1009 [80 Cal.Comp.Cases 1256], clarifying the role of section 4605 in the medical-legal process:

The Board noted that section 4605 is contained in article 2 of chapter 2 of part 2 of division 4 of the Labor Code, which is titled "Medical and Hospital Treatment." Considering this context, the Board concluded that the term "consulting physician" in section 4605 means "a doctor who is consulted for the purposes of discussing proper medical treatment, not one who is consulted for determining medical-legal issues in rebuttal to a panel QME." We agree with the Board. Section 4605 provides that an employee may "provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires." When an employee consults with a doctor at his or her own expense, in the course of seeking medical treatment, the resulting report is admissible.

(*Id.* at p. 1016.)

The *Batten* Court ultimately affirmed the Appeals Board's decision and held that:

Section 4605 permits the admission of a report by a consulting or attending physician, and section 4061, subdivision (i) permits the admission of an evaluation prepared by a treating physician. Neither section permits the admission of a report by an expert who is retained solely for the purpose of rebutting the opinion of the panel qualified medical expert's opinion.

(*Ibid.*)

The *Batten* Court made clear that parties are not permitted to forego the *medical-legal process* mandated by sections 4060, 4061 and 4062 by obtaining a medical report for the sole purpose of rebutting the opinion of the QME.

Here, the parties have placed in issue "[w]hether Applicant's AQME Reports may be provided to the PQMEs." (Minutes, at p. 2:16.) Pursuant to the Supreme Court's analysis in *Valdez, supra*, "the comprehensive medical evaluation process set out in section 4060 et seq. for the purpose of resolving disputes over compensability does not limit the admissibility of medical reports." (*Valdez, supra*, at p. 1239.) Moreover, the Court has observed that the legislature has affirmatively endorsed the broad admissibility of medical reporting pursuant to section 4062.3(a), which "permits any party to provide the evaluator with '[m]edical and nonmedical records relevant to determination of the medical issue.'" (*Ibid.*) In addition, section 4064(d), provides that any comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board ... except as provided in specified statutes." Finally, "the Board is, in

general, broadly authorized to consider ‘[r]eports of attending or examining physicians.’ (§ 5703, subd. (a).)” (*Ibid.*)

We observe that this “broad authorization” under sections 5703, 4064(d), and 4062.3(a) is not unlimited, and we acknowledge the Court of Appeal’s cautionary admonition in *Batten, supra*, that a report by an expert who is retained solely for the purpose of rebutting the opinion of the panel qualified medical expert’s opinion is inadmissible. However, here there is no dispute that applicant’s self-procured reports were obtained prior to the parties’ selection of QMEs pursuant to current sections 4060 and 4062.2. Therefore, pursuant to the reasoning in *Batten, supra*, applicant’s self-procured reports were not obtained for the purposes of rebutting the opinion of the panel qualified medical expert’s opinion, as those opinions had not yet been rendered.

Accordingly, we concur with the WCJ’s determination that the reports of Michael Einbund, M.D., Rosabel Young, M.D., Michael Wells, M.D., and Koruon Daldalyan, M.D., are admissible in proceedings before the WCAB, and may further be submitted for review by the appropriately selected panel QMEs in this matter. We express no opinion as to the evidentiary weight the reports should be accorded, either by the QMEs selected by the parties pursuant to current section 4060 and 4062.2, or by the WCJ.

Because we discern no error in the Findings of Fact, we conclude that defendant has not met its burden of establishing substantial prejudice or that irreparable harm will result if removal is not granted. We will deny removal, accordingly.

For the foregoing reasons,

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

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**February 13, 2026**

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

**NATRAVIS CLAYBROOKS  
GLENN, STUCKEY & PARTNERS  
DIMACULANGAN & ASSOCIATES**

**SAR/abs**

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