

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

OTTO STOWE, *Applicant*

vs.

**DALLAS COWBOYS; DENVER BRONCOS; LOS ANGELES RAMS;
TRAVELERS; CIGA, *Defendants***

**Adjudication Numbers: ADJ9093456, ADJ9996405, ADJ9996406
Santa Ana District Office**

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

Applicant seeks removal of the January 25, 2022, Order wherein the workers' compensation administrative law judge (WCJ) set the matter for trial, did not allow applicant to elect against a defendant pursuant to Labor Code section 5500.5, and refused to allow applicant to add additional witnesses.

Applicant contends that he is significantly prejudiced by the WCJ's refusal to allow an election pursuant to Section 5500.5 and by the WCJ's refusal to admit evidence and hold a trial on applicant's petition to appoint a guardian ad litem. Applicant also contends that he has been prejudiced by ongoing delays in this case.

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons discussed below, we rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

A minor or incompetent injured worker must appear in a hearing before the Workers' Compensation Appeals Board by a guardian ad litem or a conservator. (Labor Code, § 5408.) The Workers' Compensation Appeals Board is authorized to decide the fact of incompetency of an injured employee and appoint a guardian ad litem. (Labor Code, §§ 5307.5, 5408.) The appointment of a guardian ad litem, however, must be based upon a medical report or other evidence that the adult injured worker is in fact incompetent. (*Lamin v. City of Los Angeles* (2004), 69 Cal. Comp. Cases 1002 [Appeals Board Panel Decision].)

Therefore, a determination on the issue of applicant's competence must be made before proceeding further with this case. Accordingly, we grant removal and, as our decision after removal return this matter to the trial level. The WCJ should hold a hearing to determine to whether applicant currently needs a guardian and to appoint a guardian ad litem if necessary.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the January 25, 2022, Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the January 25, 2022, Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 19, 2023

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

**OTTO STOWE
GLENN, STUCKEY & PARTNERS, LLP
FLOYD SKEREN
DIMACULANGAN & ASSOCIATES**

MWH/mc

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