WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SHARON FRINK, ***Applicant,*** **vs.** **SHASTA-TEHAMA-TRINITY JOINT COMMUNITY COLLEGE, Permissibly Self-Insured,** ***Defendant.***	**Case No. ADJ7688956** **(Redding District Office)** **OPINION AND ORDER GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL**

Defendant requests removal regarding an October 10, 2011 Findings and Order and an October 11, 2011 Findings and Order issued by the workers' compensation administrative law judge (WCJ). In the former, the WCJ found that a replacement for panel qualified medical examination (QME) number 1301015 shall be provided because panel member John Santaniello, M.D., is unavailable pursuant to California Code of Regulations, title 8, section 34(b). Based on this finding, the WCJ ordered the Medical Director to issue a repiacement panel QME in the specialty of orthopedic surgery. In the latter, the WCJ denied defendant's Petition to Compel Attendance for Re-Evaluation with Qualified Medical Evaluator Dr. Santaniello. Previously, the parties stipulated that, while employed on September 22, 2006 as a groundskeeper, applicant sustained industrial injury to her left knee and fingers and claims to have sustained industrial injury to her right knee.

Defendant contends that the WCJ erred in denying its Petition to Compel Attendance for Re-Evaluation with Qualified Medical Evaluator Dr. Santaniello and in ordering the Medical Director to issue a replacement panel QME. Defendant argues that Administrative Director Rule 34(b) does not apply to reevaluations and that the WCJ's decision is inconsistent with Labor Code[1] section 4062.3.

[1] All further statutory references are to the Labor Code, unless otherwise noted.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Removal recommending that we deny defendant's request for removal.

I.

Based on our review of the record and for the reasons discussed below, we will grant defendant's request for removal, rescind the WCJ's decision, and return this matter to the trial level for further proceedings and decision.

II.

The facts in this case are not in dispute. Applicant sustained an admitted industrial injury to her left knee and fingers while employed as a groundskeeper from December 7, 2008 to December 7, 2009. While in pro per, she was evaluated by panel QME Dr. Santaniello in Anderson, California. Thereafter, applicant became represented and amended her claim to include bilateral knees. Defendant objected to the amendment and requested a re-evaluation. However, after the initial evaluation, Dr. Santaniello moved his office from Anderson, California to Redding, California, approximately 15 miles away. According to defendant's verified Petition for Removal, applicant refused to agree to be reevaluated in Redding and, instead, requested a new panel QME.

On June 30, 2011, defendant filed a Petition to Compel Attendance for Re-Evaluation with Qualified Medical Evaluator Dr. Santaniello. The issue of defendant's Petition to Compel was tried on September 15, 2011 and October 5, 2011. Thereafter, the WCJ issued the decision from which defendant seeks reconsideration herein. In her Report, the WCJ stated that Rule 34(b) prevents the reevaluation in Redding and that this outcome is not inconsistent with Rule 36(d) and section 4062.3(j).

III.

The fundamental rule of statutory construction is to effectuate the Legislature's intent. (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289] (*DuBois*).) "When interpreting any statute, it is well-settled that we begin with its words because they generally provide the most reliable indicator of legislative intent." (*Smith v. Workers' Comp. Appeals Bd.* (2009) 46 Cal.4th 272, 277 [74 Cal.Comp.Cases 575, 578] (*Smith*) [internal quotation marks omitted].) "We are required to give effect to statutes according to the usual, ordinary import of the language employed … ."

(*DuBois*, 5 Cal.4th at p. 388 [58 Cal.Comp.Cases at p. 289]).) "If the language is clear and unambiguous, there is ordinarily no need for judicial construction [and, therefore,] we presume the Legislature meant what it said and the plain meaning governs." (*Smith*, 46 Cal.4th at p. 277 [74 Cal.Comp.Cases at p. 578] [internal quotation marks omitted]; see also *DuBois*, 5 Cal.4th at pp. 387-388 [58 Cal.Comp.Cases at p. 289].) Nevertheless: "At the same time, we do not consider ... statutory language in isolation. Instead, we examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts. Moreover, we read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*San Leandro Teachers Ass'n v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 831 [internal quotation marks and citations omitted]; see also *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (*Steele*) (1999) 19 Cal.4th 1182, 1194 [64 Cal.Comp.Cases 1, 22] (*Steele*) ("The words of the statute must be construed in context ... and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.").)

Generally, the rules of statutory interpretation also govern the interpretation of regulations. (*Cal. Drive-In Restaurant Ass'n v. Clark* (1943) 22 Cal.2d 287, 292.) Thus, we are "limited to determining whether the regulation (1) is within the scope of the authority conferred and (2) is reasonably necessary to effectuate the purpose of the statute." (*State Farm*, 32 Cal.4th at p. 1040 [quoting from *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 411 [546 P.2d 687]] (internal citations and quotation marks omitted).)

Turning to the issue before us, we note that section 4062.3(j) provides:

> "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), (emphasis added).)

Administrative Director Rule 36(d) provides, in relevant part:

> "If an evaluation report is completed for an unrepresented employee, in which the QME determines that the employee's condition has not become permanent and stationary as of the date of the evaluation, the parties shall request any further

> evaluation from the same QME if the QME is currently an active QME and available at the time of the request for the additional evaluation. If the QME is unavailable, a new panel may be issued to resolve any disputed issue(s). ..." (Cal. Code, Regs., tit. 8, § 36(d).)

Finally, Administrative Director Rule 34(b), on which the WCJ relied, states that:

> "The QME shall schedule an appointment for a comprehensive medical-legal examination which shall be conducted only at the medical office listed on the panel selection form. However, upon written request by the injured worker and only for his or her convenience, the evaluation appointment may be moved to another medical office of the selected QME if it is listed with the Medical Director as an additional office location." (Cal. Code Regs., tit. 8, § 34(b).)

At the outset, we note that the language of section 4062.3(j) must be interpreted in accordance with legislative intent and that we are required to give effect to statutes according to the usual, ordinary import of the language employed. Thus, we are persuaded that by using the phrase "***to the extent possible***, [the parties] ***shall*** utilize the same medical evaluator" the Legislature intended to prevent the AME/QME selection process from restarting where there is a reasonable possibility that the injured worker return to the same medical evaluator. This interpretation both minimizes medical-legal costs and thwarts attempts to doctor-shop.

In light of this interpretation of section 4062.3(j), we find that Rule 34(b), which requires that "a comprehensive medical-legal examination [] shall be conducted only at the medical office listed on the panel selection form," applies only to the *initial* comprehensive medical-legal evaluation by the panel QME. This interpretation gives the greatest effect to section 4062.3(j). We also find that the language of Administrative Director Rule 36(d), which provides that "[i]f the [initial] QME is unavailable, a new panel may be issued to resolve any disputed issue(s)," applies to supplemental comprehensive medical-legal evaluations. However, a QME does not become "unavailable" merely because the QME moves his or her office to another "location[] within the general geographic area of the employee's residence." (Lab. Code, § 139.2(h)(3)(B).) We are persuaded that Dr. Santaniello's office in Redding is within the general geographic area of the employee's residence.

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Accordingly, we will grant defendant's request for removal, rescind the WCJ's decision, and return this matter to the trial level for further proceedings and decision. Upon this matter's return, the WCJ shall conduct further proceedings as she deems necessary to have applicant return to Dr. Santaniello for reevaluation.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the October 10, 2011 Findings and Order and of the October 11, 2011 Findings and Order be, and the same hereby is **GRANTED**.

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IT IS FURTHER ORDERED as the Appeals Board's Decision After Removal that the October 10, 2011 Findings and Order and October 11, 2011 Findings and Order are **RESCINDED,** and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

ALFONSO J. MORESI

I CONCUR,

JOSEPH M. MILLER

FRANK M. BRASS

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JAN 31 2012

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

SHARON FINK
MULLEN FILIPPI
PICKERING LAW

PAG/sye