WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANTONIO MARQUEZ, ***Applicant***

vs.

ROMAN CATHOLIC BISHOP OF MONTEREY, permissibly self-insured, administered by LWP CLAIMS SOLUTIONS, INC., ***Defendants***

Adjudication Numbers: ADJ11986446, ADJ13326888
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration in order to further study the factual and legal issues in these cases. This is our Opinion and Decision After Reconsideration.

Defendant seeks removal of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 25, 2021. By the F&O, the WCJ found that the orthopedic qualified medical evaluator (QME) will examine applicant solely on the issues identified by the internal medicine QME for ADJ11986446. He also made a finding that the chiropractic QME will examine applicant as the QME in ADJ13326888 and that neither QME would supersede the other. The F&O included orders pursuant to these findings.

Defendant contends that the orthopedic QME must consider all of applicant's medical history, including his second injury, in order for his reporting to be substantial evidence and pursuant to the Labor Code. Defendant also contends that if the orthopedic QME had evaluated applicant first before the chiropractic QME (as he was scheduled to), he would be the QME for both cases per *Navarro v. City of Montebello* (2014) 79 Cal.Comp.Cases 418 (Appeals Board en banc). Lastly, defendant contends that a finding that the orthopedic QME is the QME for both cases does not deny applicant's right to due process.

We received an answer from applicant. Due to the WCJ's unavailability, the presiding WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny the Petition.

We have considered the allegations of defendant's Petition for Removal, applicant's answer and the contents of the presiding WCJ's Report with respect thereto. Based on our review

of the record and for the reasons discussed below, we will amend the F&O to find that the orthopedic QME will not become the QME in ADJ13326888 and must evaluate applicant pursuant to the Labor Code (Finding of Fact No. 3). We will also revise the order in ADJ11986446 to reflect this finding. We will not disturb the WCJ's other findings of fact or order in the F&O.

FACTUAL BACKGROUND

Applicant initially claimed injury to the back, hernia, abdomen/groin, testicles and left leg on June 19, 2018 while employed as a handyman/custodian by the Roman Catholic Bishop of Monterey (ADJ11986446). The injury occurred when he was moving furniture. Applicant returned to work performing modified duties in December 2018. (Defendant's Exhibit D-11, QME Report of Dr. David Baum, February 13, 2019, p. 2.) An Application for Adjudication of Claim was filed by applicant's attorney on March 8, 2019.

David Baum, M.D. evaluated applicant as the internal medicine QME for ADJ11986446 in February 2019. Dr. Baum diagnosed applicant with a left inguinal hernia and left ilioinguinal neuralgia. (Defendant's Exhibit D-11, QME Report of Dr. David Baum, February 13, 2019, p. 6.)

Applicant filed a second Application for Adjudication of Claim in June 2020 claiming injury to the neck, right shoulder, right arm, right hand, right upper extremity, back and bilateral lower extremities on February 21, 2020 while employed in the same position (ADJ13326888). The DWC-1 claim form for this injury is dated February 28, 2020. (Applicant's Exhibit A-1, DWC-1 Claim Form, February 28, 2020.) The record indicates that this injury occurred when applicant felt lower back pain while stacking tables. (Defendant's Exhibit D-1, Medical report and RFA, Pinnacle Healthcare, March 27, 2020, exh. p. 2.)

In June 2020, Dr. Baum was deposed. During his deposition, Dr. Baum testified as follows in relevant part:

> Q. In any case, the evaluation of the back and the complaints of radicular symptoms would be outside your area of medical expertise.
>
> Do I have that correct?
>
> A. I'd refer that to an orthopedic surgeon.
> …
> Q. So, Dr. Baum, defense counsel just asked you about whether addressing the back is essentially outside your area of expertise. And, generally, a QME is

required to address any issues that they can address. So even though the low back may be not your specialty, it's an orthopedic issue.

Are you capable of addressing the medicolegal issues as far as causation, apportionment, impairment, et cetera, or are you deferring that to a separate evaluator?

A. I'd defer that to a separate evaluator with the caveat that I need that separate evaluator to comment upon his back pain so that I can better understand his groin pain.

Q. Okay. And I believe, then, Ms. Roberts asked you about an orthopedist. The workers' compensation, medically, has a number of different medical specialties that may be competent to address the low back injury ranging from orthopedic surgery to physical medicine and rehabilitation to pain medicine to chiropractic and the list goes on.

Do you have any preference between those specialties, or do you defer to the trier of fact on the particular specialty for this separate evaluator?

MS. ROBERTS: Objection. That's been asked and answered.

Dr. Baum already said he would defer it to an orthopedic evaluator.

BY MR. DILLES:

Q. You can go ahead and answer, Dr. Baum.

A. My preference would be, one, an orthopedic surgeon, and that would be my preference.

(Defendant's Exhibit D-12, Deposition of David Baum, M.D., June 10, 2020, pp. 25:3-7, 26:2-23.)

On June 15, 2020, applicant's attorney sent a letter to defendant stating as follows in relevant part:

Please consider this an objection per LC 4062 to the June 5, 2020 report of Eugene Guzman, PA as to body parts/diagnosis. As LWP Claims Solutions, Inc. has failed to assign a claim number, Applicant hereby assigns the claim number of SGD6433 to Mr. Marquez's claim relating to the specific injury of February 21, 2020.

(Defendant's Exhibit D-5, Letter to LWP Claims Solutions, Inc., June 15, 2020, p. 2.)

On June 30, 2020, applicant requested a chiropractic QME panel (number 7344840) for the 2020 claim utilizing his self-assigned claim number. (Defendant's Exhibit D-6, Letter to LWP Claims Solutions, Inc., with panel strikes, July 2, 2020.) Applicant served the panel on defendant on July 2, 2020 with his strike. (*Id.*)

On July 6, 2020, defendant sent two letters to applicant, one letter accepting his February 21, 2020 claim for the lumbar spine and separately a Notice Regarding Denial of Workers' Compensation denying injury for all other parts pled for the 2020 claim. (Defendant's Exhibit D-9, Letter to applicant, LWP Claims, Solutions, Inc. July 6, 2020; Applicant's Exhibit A-4, Letter to applicant w/ attachments, LWP Claims Solutions, Inc., July 6, 2020.)

Applicant requested another chiropractic QME panel (number 7346907) on July 10, 2020 utilizing his June 15, 2020 objection letter and with defendant's claim number for the 2020 claim. This was served on defendant on July 10, 2020 with a letter wherein applicant contends that the parties should use the first chiropractic panel number 7344840. (Defendant's Exhibit D-8, Letter to Stander, Reubens et al, Sprenkle, Georgariou & Dilles, July 10, 2020.) Pamela Kirkwood, D.C. was the remaining panelist on panel number 7346907 after both parties' strikes. (Defendant's Exhibit D-7, QME Panel No. 7346907 with strikes, July 10, 2020.)

Defendant sent applicant a letter objecting to both chiropractic panels on the basis that applicant's original objection letter was defective. (Defendant's Exhibit D-10, Letter to Sprenkle, Georgariou & Dilles, July 23, 2020.) Defendant also noted that Dr. Baum had recommended an evaluation with an orthopedist.

The matter initially proceeded to trial regarding only ADJ13326888 (the 2020 claim) on November 2, 2020 on the following issues:

> (a) This dispute is limited to the QME panels obtained by Applicant on 7/1/20 (Panel No. 7344840) and on 7/10/20 (Panel No. 7346907). Defendant asserts that these panels were obtained by Applicant in contravention of Labor Code Section 4062.2. Applicant assigned his own claim number and obtained QME panels from the Medical Unit through inadequate notice to Defendant.
>
> (b) Defendant further asserts that the QME in the 6/19/18 date of injury has recommended an orthopedic surgeon and a chiropractor QME is an inappropriate specialty.
>
> (c) Applicant asserts that Defendant was adequately notified, that the QME panels were appropriately obtained, and that there is no valid basis for Defendant to object to QME panel specialty.

(d) Applicant asserts that the opinions of the PQME in ADJ11986446 are irrelevant to the issues raised above.

(Minutes of Hearing, November 2, 2020, pp. 2-3.)

In November 2020, defendant filed a Petition for Additional QME Panel in ADJ11986446 requesting an order for a panel in orthopedic surgery. Attached to the Petition was a report from Dr. Baum dated October 9, 2019 (referred to as dated 2/13/2020 in the Petition), in which, Dr. Baum noted that applicant was reporting back pain into his right lower extremity, as well as portions of Dr. Baum's June 10, 2020 deposition testimony. Dr. Baum recommended an orthopedic evaluation in his October 9, 2019 report. Applicant did not file an objection to defendant's Petition.

The WCJ issued an Order Granting Petition for Additional QME Panel in orthopedic surgery in ADJ11986446 in response to defendant's Petition on November 3, 2020. (Defendant's Exhibit D-19, Order Granting Petition for Additional QME Panel, November 3, 2020.) Defendant obtained QME panel number 2631619 in orthopedic surgery on November 16, 2020. (Defendant's Exhibit D-18, QME Panel No. 2631619, November 16, 2020.)

On November 30, 2020, the WCJ issued an Order Rescinding Submission of the case on the basis that defendant had raised a new issue in its post-trial points and authorities: whether applicant had complied with Administrative Director (AD) Rule 30(b)(1)(C) regarding service of the chiropractic QME panels. Applicant filed a response to the Order on December 4, 2020 and enclosed a copy of the QME panel request packages showing service on only the claims adjuster for the first panel and on both the adjuster and defendant's attorney for the second panel. (Applicant's Exhibit A-5, Letter from applicant's attorney, December 4, 2020.) Applicant explained that he was unaware of defense counsel's representation at the time of the first panel's issuance, which is why defense counsel was not served with the first panel. (*Id.*)

At the February 2, 2021 status conference, the WCJ admitted applicant's December 4, 2020 letter into evidence and the case was set to be resubmitted for decision on March 1, 2021. (Minutes of Hearing, February 2, 2021.)

On February 16, 2021, defendant filed a Petition to Compel Applicant's Attendance at Medical-legal Evaluation requesting an order compelling applicant to attend an evaluation set with Mark Hellner, M.D. from the orthopedic QME panel scheduled for March 19, 2021.

The WCJ issued his first Findings and Order (First F&O) on March 9, 2021 which listed both claim numbers on it. The WCJ found that QME panel number 7346907 "is the appropriate panel to resolve the disputed medical issues in ADJ13326888" and panel number 7344840 "is not an appropriate panel to resolve the disputed medical issues in ADJ13326888." (First, F&O, March 9, 2021, p. 1.) He further found that it is appropriate for the parties to use Dr. Kirkwood "as the appropriate panel QME in ADJ13326888" and chiropractic is an appropriate specialty "to evaluate the disputed medical issues in ADJ13326888." (*Id.*) The parties were ordered to use Dr. Kirkwood for ADJ13326888. Neither party challenged the First F&O.

On March 10, 2021, the WCJ issued an Order Compelling Applicant's Attendance at the appointment with the orthopedic QME Dr. Hellner per defendant's Petition. Applicant filed a petition for removal of this order, which was stamped received on March 17, 2021. In response, the WCJ issued an Order Rescinding the Order on March 26, 2021 and set the matter for an expedited hearing on April 8, 2021.

At the expedited hearing on April 8, 2021, applicant's two claims were consolidated with all evidence received in one file to be deemed evidence admitted into the other to the extent it is relevant and material. (Minutes of Expedited Hearing; Order of Consolidation, April 8, 2021, p. 2.) The disputed issues were identified as follows:

> (a) Applicant objects to Defendant's assertion re serving Chronology of Events, as Panel No. 7346907 issued first. Defendants dispute this statement.
>
> (b) The parties dispute the scope of PQME Dr. Hellner's examination and require a determination as to whether, per *Navarro*, Dr. Hellner would become the PQME in ADJ 13326888, examining Applicant for all dates of injury listed on all claim forms.
>
> (c) Defendant asserts that the QME Hellner evaluation should take place before the QME examination by Dr. Kirkwood to preserve Chronology of Events.
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> (*Id.* at pp. 2-3.)

Additional evidence was admitted into the record and the matter was anticipated to be submitted on May 17, 2021.[1] (*Id.* at pp. 1 and 3-4.)

[1] At the April 8, 2021 trial the WCJ assigned a 3/4/21 letter from applicant's attorney as applicant's exhibit A-5 even though he had previously assigned the designation of A-5 to applicant's 12/4/20 letter at the February 2, 2021 status conference.

DISCUSSION

I.

Defendant sought removal of the F&O. If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment (AOE/COE), jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

The F&O included a finding that applicant sustained injury AOE/COE to his groin and back. Injury AOE/COE is a threshold issue fundamental to the claim for benefits. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

II.

Although the F&O contains a finding that is final, defendant only challenges the WCJ's findings that the orthopedic QME Dr. Hellner will examine applicant solely on the issues identified by the internal medicine QME Dr. Baum and that Dr. Kirkwood is the panel QME for ADJ13326888. These are interlocutory decisions and are subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona*, *supra*.)

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).)

Section 4062.2(a) provides as follows:

> 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.
>
> (Lab. Code, § 4062.2(a); see also Lab. Code, §§ 4061-4062 [outlining the process for requesting a QME panel where at least one body part is accepted and mandating a medical evaluation per section 4062.2 where the employee is represented by an attorney].)

Section 4062.3 further provides in relevant part:

> (j) Upon completing a determination of the disputed medical issue, the medical evaluator shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. **The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator.**
>
> (k) If, after a medical evaluation is prepared, the employer or the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.
>
> (Lab. Code, § 4062.3(j)-(k), emphasis added; see also Cal. Code Regs., tit. 8, § 35.5(c)(1) [also providing that the evaluator shall address all contested medical issues arising from all injuries reported on one or more claims forms before the appointment that are issues within the evaluator's scope of practice and areas of clinical competence].)

Section 4064(a) also 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,** except medical treatment recommendations, which are subject to utilization review as provided by Section 4610, and objections to utilization review determinations, which are subject to independent medical review as provided by Section 4610.5.
>
> (Lab. Code, § 4064(a), emphasis added.)

In *Navarro*, the Appeals Board held en banc that the "Labor Code does not require an employee to return to the same panel QME for an evaluation of a subsequent claim of injury." (*Navarro*, *supra*, 79 Cal.Comp.Cases at p. 420.) In *Navarro*, applicant filed an application in 2009 alleging a cumulative trauma injury through February 9, 2009. He was evaluated by QME Dr. Yogaratnam in September 2009. In 2010, applicant filed two additional applications alleging two specific injuries in 2010. All three of applicant's claims included alleged injury to the back. Defendant sought to have Dr. Yogaratnam evaluate applicant for all three of his claims.

The WCJ in *Navarro* found that applicant was entitled to a new QME panel for his specific injury claims. Defendant sought removal of the decision. In its en banc decision, the Appeals Board affirmed the WCJ's decision and opined in relevant part:

> Considering section 4062.3(j) and section 4064(a) together, both sections state that a medical evaluation shall address "all medical issues arising from all injuries reported on one or more claim forms." Both sections refer to an injury reported on a claim form as the operative act, and not to a date of injury, a report of injury other than on a claim form, or the filing of an application with the WCAB. Under section 5401, an employer must provide a claim form and an injured worker must file a claim form **with** an employer. Hence, the reported date under sections 4062.3(j) and 4064(a) must be the filing date as defined by section 5401 because only section 5401 refers to filing a claim form. **Because the date the claim form is filed with employer is the operative act, the date of filing of the claim form determines which evaluator must consider which injury claim(s).**
>
> (*Navarro*, *supra*, 79 Cal.Comp.Cases at pp. 423-424, emphasis in original for "with"; emphasis added to last sentence.)

The *Navarro* decision also held that the requirement in AD Rule 35.5(e) "that an employee return to the same evaluator when a new injury or illness is claimed involving the same parties and the same type of body parts is inconsistent with the Labor Code, and therefore, this requirement is

invalid." (*Id.* at p. 426.)[2] The decision stated in this regard:

> While parties are not precluded from agreeing to return to the same evaluator for subsequent claims of injury, based on the foregoing, **we conclude that an employee may be evaluated by a new evaluator for each injury or injuries reported on a claim form after an evaluation has taken place**. Thus, regardless of whether a subsequent claim of injury is filed with the same employer or a different employer and regardless of whether injury is claimed to the same body parts or to different body parts, when a subsequent claim of injury is filed, the Labor Code allows the employee and/or the employer to request a new evaluator. **In keeping with the limitations set forth in sections 4062.3(j) and 4064(a), at the time of an evaluation the evaluator shall consider all issues arising out of any claims that were reported before the evaluation, and if several subsequent claims of injury are filed before the evaluation by the new evaluator takes place, that one new evaluator shall consider all of those claims of injury.**
>
> (*Id.* at p. 425, emphasis added.)

In this matter, applicant was evaluated for his 2018 injury by the internal medicine QME Dr. Baum in February 2019. Applicant subsequently filed a claim form dated February 28, 2020 alleging another specific injury occurring on February 21, 2020. Pursuant to *Navarro*, the date the claim form is filed is the operative act in determining the right to request a new QME panel. Dr. Baum's evaluation occurred in 2019. Applicant filed his claim form for the 2020 specific injury in 2020 *after* Dr. Baum's evaluation. Therefore, applicant was entitled to request a chiropractic QME panel for the subsequently filed DWC-1 claim form, which he did in July 2020 in accordance with sections 4062 and 4062.2.

However, Dr. Baum in his June 2, 2020 deposition testified that he needs an orthopedic evaluator to comment on applicant's back pain in order to better understand his groin pain. Pursuant to Dr. Baum's request, an order for an additional QME panel in orthopedic surgery in ADJ11986446 was issued and an orthopedic QME panel obtained by defendant in November

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[2] AD Rule 35.5(e) states:

> In the event a new injury or illness is claimed involving the same type of body part or body system and the parties are the same, or in the event either party objects to any new medical issue within the evaluator's scope of practice and clinical competence, the parties shall utilize to the extent possible the same evaluator who reported previously.

Despite the holding regarding its validity in *Navarro*, the language of this regulatory subdivision has not been changed and remains the same to date.

2020.

Defendant incorrectly contends that the orthopedic QME must be the QME for both claims of injury. The parties remain obligated to return to Dr. Baum for the 2018 claim to address contested medical issues that are within his scope of practice and areas of clinical competence. (See Cal. Code Regs., tit. 8, § 35.5(c)(1).) However, applicant was entitled to obtain a QME panel in another specialty for his subsequently filed 2020 claim form per the discussion above. The need for an orthopedic evaluator per Dr. Baum's request does not negate either party's right to request a new QME panel in another specialty for a subsequently filed claim form. The orthopedic QME panel was not issued as a *new* panel for the 2020 claim, but rather, as an additional QME panel for the 2018 claim per AD Rule 31.7.[3]

We consequently agree with the WCJ's conclusion that the chiropractic QME Dr. Kirkwood is the panel QME for ADJ13326888 and will not disturb this finding of fact or order in the F&O.

III.

Although we agree with the WCJ's conclusion regarding Dr. Kirkwood, we disagree with his finding that the orthopedic QME Dr. Hellner's evaluation must be restricted to only those issues identified by Dr. Baum.

Panel QMEs are obligated to "address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator" per section 4062.3(j). Similarly, section 4064(a) states that "[e]ach comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms." The orthopedic QME is therefore statutorily required to address all issues arising from any claim forms filed prior to the evaluation appointment. (See also *Navarro*, *supra*, 79 Cal.Comp.Cases at p. 425 ["the Labor Code requires that an evaluator discuss all medical issues arising from all reported claims of injury at the time of an evaluation"]; Lab. Code, § 4663(b)-(c) [a physician's report addressing permanent disability must include an apportionment determination by finding the approximate percentage of permanent

[3] AD Rule 31.7(a) states that once an evaluator "has issued a comprehensive medical-legal report in a case and a new medical dispute arises, the parties, to the extent possible, shall obtain a follow-up evaluation or supplemental evaluation from the same evaluator." AD Rule 31.7(b) permits a QME panel in a different specialty upon a showing of good cause. (Cal. Code Regs., tit. 8, § 31.7(a)-(b).) Good cause for an additional panel in another specialty for the 2018 claim was shown here.

disability directly caused by the injury and other factors both before and subsequent to the industrial injury including prior industrial injuries].) Additionally, the back is pled as a body part in both applicant's claims. It is unclear how the orthopedic QME can adequately address applicant's back pain as requested by Dr. Baum without discussion of its relation to both injurious events.

Defendant appears to be trying to tie which QME is the dispositive QME on the 2020 claim to which QME (chiropractic or orthopedic) evaluates applicant first. As discussed above, applicant was entitled to request a new QME panel for his 2020 claim form because the operative act in determining the right to request a panel is the filing of the claim form. Although Dr. Kirkwood is the QME for the 2020 claim, both Dr. Kirkwood and Dr. Hellner must address all claim forms that have been filed prior to their evaluation per the Labor Code. It is irrelevant which QME evaluates applicant first for purposes of determining which physician is **the** QME for his 2020 claim of injury.

It is acknowledged that having more than one QME addressing the same body parts may result in conflicting opinions on the contested medical issues. In this matter, the resulting reports from Dr. Kirkwood and Dr. Hellner will presumably be admissible in both applicant's cases because they are consolidated and pursuant to the order of consolidation. (See Cal. Code Regs., tit. 8, § 10396(e).) In the event there are conflicting medical opinions in the record on disputed issues, it is up to the trier of fact to determine which medical opinion is more persuasive and constitutes substantial medical evidence regarding those issues. (See *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525] [the relevant and considered opinion of one physician may constitute substantial evidence upon which a determination may be made even if inconsistent with other medical opinions].)

In conclusion, we will amend the F&O to find that Dr. Hellner will not become the QME in ADJ13326888 and must evaluate applicant pursuant to the Labor Code (Finding of Fact No. 3). We will also revise the order in ADJ11986446 to reflect this finding.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued by the WCJ on May 25, 2021 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

3. Mark Hellner, M.D. will not become the QME for ADJ13326888 and must conduct his evaluation of applicant pursuant to the Labor Code.

* * *

ORDER IN ADJ11986446

IT IS ORDERED THAT Dr. Hellner examine applicant in accordance with the Labor Code.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 14, 2021

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

ANTONIO MARQUEZ
SPRENKLE GEORGARIOU & DILLES
STANDER REUBENS

AI/*pc*

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