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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LINDA LOFTIN,

Applicant,

vs.

COUNTY OF SACRAMENTO,

Defendant.

**Case No. ADJ7481566
(Sacramento District Office)**

**OPINION AND ORDER
DENYING PETITION FOR
REMOVAL**

Defendant has filed a timely, verified Petition for Removal, requesting that the Appeals Board reverse the Order dated October 26, 2011, wherein the workers' compensation administrative law judge (WCJ) stated: "Pursuant to [Labor Code section 4062.1(b)],¹ there does not appear to have been a request, by the employer, to the employee to submit the PQME [panel qualified medical evaluator] request form. Absent a request from the employer to the injured worker to submit the form, applicant retains the right to select the specialty of the panel."

Defendant contends that discovery should have closed at the mandatory settlement conference (MSC) on October 26, 2011, because she did not object to defendant's Declaration of Readiness to Proceed, and that defendant has the right to choose the specialty for the QME panel because applicant failed to request one timely. We have not received an answer from applicant, who is not represented by an attorney.

Applicant, while employed as a community services officer on August 14, 2009, sustained an industrial injury to her neck and shoulder. On August 18, 2011, defendant sent her a notice that she had received her last permanent disability payment; that she had received permanent disability advances of \$5,833.97; and that "[i]f you disagree with our decision you may" request a panel of QMEs. She did not

¹ Unless otherwise specified, all statutory references are to the Labor Code.

1 request a panel. On October 12, 2010, the parties submitted Stipulations with Request for Award with a
2 stipulation to 5% permanent disability based upon the evaluation of the treating physician. On October
3 13, 2010, the WCJ disapproved the stipulations, noting: "Among other issues Dr. Robertson [the treating
4 physician] indicates the neck is part of this injury." On September 14, 2011, the WCJ again disapproved
5 the settlement.

6 On September 19, 2011, defendant filed a Declaration of Readiness to Proceed (DOR), requesting
7 a mandatory settlement conference (MSC) on the issues of permanent disability and apportionment.
8 Applicant did not respond. At the MSC on October 26, 2011, the first time that applicant had appeared
9 before the WCJ, the WCJ ordered applicant to obtain a QME panel, stating, "Absent a request from the
10 employer to the injured worker to submit the form, applicant retains the right to select the specialty of the
11 panel." The WCJ also noted: "Defendant believes that they are entitled to pick the specialty of the panel
12 QME. The 8/18/11 benefit notice does not 'request' the employee to obtain a panel QME. Furthermore,
13 there is a need for clarification regarding impairment for the neck and applicant believes her neck may be
14 worse."

15 With regard to applicant's failure to object to defendant's DOR, Court Administrator Rule
16 10251(d) (Cal. Code Regs., tit. 8, § 10251(b)) provides: "If a party has received a copy of the declaration
17 or readiness to proceed and has not filed an objection under this section, that party shall be deemed to
18 have waived any and all objections to proceeding on the issues specified in the declaration, absent
19 extraordinary circumstances." In his Report and Recommendation, the WCJ states that he "felt that
20 pushing a case to trial on an incomplete record would constitute an extraordinary circumstance" (page 3).
21 We agree. Although it appears that applicant has met with an Information and Assistance officer, there is
22 nothing in the present record to indicate that she understood her options, including obtaining a QME
23 panel, until the MSC or that she understood her duty to object to the DOR if she did not want discovery
24 closed at the MSC. Therefore, we find that the WCJ correctly decided that discovery did not close at the
25 MSC.

26 With regard to choice of QME specialty, section 4062.1(b) provides in relevant part: "However,
27 the employer may not submit the form unless the employee has not submitted the form within 10 days

1 after the employer has furnished the form to the employee and requested the employee to submit the
2 form. The party submitting the request form shall designate the specialty of the physicians that will be
3 assigned to the panel.” Administrative Director Rule 31(a) provides: “The panels shall be selected
4 randomly from the appropriate specialty identified by the party who holds the legal right to designate the
5 specialty”

6 In this case, the employer’s notice to applicant dated August 18, 2011, informed applicant of her
7 option to obtain a panel of QMEs, but it did not “request” that she submit the form to obtain the panel.
8 There is no indication that defendant had any objection to the determinations of the treating physicians or
9 wished to obtain a QME evaluation to contest them. Therefore, we concur with the WCJ that defendant
10 is not now entitled to submit the QME request form or to designate the specialty of the QME panel.

11 Furthermore, we are not persuaded that defendant will sustain substantial prejudice and/or
12 irreparable harm, as required by WCAB Rule 10843, if applicant is permitted to designate the specialty
13 of the QME.

14 Finally, we acknowledge receipt of defendant’s letter dated December 11, 2011, in response to
15 the WCJ’s Report and Recommendation. We construe the letter as a “supplemental petition” pursuant to
16 WCAB Rule 10848, and we reject it because defendant has not complied with the requirements of that
17 Rule.

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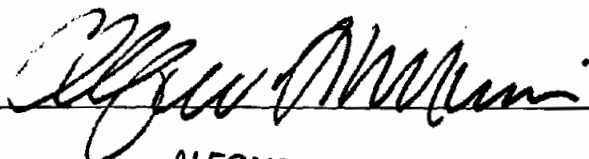
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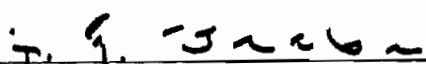
1 For the foregoing reasons,

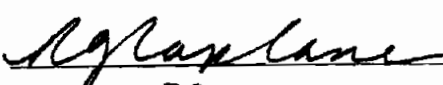
2 **IT IS ORDERED** that defendant's Petition for Removal is **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **ALFONSO J. MORESI**

8 **I CONCUR,**

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12 **FRANK M. BRASS**

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15 **RONNIE G. CAPLANE**



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

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19 **MAY 16 2012**

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

22 **HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**
23 **LINDA LOFTIN**

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25
26 **MR/ara**