

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

SHANNON HEIGHTON, *Applicant*

vs.

**GILL TRANSPORT, INC.; SERVICE AMERICAN INDEMNITY COMPANY,
administered by LWP CLAIMS, *Defendants***

**Adjudication Number: ADJ20009316
Los Angeles District Office**

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

Defendant seeks removal, or in the alternative, reconsideration, of the Findings and Order (F&O) issued on April 23, 2026, wherein the workers' compensation administrative law judge (WCJ) found that "[a]pplicant's [c]ounsel's strike of Dr. David Polushkin from QME panel 3734606 on [October 22, 2025] is valid" and ordered the parties "to proceed with discovery utilizing the remaining doctor from Panel #3734606."

Defendant contends that "[a]pplicant's October 22, 2025 strike of Dr. David Polushkin was defectively served and therefore invalid" as it was sent by applicant attorney's office to the defense attorney's email and that, as a result, defendant has a "right to select any physician remaining on Panel No. 3734606 following its timely strike of Dr. Ninoosh Askar on October 16, 2025." (Petition for Reconsideration (Petition), p. 15.) Alternatively, defendant contends that the F&O should be reconsidered "on the grounds that it constitutes legal error inconsistent with binding appellate authority" as it is based upon incorrect interpretations of case law and WCAB Rule 10625. (*Id.* at pp. 5, 7, 16.)

We have 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 contents of the Petition, Answer, and Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition to the extent that it seeks reconsideration and deny it as one seeking removal.

FACTS

Applicant claimed that while employed by defendant as a driver during the period from January 1, 2020 through October 5, 2024, she sustained an injury arising out of and occurring in the course of employment (AOE/COE) to the neck, right shoulder, right arm, right elbow, right hand, right fingertips, bilateral legs, bilateral hips, bilateral knees, and sleep.

On September 19, 2025, defendant requested a Qualified Medical Evaluation (QME) panel in the specialty of dentistry, and on October 7, 2025, panel number 3734606 issued. (Exhibit 1)

On October 16, 2025, defendant sent a letter to applicant's attorney with a copy of the QME panel and language indicating their strike of Dr. Askari from the panel. (Exhibit 2).

On October 22, 2025, applicant attorney's office emailed the defense attorney indicating that they were striking David Polushkin, D.D.S. from the dental QME panel (Exhibit 4).

On October 23, 2025, defendant sent a letter to applicant alleging that the October 22, 2025 was "procedurally defective and d[id] not constitute proper service of a panel strike" because the email was improperly served, insufficiently formal, inadequate in documentation, and deficient in authority. (Exhibit 3, pp. 1-2.) The defense attorney indicated that per Labor Code¹ section 4062.2, Dr. Polushkin was selected by defendant as the dental PQME. (*Id.* at p. 2.)

On December 8, 2025, defendant filed a Declaration of Readiness to Proceed to an Expedited Hearing on the panel strike issue.

On December 30, 2025, the matter was set for an Expedited Hearing on the sole issue of whether applicant's October 22, 2025 strike of Dr. Polushkin from panel 3734606 was valid under section 4062.2(c). Defendant submitted as an exhibit, the DOR dated December 8, 2025, and the parties submitted as joint exhibits, a copy of panel 3734606; defendant's strike letter to applicant dated October 16, 2025; defendant's objection letter to applicant dated October 23, 2025; and email correspondence between the parties dated October 22, 2025.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

On April 23, 2026, the WCJ issued an F&O which held that applicant attorney's strike of Dr. Polushkin from panel 3734606 was valid and ordered the parties to proceed with utilizing the remaining doctor from the panel.

It is from this F&O that defendant now seeks reconsideration and/or removal.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 May 14, 2026, and 60 days from the date of transmission is July 13, 2026. This decision was issued by or on July 13, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, the Report was served on May 14, 2026, and the case was transmitted to the Appeals Board on May 14, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on May 14, 2026.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order is defined as one that determines “any substantive right or liability of those involved in the case” or a “threshold” issue fundamental to a claim for benefits. (*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]; *Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, at 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, and other similar issues.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether 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 Bd. en banc).) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the Appeals Board 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.

Here, the WCJ’s decision pertains to an intermediate evidentiary issue and does not determine any substantive right or liability or a threshold issue. Accordingly, it is not a “final” decision, and the Petition will be dismissed to the extent it seeks reconsideration.

We note that petitions for reconsiderations of non-final orders are not permissible and may be sanctionable. (See *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases 462, 475 (Appeals Bd. en banc).)

We therefore admonish defendant and their attorneys, Ronald A. Cher (SBN 157513) and Michael Sullivan & Associates. Petitions challenging a decision that consists only of a non-final order should be filed as a petition for removal. An offending party could be subject to potential sanctions under section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421).

We now consider defendant’s Petition as one for removal. 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 can show that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a). The petitioner must also demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (*Ibid.*)

Here 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.

III.

Notwithstanding the above, we address the merits of defendant's Petition. Section 4060 provides guidance as to the QME panel process in cases wherein compensability is disputed and applicant is represented. It provides in relevant part that:

- (a) This section shall apply to disputes over the compensability of any injury. This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.
- (b) Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.
- (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(a)-(c).)

Section 4060(c) avers that if an evaluation with a QME is necessary for determination of compensability, parties are to proceed as per section 4062.2, which provides, in pertinent part, that:

- (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.
- (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(a)-(b).)

Here, defendant contends that applicant's October 22, 2025 strike of Dr. Polushkin was defectively served and references WCAB Rule 10625(b)(1) pertaining to service. (Petition, pp. 5, 15.) WCAB Rule 10625 states that:

- (a) Service shall be made on the attorney or agent of record of each affected party unless that party is unrepresented, in which event service shall be made directly on the party, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.
- (b) A document may be served using the following methods:
 - (1) Personal service;
 - (2) Electronic service;
 - (3) First class mail; or
 - (4) An alternative method that will effect service that is equivalent to or more expeditious than first class mail; or
 - (5) Another method if the serving and receiving parties have agreed.
- (c) “Proof of service” means a dated and verified declaration identifying the document(s) served and the parties who were served, and stating that service has been made and the method by which it has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served represents. If a document is served electronically, the proof of service must also state the names and email addresses of the person serving electronically and the person served electronically.
- (d) Where a party receives notification that the service to one or more parties failed, the server shall re-serve the document on all intended recipients and execute a new proof of service, or provide a courtesy copy to the recipient on whom service failed, within a reasonable amount of time.

(Cal. Code Regs., tit. 8, § 10625.)

However, as outlined in the case of *Fredy Ramos v. Aqua Construction, Inc.* (ADJ19757339, October 7, 2025), there is no requirement that a strike be formally served upon the opposing party. Per section 4062.2(c) above, the Labor Code only requires that a party exercise their right to strike. It does limit the methods that may be used to exercise that right. While a party may exercise their right by formally serving a document, such service is not required.

Further, requirement of formal service would defeat the fundamental principles of workers’ compensation. As outlined in our recent en banc decision of *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 838-839 (Appeals Bd. en banc):

The workers’ compensation system “was intended to afford a simple and nontechnical path to relief.” (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, “the informality of pleadings in workers’ compensation proceedings before the Board has been recognized.” (*Zurich Ins. Co. v. Workmen’s Comp. Appeals Bd.* (1973) 9

Cal.3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 328–334 [35 Cal.Comp.Cases 513].) “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee’s entitlement to rehabilitation benefits.” (*Martino v. Workers’ Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal. Comp. Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152-153 [167 Cal. Rptr. 57, 45 Cal. Comp. Cases 866].) “Necessarily, failure to comply with the rules as to details is not jurisdictional.” (*Rubio, supra*, at pp. 200-201; see Cal. Code Regs., tit. 8, § 10517.)

Therefore, in workers’ compensation proceedings, it is settled law that (1) pleadings may be informal. (*Zurich Ins. Co., supra*, 9 Cal. 3d at p. 852; *Beaida v. Workmen’s Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204, 207-210 [33 Cal.Comp.Cases 345]); (2) claims should be adjudicated based on substance rather than form (*Bland, supra*, 3 Cal.3d at pp. 328-334; *Martino, supra*, 103 Cal.App.4th at p. 491; (3) pleadings should liberally construed so as not to defeat or undermine an injured employee’s right to make a claim (*Sarabi v. Workers’ Comp. Appeals Bd.* (2007) 151 Cal.App.4th at pp. 925-926 [72 Cal.Comp.Cases 778]); *Martino, supra*, 103 Cal.App.4th at p. 490; and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction (*Bland, supra*, 3 Cal.3d at pp. 331-332).

Here, as acknowledged in the Petition, defendant stipulated to receipt of the October 22, 2025 email from applicant’s counsel striking Dr. Polushkin. Defendant was thus apprised of applicant’s valid and timely strike.

Accordingly, to the extent that defendant seeks reconsideration, the Petition is dismissed, and to the extent that defendant seeks removal of the April 23, 2026 F&O, the Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the workers' compensation administration law judge's April 23, 2026 Findings and Order is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal of the workers' compensation administration law judge's April 23, 2026 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 7, 2026

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

**SHANNON HEIGHTON
SOLOV AND TEITELL, A P.C.
MICHAEL SULLIVAN & ASSOCIATES LLP**

RL/cs

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