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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DOLORES NATIVIDAD,

Applicant,

vs.

**SHERBOURNE PROPERTIES, INC.;
EMPLOYERS COMPENSATION
INSURANCE COMPANY,**

Defendants.

**Case No. ADJ9348004
(Los Angeles District Office)**

**OPINION AND ORDER
DENYING PETITION FOR
REMOVAL**

Defendant has filed a timely, verified Petition for Removal, requesting that the Appeals Board rescind the Amended Findings of Fact and Order dated December 15, 2014, wherein the workers' compensation administrative law judge (WCJ) rescinded the Findings of Fact dated November 19, 2014, and found that the panel of chiropractic qualified medical evaluators (QMEs) dated May 9, 2014, was at all times and currently is a valid QME panel in this case. Defendant contends that the evidence does not justify the WCJ's Amended Findings and Order; and that applicant's failure to comply with Administrative Director Rule 31.1(b) (Cal. Code Regs., tit. 8, § 31.1(b)) justifies the issuance of a new QME panel. Applicant has not filed an answer.

Applicant, while employed from January 1, 2010, through January 15, 2014, claims to have sustained an industrial injury to multiple body parts. It appears that the injury has been denied by the employer. She has been treated by Craig Chanin, M.D., who identifies his areas of practice as "family practice/occupational medicine" (Exhibit E, page 9). On April 18, 2014, she filed a Request for Panel QME (Exhibit 4). She identified Labor Code section 4060¹ (compensability exam) as the reason for the

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

1 request. She did not identify the primary treating physician. She requested a panel of chiropractors but
2 did not submit any relevant documentation supporting designation of chiropractors.

3 The panel issued on May 9, 2014 (Exhibit 5). Defendant wrote a letter to applicant's attorney
4 dated May 27, 2014, objecting to the panel of chiropractors and stating that Dr. Chanin's area of practice
5 is general medicine. On June 12, 2014, defendant filed a Declaration of Readiness to Proceed, requesting
6 a status conference and stating: "Defendant contends state panel QME No. 1630249 was improperly
7 procured and the specialty requested is improper. . . . The panel was requested in the field of chiropractic
8 medicine. It is defendant's contention that since the applicant is claiming injuries for the back leg and
9 lower extremities the more appropriate QME would be in the field of orthopedic medicine."

10 On September 8, 2014, defendant filed a Replacement Panel Request (Exhibit C). It attached the
11 report of Dr. Chanin and requested a panel in the field of occupational medicine. After a mandatory
12 settlement conference, the case was set for trial on November 13, 2014. Issues identified were: "1.
13 Whether Applicant's procurement of a chiropractic panel is the proper medical specialty. 2. Whether
14 Defendant timely objected to the Medical Unit" (Minutes of Hearing, page 2). On the same date the
15 WCJ issued a Findings of Fact, finding that the QME panel was not validly procured and that the parties
16 must re-initiate the panel process if they wish to have a panel QME report or reports considered by the
17 WCAB. In his Opinion on Decision, he stated that applicant had failed to comply with Rule 31.1(b).

18 Applicant filed a Petition for Removal. In response, the WCJ rescinded the Findings of Fact
19 (WCAB Rule 10843(d)) and issued the Amended Findings and Order that is the subject of defendant's
20 petition.

21 Rule 31.1(b) provides: "In the event at party in a represented case wishes to request a QME panel
22 pursuant to Labor Code section 4062.2 in a specialty other than the specialty of the treating physician, the
23 party shall submit with the panel request form any relevant documentation supporting the reason for
24 requesting a different specialty." In this case, applicant did not comply with this rule. She did not
25 identify the treating physician or his specialty. She did not attach documentation supporting a panel of
26 chiropractors.

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1 However, defendant did not object to the Medical Unit when applicant filed her Request for Panel
2 QME. Defendant did not file its Replacement Panel Request until four months after the issuance of the
3 panel of chiropractors. In these circumstances, we conclude that defendant's objection to the Medical
4 Unit was untimely. Defendant has failed to demonstrate that it has sustained substantial prejudice or
5 irreparable harm because of the WCJ's decision and that reconsideration will not be an adequate remedy
6 if it is aggrieved by any final order arising from the designation of a chiropractic QME.

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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 **RONNIE G. CAPLANE**

8 **I CONCUR,**

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11 **KATHERINE ZALEWSKI**

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13  **DEPUTY**

14 **ANNE SCHMITZ**



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

17 **MAY 26 2015**

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

20 **DOLORES NATIVIDAD**
21 **LAW OFFICE OF ROBIN JACOBS, INC.**
22 **TOBIN LUCKS**

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26 **MR/ara**