

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Misc. No. 254**

5
6 **IN RE: DANIEL ESCAMILLA,**

7 *Respondent.*

8
9 **OPINION AND ORDERS DENYING
PETITIONS FILED ON MARCH 16, 2012
AND MARCH 30, 2012**

10 **(EN BANC)**

11 Daniel Escamilla, in propria persona, has filed two petitions. The first, filed on March 16, 2012,
12 is captioned Petition for Order Requiring Board to Produce All Case Documents Relating to Sanction
13 Proceedings in Eleven Cases Being Used Against Respondent. The second, filed on March 30, 2012, is
14 captioned Objection to Order Requiring Submission of Offer of Proof and Petition for Removal to Obtain
15 Ruling on Petition to Produce and to Obtain Clarification of Specific Issues to be Determined by Board
16 in Connection with its Determination under Labor Code Section 4907. Although the relief sought by Mr.
17 Escamilla is not clearly stated, in the March 16, 2012 petition, Mr. Escamilla seeks production of “a
18 complete file of the documents relating to the eleven sanctions orders.” In the March 30, 2012 petition,
19 Mr. Escamilla (1) “objects to, and seeks removal of, the WCJ’s order of March 16, 2012 requiring ‘a
20 written, specific and non-generalized offer of proof as to the expected testimony of each person he
21 desires to call as a witness in these proceedings,’” (2) “seeks removal of the WCJ’s refusal to rule on the
22 Petition for Order Requiring Board to Produce All Case Documents Relating to Sanction Proceedings in
23 Eleven Cases Being Used Against [Respondent],” and (3) “seeks an opinion from the Board providing
24 clarification of the specific issues to be determined in this matter, including an opinion as to whether
Respondent’s moral character is at issue.”

25 We have considered the petitions and the written reply to Mr. Escamilla’s March 30, 2012
26 petition filed by John Shields, prosecuting attorney for the Workers’ Compensation Appeals Board
27 (WCAB), and we have reviewed the record in this matter.

1 For the reasons discussed below, we will deny Mr. Escamilla's petitions.

2 The specific pattern of conduct at issue was set forth in the September 21, 2011 Notice of Hearing
3 Regarding Suspension or Removal of Privilege of Daniel Escamilla to Appear in any Proceeding as a
4 Representative of any Party before the Appeals Board or any Workers' Compensation Administrative
5 Law Judge (NOH). Only Mr. Escamilla's pattern of conduct before the WCAB, and therefore whether or
6 not he should be suspended or removed under Labor Code section 4907, are at issue. Mr. Escamilla's
7 "moral character" is not at issue.

8 Mr. Escamilla requests an order requiring that "all case documents relating to sanction
9 proceedings in eleven cases" be produced.

10 The NOH was served by mail upon Mr. Escamilla on September 21, 2011, and personally served
11 on Mr. Escamilla on October 18, 2011. Eleven sanctions orders were attached as exhibits to the NOH.
12 Additionally, the NOH included as exhibits a number of case documents underlying the sanctions orders
13 in four of the cases.¹ With the exception of rebuttal evidence, Mr. Shields has indicated that the exhibits
14 to the NOH, which were provided to Mr. Escamilla several months ago, are the only documents that the
15 WCAB intends to submit. (Transcript of December 2, 2011 Proceedings at p. 10.) Furthermore, these
16 proceedings involve only cases in which Mr. Escamilla was involved, and he should already have any
17 documents associated with these cases. Additionally, pursuant to Court Administrator Rule 10270, Mr.
18 Escamilla has access, without need for any order from the Appeals Board, to the paper or electronic
19 adjudication files in all of these matters. (Cal. Code Regs., tit. 8, § 10270.) Mr. Escamilla is free to
20 inspect these files during the regular business hours of the various district offices at his convenience.²
21 No order producing these documents is necessary.

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23 ¹ These documents include a transcript of a hearing before Appeals Board commissioners in Case No. LAO 0829698
24 (*Rozenblat*), a petition for reconsideration, minutes of hearing, and correspondence from Mr. Escamilla filed in Case No.
25 ADJ1194116/LAO 0797672 (*Ortiz*), two petitions for reconsideration, a petition for removal and a declaration submitted by
26 Mr. Escamilla in Case No. ADJ3897299 (*Santangelo*), and a petition for reconsideration, minutes of hearing and a partial
27 transcript of proceedings in case Nos. ADJ4517161/ADJ3871851 (*Chavez*).

² In any case, in our January 20, 2012 Decision after Removal, we ordered that all documentary evidence was to be presented
at a pre-hearing conference to be held within 45 days of service of our January 20, 2012 opinion, and that Mr. Escamilla was
to provide Mr. Shields with said documentary evidence at least 15 days before the pre-hearing conference. The pre-hearing
conference took place on March 16, 2012. Thus, although Mr. Escamilla is free to inspect the adjudication files of any case he
participated in at his convenience, the deadline to disclose and present documentary evidence has already come and gone.

1 With regard to Mr. Escamilla’s objection to the requirement that he provide a “a written, specific
2 and non-generalized offer of proof as to the expected testimony of each person he desires to call as a
3 witness in these proceedings,” we note that on December 20, 2011, the Honorable David Hettick, a
4 workers’ compensation administrative law judge who is serving as hearing officer in this matter pursuant
5 to a delegation of authority conferred in the NOH, ordered Mr. Escamilla to “disclose the names and
6 work addresses of any witnesses that he will call at trial, and to make a short concise Offer of Proof as to
7 the anticipated testimony of such witnesses” by January 6, 2012. (Transcript of December 20, 2011
8 Proceedings at p. 23.) On January 9, 2012, Mr. Escamilla filed a Petition for Removal and Request for
9 Immediate Stay of Proceedings challenging the January 6, 2012 deadline, stating that it gave him
10 “insufficient time to conduct pretrial discovery or otherwise prepare his defense to the Board’s action...”
11 (January 9, 2012 Petition for Removal at p. 14.) Mr. Escamilla did not challenge the substance of Judge
12 Hettick’s order. In our Decision after Removal, we extended the deadline for Mr. Escamilla to present
13 his list of witnesses and their addresses and offer of proof to March 16, 2012. Now, for the first time,
14 more than three months after Judge Hettick’s original order, and two weeks after the response was due,
15 Mr. Escamilla objects to the substance of the order.

16 Appeals Board Rule 10843(a) requires that a petition for removal challenging an interim order be
17 filed within 20 days of service of the order. (Cal. Code Regs., tit. 8, § 10843, subd. (a).) Judge Hettick
18 ordered Mr. Escamilla to provide his witness list and offer of proof more than three months prior to the
19 filing of the March 30, 2012 petition for removal. Mr. Escamilla’s challenge to the order on substantive
20 grounds is untimely.

21 In any case, we reject Mr. Escamilla’s argument that he does not have sufficient notice of the
22 issues in these proceedings to adequately prepare a witness list or an offer of proof of the witnesses’
23 expected testimony. The NOH thoroughly details Mr. Escamilla’s conduct in eleven cases which
24 resulted in sanctions. The NOH raises his “continuing sanctionable conduct” and “repeated misconduct,
25 with no attempt to reform.” It also raises the facts that he has “repeatedly executed, verified and
26 willfully filed pleadings containing misrepresentations of material facts made with reckless indifference
27 as to their truth or falsity,” has been “sanctioned numerous times for filing frivolous petitions,” and has

1 evinced “a pattern of disciplinary actions and repeated misconduct with no apparent attempt to reform.”
2 In fact, at the March 16, 2012 pre-hearing conference in this matter, Mr. Escamilla acknowledged that he
3 was aware of what is at issue, stating:

4 “I’m prepared to, yes, go to each witness and state the extent to which
5 that witness has testimonial evidence and would be able to present
6 testimonial evidence before the Court on the very limited issues of
7 whether I have a pattern and practice of filing papers which are frivolous
8 or contain misrepresentations, whether I have a pattern and practice of
9 wasting judicial resources, and just generally as the Board has stated,
10 whether there is good cause to remove me or suspend me from practice
11 before the Board.” (Transcript of March 16, 2012 Proceedings at p. 8.)

12 The issues in this hearing are the ones that are enumerated in the NOH. Any conduct not listed in
13 the NOH, including Mr. Escamilla’s “moral character,” is not at issue. Moreover, the prior sanctions
14 orders are final and not subject to relitigation. However, despite his arguments to the contrary, it is clear
15 that Mr. Escamilla is quite aware of the issues in these proceedings, and the NOH has given him more
16 than adequate notice and opportunity to prepare a defense against them. Mr. Escamilla has been
17 provided all of the evidence that will be introduced by the WCAB in this proceeding, save any rebuttal
18 evidence, and was afforded the opportunity to procure and present his own evidence in this matter.

19 We therefore deny Mr. Escamilla’s March 16, 2012 and March 30, 2012 petitions.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that Daniel Escamilla's Petition for Order Requiring Board to Produce All
3 Case Documents Relating to Sanction Proceedings in Eleven Cases Being Used Against Respondent is
4 **DENIED.**

5 **IT IS FURTHER ORDERED** that Daniel Escamilla's Objection to Order Requiring Submission
6 of Offer of Proof and Petition for Removal to Obtain Ruling on Petition to Produce and to Obtain
7 Clarification of Specific Issues to be Determined by Board is **DENIED.**

8
9 **WORKERS' COMPENSATION APPEALS BOARD**

10
11 /s/ Ronnie G. Caplane
12 **RONNIE G. CAPLANE, Chairwoman**

13 /s/ Frank M. Brass
14 **FRANK M. BRASS, Commissioner**

15 /s/ Alfonso J. Moresi
16 **ALFONSO J. MORESI, Commissioner**

17 /s/ Deidra S. Lowe
18 **DEIDRA E. LOWE, Commissioner**

19 /s/ Marguerite Sweeney
20 **MARGUERITE SWEENEY, Commissioner**

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22 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**
23 **04/20/2012**

24 **SERVICE BY MAIL EFFECTED ON ABOVE DATE ON THE FOLLOWING PARTIES:**

25 **DANIEL ESCAMILLA**
26 **JOHN SHIELDS, Staff Attorney**
HONORABLE DAVID HETTICK

27 **DW/bgr**