

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

**TIEQIANG ZHAO, *Applicant***

**vs.**

**TAWA, INCORPORATED RETAIL DBA 99 RANCH MARKET;  
HDI GLOBAL INSURANCE COMPANY administered by GALLAGHER BASSETT,  
*Defendants***

**Adjudication Number: ADJ21492524  
Anaheim District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION AND DECISION  
AFTER RECONSIDERATION**

Applicant seeks removal of the Findings and Orders (F&O) issued on December 12, 2025 by the workers' compensation administrative law judge (WCJ). The F&O found, in pertinent part, that (1) panel 37875837<sup>1</sup> [*sic*] is stricken as it was not timely requested (2) the subsequent requests by applicant's attorney and defendants' attorney are invalid as they were not served on the opposing side at time of submission to the Medical Unit, and (3) the Medical Unit is to produce a new panel qualified medical evaluator (QME) list in orthopedics (MOS) based upon applicant's zip code of 92870. The WCJ thereafter ordered the Medical Unit to produce a new panel QME list in orthopedics (MOS) based upon the applicant's zip code, 92870, and simultaneously issued a form Finding and Order re: Second Panel to that effect.<sup>2</sup>

Applicant contends that the WCJ erred in finding their subsequent panel request to be invalid due to a lack of proper service. Applicant further argues that the WCJ's findings and order

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<sup>1</sup> Pursuant to the December 8, 2025 Minutes of Hearing (MOH), the panel QME at issue is numbered 7875837. (MOH, 12/8/25 at p. 2:13-14.)

<sup>2</sup> The WCJ issued a separate and simultaneous Finding and Order Re: Second QME Panel (Represented Case) in the specialty of Orthopedic Surgery (MOS), within a reasonable geographic area of applicant's residential zip code of 92870. For purposes of this Opinion, we shall treat the form Finding and Order re: Second QME Panel as part and parcel of the WCJ's F&O, and as objected to by applicant in the Petition.

to the Medical Unit to issue a panel in the defendant's preferred specialty of orthopedic surgery (MOS) and not applicant's preferred specialty of pain medicine (MPA) was improper. Finally, applicant alleges that the WCJ is biased against applicant by holding applicant to a higher standard than defendant.

We have received an Answer from defendant. 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 Petition, the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, we will treat the petition as seeking reconsideration of the F&O as it contains both final and non-final orders. We will grant the applicant's Petition and as our Decision After Reconsideration, we will rescind both the December 12, 2025 Findings and Order of the WCJ as well as the form F&O re: second QME panel, substitute findings affirming the stipulations of the parties, as well as the finding striking panel 7875837, deferring all other issues, and returning this matter to the trial level for further proceedings consistent with this decision.

## **FACTS**

Applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant during the period December 1, 2003 to August 23, 2025 as a worker, he sustained injury arising out of and in the course of employment (AOE/COE) to the head, neck, arm, wrist, hands, fingers, back, hips, shoulders, knees, nervous system, psyche, and injury resulting in high cholesterol. (Application, September 10, 2025, at p. 9.)

On October 13, 2025, defendant issued a Notice Regarding Denial of Workers' Compensation Benefits dated October 10, 2025. (Joint Exhibit 4.)

On October 28, 2025, at defendant's request, the Medical Unit issued panel number 7875837 in the specialty of orthopedic surgery (MOS). (Joint Exhibit 5, at p. 1.)

Thereafter, applicant requested an additional QME panel, which was denied by the Division of Workers' Compensation Medical Unit (Medical Unit) pursuant to correspondence dated October 31, 2025 on the basis that a panel with the same claim number, date of injury and injured worker's name has already been issued, thus applicant was ineligible for an additional QME panel. (Applicant's Exhibit 1.)

On November 5, 2025, defendant struck Rojeh Melikian, M.D., from panel number 7875837. (Applicant's Exhibit 2.)

On November 11, 2025, applicant objected to the timeliness and ineffective service of panel number 7875837, and without waiving their objection, then struck Darryl Willoughby, M.D., from the panel. (Joint Exhibit 1.)

On November 12, 2025, defendant acknowledged receipt of applicant's November 11, 2025, correspondence and forwarded applicant QME form 106 as an e-mail attachment, "Ortho Panel.pdf." (Joint Exhibit 2.)

Sometime thereafter, defendant requested an additional panel, which, according to the WCJ in his F&O, was rejected by the Medical Unit on November 8, 2025.<sup>3</sup> (Opinion, at p. 3.)

On December 8, 2025, the matter proceeded to an expedited trial. The limited issues were: (1) applicant attorney's request to invalidate panel number 7875837 as it was requested prior to the time had expired to obtaining a panel, and (2) whether or not the subsequent request for panel by defendant and the subsequent request for replacement panel by applicant are proper. Both parties seek replacement of the panel that was requested early. (Minutes of Hearing (MOH), Expedited Hearing, December 8, 2025, at p. 2:16-20.)

The parties offered five joint exhibits, and applicant offered two exhibits, with the matter thereafter submitted for decision.

On December 12, 2025, the WCJ issued an F&O in which the WCJ found that panel number is 7875837 is stricken as it was not timely requested, and that the subsequent requests by applicant and defendant are invalid as they were not served on the opposing side at time of submission to the Medical Unit. The WCJ then issued an Order and an accompanying Finding and Order re: Second QME panel directing the Medical Unit to issue a new panel in the specialty of orthopedic surgery (MOS).

It is from this F&O and Finding and Order re: Second QME panel that applicant seeks removal.

## **DISCUSSION**

### **I.**

Preliminarily, we note that former Labor Code<sup>4</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days

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<sup>3</sup> The WCJ refers to Defendant's Exhibit A in the Opinion, however, this exhibit does not appear to have been offered by defendant at trial, nor identified or entered into evidence.

<sup>4</sup> All further references are to the Labor Code unless otherwise noted.

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 22, 2025 and 60 days from the date of transmission is February 20, 2026. This decision was issued by or on February 20, 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 December 22, 2025, and the case was transmitted to the Appeals Board on December 22, 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 22, 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].)

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.

Here, the orders issued by the WCJ are a hybrid decision that included final findings on the issues of employment and insurance coverage. While these findings were not challenged, the inclusion of final findings renders the decision a final order for purposes of reconsideration, and thus we treat the Petition as one seeking reconsideration.

Although we treat the petition as one seeking reconsideration, the petition challenges only the issue relating to QME panels, a non-final portion of the decision. Accordingly, we apply 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).)

Here, and for the reasons discussed below, the decision of the WCJ is not supported by an adequate record with respect to the WCJ's findings relating to the parties' subsequent panel requests. Accordingly, we find that the decision rises to the level of substantial prejudice which warrants a grant of removal.

### III.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

Here, no testimony exists in the record and only limited exhibits were provided. The parties stipulated to the following: the claim was denied on October 10, 2025, and the denial was served on October 13, 2025. Panel number 7875837 was requested on October 28, 2025. (MOH, Expedited Hearing, December 8, 2025, at p. 2:12-14.) With this information, the matter proceeded to trial on the issues of the validity of both panel number 7875837, as well as the propriety of the subsequent replacement requests by both defendant and applicant. While due primarily to the stipulation of the parties as to the operative dates, the WCJ found that panel number 7875837 was prematurely requested and thus not valid, and this finding is not disputed by either party.

However, with respect to the second issue set for trial; whether the subsequent request by each party to the Medical Unit was proper, there is a lack of sufficient evidence upon which to determine same. The WCJ notes as much in his Opinion:

It appears from Appl. Exh 1 that the applicant made a subsequent request to the medical unit for a new QME Panel, and it was rejected. The request was rejected [on] 10/31/25 by the medical unit. Applicant did not submit the original Form 106 and the request for the court to review. Defendant objected to applicant's Exh.1 based upon the fact that the request to the medical unit was not served on them. The applicant attorney at trial stipulated the request made to generate the 10/31/25

rejection by the medical unit was not served upon the defendant until 12/7/25 by email in anticipation of trial.

(Opinion on Decision, December 12, 2025, at p. 2.)

The WCJ further noted:

In an attempt to get a new panel, the defendant submitted a new request to the Medical Unit. On 11/18/25 defendants received a rejection from the medical unit, Def. Exh. A.

(*Id.* at p. 5.)

However, there is no defendant's Exhibit A either offered, or admitted, into the record. Additionally, there is no evidence of a second request for a panel by defendant rejected by the Medical Unit on November 18, 2025, and no evidence in the record relating to defendant's second Form 106 and service of same.

Further, while the WCJ states in his Opinion that applicant's attorney "stipulated" that its request to the Medical Unit was served on defendant on December 7, 2025, no such Stipulation exists in the record. (*Id.* at p. 2.)

As to the underlying legal issues, the process by which a party may seek the issuance of a panel of QMEs is addressed in AD Rule 30 (Cal. Code Regs., tit. 8, § 30).

Furthermore, once a panel of QMEs is electronically obtained, the party requesting the panel shall:

(C) Print and serve a paper copy of the online request, the panel list, and a copy of any supporting documentation that was submitted online, upon the opposing party with a proof of service, within 1 (one) working day after generating the QME panel list. Within 10 (ten) days of service of the panel, each party may strike one name from the panel.

(*Id.* (C).)

Section 4060 provides, in relevant part:

(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.

...

(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) and (c).)

To obtain a QME panel in a represented case, section 4062.2 provides, in relevant part:

(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, to be timely, the request for a QME panel must be at least 10 days from the date of mailing of the defendant's denial notice, plus an additional 5 days if service of the correspondence is only on parties in California.

At trial, the parties stipulated that the defendant's denial letter dated October 10, 2025 was served on October 13, 2025, and that defendant requested panel number 7875837 fifteen days later on October 28, 2025.

As stated by the WCJ in his Opinion, "[b]ased upon Labor Code 4062.2(b) the earliest the request could have been made was 10/29/25, therefore the request was prematurely made, untimely, not properly served and invalid." (Opinion on Decision, at pp. 1-2.)

Accordingly, the WCJ was correct in finding that panel number 7875837 should be stricken as untimely.

However, based upon an inadequate record, we cannot determine whether good cause presently exists as to the validity of the subsequent panel requests by each party, as well as the finding and order by the WCJ for a replacement panel in orthopedic surgery (MOS), and thus we must return the matter to the trial level for further proceedings.

Accordingly, we grant applicant's Petition, and as our Decision After Reconsideration, we will rescind both the December 12, 2025 Findings and Order of the WCJ as well as the form F&O re: second QME panel, issue new findings affirming the stipulations of the parties, as well as the finding striking panel 7875837, defer all other issues, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that the applicant's Petition for Reconsideration of the Findings and Orders issued on December 12, 2025, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Orders and the Finding and Order Re: Second QME Panel both issued on December 12, 2025, are **RESCINDED** with the following **SUBSTITUTED** therefor, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

#### **FINDINGS OF FACT**

1. Applicant, Tieqiang Zhao, while employed as a truck driver at Buena Park, California, by Tawa Inc., Retail, doing business as 99 Ranch Market, from December 1, 2003, to August 23, 2025, claims to have sustained injury arising out of and in the course of employment to his back, neck, shoulders, hands, wrists, fingers, elbows, knees, hips, psych, insomnia, high cholesterol, head and dizziness.
2. At the time of injury, the employer's workers' compensation carrier was HDI Global Insurance Company, administered by Gallagher Bassett.

3. Panel number 7875837 is stricken as it was not requested timely.
4. All other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

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



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

**February 17, 2026**

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

**TIEQIANG ZHAO  
LAW OFFICES OF JAMES YANG & ASSOCIATES  
BLITSTEIN, YOUNG & BLINDER**

**SL/abs**

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