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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PAULA LECOCQ,

Applicant,

vs.

**ASSOCIATED FEED & SUPPLY COMPANY
and INSURANCE COMPANY OF THE WEST,**

Defendants.

Case Nos. ADJ7946888; ADJ7987800
(Stockton District Office)

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

Defendant has filed a timely Petition for Removal, requesting that the Appeals Board rescind the Finding and Order Re Second QME Panel dated March 6, 2012, wherein the workers' compensation administrative law judge (WCJ) ordered the Medical Director to issue a panel of qualified medical evaluators (QMEs) in the specialty of physical medicine and rehabilitation. Defendant contends that the authority to designate the specialty of a QME panel lies exclusively with the parties and the Administrative Director; and that the Finding and Order is not based on an adequate trial record despite defendant's request for a formal hearing. Applicant has filed an Answer.

Applicant, while employed as a dispatcher on March 17, 2010, claims to have sustained¹ an industrial injury to her back, neck, shoulders, wrist and psyche; and while employed as a customer service, order entry dispatcher from March 1, 2003, to March 17, 2010, claims to have sustained injury to those body parts and also to her right hand, fingers, blood clot in right arm, and cardiovascular. When a dispute as to medical treatment arose, applicant requested a panel of QMEs in neurology pursuant to Labor Code section 4062.2.² Defendant requested a panel in orthopedic surgery. The Medical Director

¹ The Applications for Adjudication of Claim filed by applicant allege that the employer has paid for medical treatment but not temporary disability indemnity. We cannot determine whether the injuries have been accepted by the employer or denied.

² Unless otherwise specified, all statutory references are to the Labor Code.

1 issued a panel in neurology. Defendant objected. The Medical Director then issued a panel in orthopedic
2 surgery.

3 On January 17, 2012, defendant filed a Declaration of Readiness to Proceed (DOR) requesting a
4 mandatory settlement conference (MSC) on the issue of "selection of PQME specialty," stating:
5 "Dispute over applicant attorney's requested PQME specialty; defendants request for replacement
6 panel." At the MSC on March 6, 2012, the WCJ issued the Finding and Order that is the subject of the
7 present litigation, over defendant's objection. Defendant "request[ed] a trial on the issue of which
8 specialty is the proper one for PQME. Defendant claims violation of due process and inability to create
9 an evidentiary record" (Minutes of Hearing, page 2).

10 With regard to selection of the specialty for the QME panel, defendant contends that the rules of
11 the Administrative Director provide that only the parties and the Medical Director can select the
12 specialty. However, in the Report and Recommendation, the WCJ correctly points out that Rule 31.1(c)
13 (Cal. Code Regs., tit. 8, § 31.1(c)) provides that where the Medical Director does not issue a panel within
14 30 days, the WCJ may order provision of a panel and may designate the specialty of the panel.
15 Furthermore, defendant requested a hearing before a WCJ on the issue of "which specialty is the proper
16 one for PQME" and should not be heard to complain when the WCJ made that determination.

17 However, we agree that the WCJ should not have decided the issue at an MSC over the objection
18 of a party. Section 5502(e)(2) provides in relevant part: "At the mandatory settlement conference, the
19 referee or workers' compensation administrative law judge shall have the authority to resolve the dispute,
20 including the authority to approve a compromise and release or issue a stipulated finding and award, and
21 if the dispute cannot be resolved, to frame issues and stipulations for trial." WCAB Rule 10353(a)
22 provides in relevant part, that at an MSC the WCJ "may submit and decide the dispute(s) on the record
23 pursuant to the agreement of the parties. The [WCJ] shall not hear sworn testimony at any conference."
24 Thus, at an MSC, a WCJ may resolve disputes pursuant to agreement or stipulation of the parties, or
25 frame issues and stipulations for trial, or submit and decide disputes on the record "pursuant to the
26 agreement of the parties."

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1 In this case, there was no "agreement of the parties" to submit the issue of the PQME specialty
2 for decision at the MSC. Indeed, defendant specifically objected to the issue being decided without trial.

3 Furthermore, there is no record upon which a decision may be based. The WCJ and the parties
4 refer to reports of various treating physicians. However, none of those reports was offered or received
5 into evidence. See *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 (appeals board en
6 banc).

7 For these reasons, defendant is entitled to a trial on the issue of QME specialty. Therefore, we
8 grant defendant's Petition for Removal and return this matter to the trial level for trial. Prior to the trial
9 date, the parties shall prepare a pretrial conference statement setting out stipulations and issues and
10 designating documents to be offered into evidence.

11 For the foregoing reasons,

12 **IT IS ORDERED** that defendant's Petition for Removal is **GRANTED**.

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1 **IT IS FURTHER ORDERED**, as the Decision After Removal of the Workers' Compensation
2 Appeals Board, that the Finding and Order Re Second QME Panel dated March 6, 2012, is
3 **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and
4 decisions by the WCJ as may be required, consistent with this opinion.
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6 **WORKERS' COMPENSATION APPEALS BOARD**

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9 **MARGUERITE SWEENEY**

10 **I CONCUR,**

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13 **FRANK M. BRASS**

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16 **DEIDRA E. LOWE**



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

19 **JUL 12 2012**

20
21 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
22 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

23 **CAVA & FAULKNER**
24 **PAULA LECOCQ**
25 **WILLIAM MORRIS**



26 **MR/ara**

27 **LECOCQ, Paula**