

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **RICK PARKER,**

5 *Applicant,*

6 **vs.**

7 **DSC LOGISTICS; ZURICH NORTH**
8 **AMERICA,**

9 *Defendants.*

Case Nos. **ADJ9636706; ADJ9636707**
ADJ9447837
(Riverside District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

10
11 On August 7, 2015, we issued our Opinion and Order Granting the Petition for Reconsideration
12 filed by defendant in order to allow sufficient opportunity to further study the factual and legal issues in
13 this case and to enable us to issue a just and reasoned decision. This is our Opinion and Decision After
14 Reconsideration.¹

15 Defendant sought reconsideration or, in the alternative, removal of the May 26, 2015 Minute
16 Order (Order) issued by a workers' compensation administrative law judge (WCJ) denying defendant's
17 Petition to Vacate QME² Panels.

18 Defendant contends that the Order contravenes Labor Code³ section 4062.3 as well as California
19 Code of Regulations section 35.5(e), arguing that Dr. Steinmann was properly selected as the Panel
20 QME, and because applicant filed three separate claims of industrial injury prior to Dr. Steinmann's
21 evaluation, Dr. Steinmann is statutorily required to evaluate all three claims. Defendant also asserts that
22 unless the WCJ's Order is vacated, it will be subjected to substantial prejudice and irreparable harm
23 because it will be required to pay the costs of unnecessary, duplicative and redundant medical
24 evaluations and applicant will have been allowed to "doctor shop." (Petition, p. 6: 16-20.)

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26 ¹ Since we issued our Opinion and Order Granting the Petition for Reconsideration, Commissioner Caplane has retired and
Deputy Commissioner Schmitz has been assigned to the panel in her place.

27 ² "QME" is the abbreviation for Qualified Medical Evaluator. See Cal. Code Regs., tit. 8, § 1(z).

³ All statutory references are to the Labor Code unless otherwise indicated.

1 The WCJ has prepared a Report and Recommendation on Petition for Reconsideration and in the
2 Alternative Petition for Removal (Report). We have not received a response to the Petition from
3 applicant.

4 We have reviewed the record in these matters, and have considered the provisions of Labor Code
5 sections 4060, 4062.2, 4062.3; AD Rule⁴ 35.5 and our decision in *Navarro v. City of Montebello* (2014)
6 79 Cal.Comp.Cases 418 (Appeals Bd. en banc). For the reasons set forth in the following discussion, and
7 consistent with our holding in *Navarro, supra*, as our decision after reconsideration, we will rescind the
8 May 26, 2015 Order denying defendant's Petition to Vacate QME Panels and issue a new Order that
9 directs applicant to return to QME Dr. Steinmann for evaluation of the disputed medical issues in case
10 numbers ADJ9636706 and ADJ9636707.

11 **BACKGROUND**

12 On May 7, 2014, an Application for Adjudication of Claim (Application) was filed on behalf of
13 Rick Parker (applicant). The Application, which was assigned case number ADJ9447837, alleges that
14 applicant, while employed as a forklift driver by defendant on March 31, 2014, sustained an injury
15 arising out of and occurring in the course of his employment to his neck and back. Defendant filed an
16 Answer to the Application on June 6, 2014, generally denying the claim of injury.

17 On September 11, 2014, applicant filed two additional Applications. Case number ADJ9636707
18 is a claim of industrial injury to the back on October 30, 2009. Case number ADJ9636706⁵ is a claim of
19 cumulative injury to the back and neck during the period ending May 14, 2014.

20 The party litigants in ADJ9636706, ADJ9636707, and ADJ9447837 are identical, and the parts of
21 the body alleged to have been injured overlap.

22 On April 2, 2015, defendant filed a "joint" Petition to Vacate in these cases. The Petition to
23 Vacate alleges that on October 2, 2014, after applicant had filed the three Applications giving rise to
24 these cases, it filed a request with the DWC Medical Unit requesting the issuance of QME Panel in the
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26 ⁴ The rules of the Administrative Director are set forth in Cal. Code of Regs., tit. 8, beginning with § 1.

27 ⁵ The Electronic Adjudication Case Management System (EAMS) Filenet Record in ADJ9636706 indicates that an Amended Application was filed on February 23, 2015 to include an allegation of cumulative injury to the hips in addition to the neck and back.

1 specialty of orthopedics. (Petition to Vacate, p. 2: 1-3.) Defendant further asserts that the panel was
2 issued on October 30, 2014, and Dr. John Steinmann was selected as the Panel QME through the proper
3 legal procedures. (*Id.*, p. 2: 3-9.)

4 Defendant sent an advocacy letter to Dr. Steinmann regarding his QME of applicant. The
5 Advocacy letter, attachment B to the Petition to Vacate, references each of the cases here, but specifically
6 asks Dr. Steinmann to address applicant's March 31, 2014 claimed injury (ADJ9447837) and his claimed
7 cumulative trauma injury to May 14, 2014 (ADJ9636706)⁶.

8 Applicant's advocacy letter to Dr. Steinmann, Exhibit C to the Petition to Vacate, also references
9 each of these cases but specifically asks Dr. Steinmann "to provide a compensability determination
10 pursuant to Labor Code § 4060 on the Applicant's claim for specific injury to the neck and back on
11 3/31/14 as a result of a slip and fall in the break room at DSC Logistics in the course of his duties as a
12 forklift operator." (Exhibit C, December 30, 2014 letter to John Steinmann from James B. James, p. 1.)

13 Dr. Steinmann conducted his QME of applicant on January 9, 2015, and issued a report on the
14 same date. Although Dr. Steinmann's January 9, 2015 PQME has not been lodged in the EAMS Filenet
15 record in these cases, a copy of the report is attached as Exhibit E to Applicant's Objection to
16 Defendant's Petition to Vacate. Dr. Steinmann's January 9, 2015 report only addresses applicant's
17 claimed March 31, 2014 injury (ADJ9447837).

18 On or about February 23, 2015, applicant requested the issuance of two additional QME panels
19 from the DWC Medical Unit with regard to his October 30, 2009 claim of specific injury to the back
20 (ADJ9636707) and his claim of cumulative injury through May 14, 2014 to the neck, back and hips
21 (ADJ9636706)⁷.

22 On March 20, 2015, the DWC Medical Unit issued two additional QME panels as requested by
23 applicant. Panel Number 1731404 pertains to applicant's October 30, 2009 claimed injury
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27 ⁶ See Exhibit B, Petition to Vacate, letter to Dr. Steinmann dated December 30, 2014.

⁷ Applicant's PQME requests are included as Exhibits F and G to his Objection.

1 (ADJ9636707), and Panel Number 1731395 pertains to applicant's cumulative trauma claim through
2 May 14, 2014 (ADJ9636706).⁸

3 Defendant's Petition to Vacate Panel Numbers 1731404 and 1731395 was heard by the WCJ at a
4 status conference on May 26, 2015, and the WCJ denied the Petition to Vacate. It is from that Order that
5 defendant seeks reconsideration or, alternatively, removal.

6 DISCUSSION

7 **A. *The Labor Code requires the QME to address all contested medical issues arising from all***
8 ***injuries reported on one or more claim forms prior to the date of the employee's initial***
9 ***appointment with the medical evaluator.***

10 Defendant contends that the factual circumstances here are distinguishable from those in *Navarro*,
11 *supra*, and section 4062.3 requires PQME Steinmann to address all three of applicant's claimed injuries
12 because they were reported prior to the date of Dr. Steinmann's initial evaluation of applicant on January
13 9, 2015. We begin our discussion with a review of the relevant statutory provisions, and with the
14 recognition that in construing a statute so as to ascertain the intent of the Legislature and effectuate the
15 purpose of the law, "our first task is to look to the language of the statute itself. (citation.) When the
16 language is clear and there is no uncertainty as to the legislative intent, we look no further and simply
17 enforce the statute according to its terms." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th
18 382, 387 [58 Cal.Comp.Cases 286]; *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd. (Arvizu)*
19 (1982) 31 Cal.3d 715, 726 [47 Cal.Comp.Cases 500; see Code Civ. Proc., §§ 1858, 1859.]

20 Section 4060(a) provides in pertinent part that "this section shall apply to disputes over the
21 compensability of any injury..."

22 Section 4060(c) states:

23 If a medical evaluation is required to determine compensability at any
24 time after the filing of the claim form, and the employee is represented by
25 an attorney, a medical evaluation to determine compensability shall be
26 obtained only by the procedure provided in Section 4062.2.

27 ⁸ Copies of the two QME panels are attached to applicant's Objection as Exhibits H and J.

1 Section 4060(d) provides:

2 If a medical evaluation is required to determine compensability at any
3 time after the claim form is filed, and the employee is not represented by
4 an attorney, the employer shall provide the employee with notice either
5 that the employer requests a comprehensive medical evaluation to
6 determine compensability or that the employer has not accepted liability
7 and the employee may request a comprehensive medical evaluation to
8 determine compensability. Either party may request a comprehensive
9 medical evaluation to determine compensability. The evaluation shall be
10 obtained only by the procedure provided in Section 4062.1.

11 Section 4062.2(a) states:

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

16 Thus, we observe that sections 4060(a), (c), and (d), and section 4062.2(a) all refer to a single
17 claim form, injury or claimed injury and require that any medical-legal evaluations to determine
18 compensability of that injury or claimed injury occur under the procedures provided in sections 4062.1⁹
19 or 4062.2.

20 Section 4062.3(j) states:

21 Upon completing a determination of the disputed medical issue, the
22 medical evaluator shall summarize the medical findings on a form
23 prescribed by the administrative director and shall serve the formal
24 medical evaluation and the summary form on the employee and the
25 employer. The medical evaluation shall address all contested medical
26 issues arising from all injuries reported on one or more claim forms prior
27 to the date of the employee's initial appointment with the medical
evaluator.

Section 4064(a) states:

The employer shall be liable for the cost of each reasonable and necessary
comprehensive medical-legal evaluation obtained by the employee
pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-
legal evaluation shall address all contested medical issues arising from all
injuries reported on one or more claim forms ...

⁹ Sections 4060(a) and (d) and 4061(i) all specify that section 4062.1 applies to unrepresented employees.

1 Both sections 4062.3(j) and 4064(a) require the medical-legal evaluation to address "all medical
2 issues arising from all injuries reported on one or more claim forms." While section 4064(a) differs from
3 4062.3(j) in that it does not include the phrase, "prior to the date of the employee's initial appointment
4 with the medical evaluator," such requirement is clearly included by inference because the claim of
5 injury must have been "reported." A claim of injury is "reported" under section 5401 when the employee
6 files the claim form with the employer.¹⁰

7 Thus, the "reported date" under sections 4062.3(j) and 4064(a) is the filing date of the claim form
8 under section 5401. It is that date, the date of filing of the claim form, that determines which injury
9 claims must be considered by the medical-legal evaluator.

10 Sections 4062.3(k) states:

11 If, after a medical evaluation is prepared, the employer or the employee
12 subsequently objects to any new medical issue, the parties, to the extent
13 possible, shall utilize the same medical evaluator who prepared the
previous evaluation to resolve the medical dispute.

14 Section 4067, not quoted verbatim here, applies to those matters in which the jurisdiction of the
15 Appeals Board is invoked by the filing of a Petition to Reopen on the grounds that the effects of the
16 injury have recurred, increased, diminished or terminated. Where there has already been a medical
17 evaluation and another evaluation is needed under section 4067, the subsequent evaluation must be
18 conducted by the same QME or the agreed medical evaluator (AME) who previously evaluated. Thus,
19 sections 4062.3(k) and 4067 generally direct the employee to return to the same medical-legal evaluator
20 who conducted the previous evaluation and prepared a report when a new medical issue arises relating to
21 the previously reported and evaluated injury claim(s).

22 ***B. Navarro, supra, applies and is not in conflict with our decision in these cases.***

23 Although the factual circumstances in *Navarro, supra*, involved claims of injury filed subsequent
24 to the initial QME evaluation, its holding also addresses previously filed claims and makes clear that the

25 ¹⁰ Section 5401 requires the employer to provide the employee with a claim form "[w]ithin one working day of receiving
26 notice or knowledge of injury under [s]ection 5400 or 5402." Section 5401(c) states, "[t]he complete claim form shall be filed
27 with the employer by the injured employee, ... [A] claim form is deemed filed when it is personally delivered to the employer
or received by the employer by first class or certified mail. A dated copy of the completed form shall be provided by the
employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form."

1 QME is required to address all contested medical issues arising from all injuries reported on one or more
2 claim forms prior to the initial QME evaluation. Our decision in *Navarro, supra*, carefully reviews
3 sections 4060, 4062.2, 4062.3(j), 4062.3(k), 4064, and 4067. We state, “[a]ccordingly, after review of
4 the pertinent statutes, we conclude that the Labor Code requires that all medical-legal evaluations be
5 obtained as set forth under sections 4062.1 or 4062.2 and that the Labor Code requires that an evaluator
6 discuss all medical issues arising from all reported claims of injury at the time of the evaluation.”
7 (*Navarro, supra*, 79 Cal.Comp.Cases 418, 425.) Applying the same statutory scheme, we further
8 determined that in the case of subsequently filed claims of injury, i.e., a claim of injury filed after the
9 initial QME evaluation, the Labor Code does not require an employee to return to the original evaluator,
10 even when the subsequent claim of injury involves the same body parts and the same parties. We also
11 held that Rule 35.5(e)¹¹ is invalid to the extent it imposes the additional requirement that an employee
12 return to the same evaluator when a new injury or illness is claimed that involves the same body parts
13 and the same parties.

14 The facts here are specifically addressed in section 4062.3(j) and Rule 35.5(c)(1) and were also
15 reviewed in *Navarro*. Applicant filed three separate Applications, and defendant disputed each. Each of
16 those Applications was filed prior to the evaluation by QME Steinmann. Thus, section 4062.3(j) and
17 Rule 35(c)(1) require QME Steinmann to address each claim of injury as part of his evaluation of
18 applicant. Accordingly, the WCJ erred when he denied defendant’s Petition to Vacate the QME panels.
19 Consistent with our holding in *Navarro, supra*, as our decision after reconsideration, we will rescind the
20 WCJ’s Order and issue a new Order directing the medical-legal evaluation of the disputed medical issues
21 in case numbers ADJ9636706 and ADJ9636707 to be conducted by QME Steinmann.

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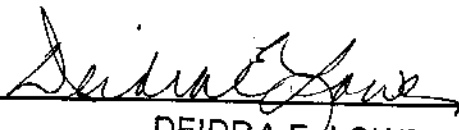
27 ¹¹ Cal. Code Regs., tit. 8, § 35.5(e)

1 For the foregoing reasons,

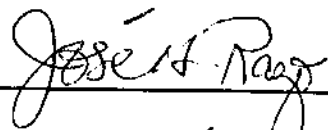
2 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
3 Appeals Board, that the May 26, 2015 Order Denying Petition to Vacate QME Panels is **RESCINDED**.

4 **IT IS FURTHER ORDERED** that defendant's Petition to Vacate QME Panels, filed herein on
5 April 2, 2015 is **GRANTED**; applicant is not entitled to new QME panels and is directed to return to Dr.
6 Steinmann for evaluation of the disputed medical issues in case numbers ADJ9636706 and ADJ9636707.

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8 **WORKERS' COMPENSATION APPEALS BOARD**

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11 DEIDRA E. LOWE

12 I CONCUR,

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15 JOSÉ H. RAZO

16 
17

18 DEPUTY

19 ANNE SCHMITZ



20 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

21 AUG 09 2016

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

24 LAW OFFICES OF JAMES B. JAMES
25 PEARLMAN, BORSKA & WAX
26 RICK PARKER



27 SVH/ara

PARKER, Rick