

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

NELLY KARINA MENJIVAR GOMEZ, *Applicant*

vs.

SANTA MARIA HARVESTING LLC; INTERCARE, *Defendants*

**Adjudication Numbers: ADJ12491402 ADJ12491418
San Luis Obispo District Office**

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

Cost claimant Ortiz Interpreting seeks removal of the June 28, 2021 Minute Order wherein the workers' compensation administrative law judge (WCJ) set the matter for a lien trial and ordered that discovery remain open in order to allow defendant to obtain depositions.

Cost claimant contends that the WCJ should have closed discovery at the mandatory settlement conference (MSC) on June 28, 2021. For the reasons discussed below, we will grant removal and order that discovery be closed. We will return this matter to the trial level so that it may be set for trial.

In this case, the only remaining issues are penalties and interest on a \$350 interpreter's bill. After defendant failed to pay the interpreter's bill for more than a year, Ortiz Interpreting, filed a Declaration of Readiness to Proceed (DOR) on April 14, 2021. Defendant did not object to the DOR. It paid cost claimant \$350 on April 21, 2021 but did not pay penalties and interest. On May 3, 2021, a status conference was held, and the matter was set for an MSC on June 28, 2021. Approximately one month after the status conference, defendant emailed cost claimant two deposition notices for depositions set for August 2, 2021. At the July 1, 2021 MSC, the workers' compensation administrative law judge set the case for trial and allowed discovery to remain open.

Labor Code section 5502(e)(3) provides: "Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference."

In this case, defendant did not object to the cost petitioner's DOR. The MSC Minutes of Hearing do not reflect that the WCJ required defendant to explain why these depositions are necessary and why it could not have obtained the depositions prior to the MSC. Given defendant's history of delay in this case, defendant should be required, at a minimum, to make a plausible argument regarding due diligence before proceeding with costly discovery. We note that, although we are closing discovery, defendant still retains the right to make arguments for reopening discovery at trial.

In addition, we note that cost petitioner has filed a Petition for Sanctions. Since we are returning this matter to the trial level, the WCJ may address the issue of sanctions in the first instance.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal, that discovery in this matter is closed and the matter is returned to the trial level for the matter to be set for trial.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2022

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

**NELLY KARINA MANJIVAR GOMEZ
EDWIN STONE
HOURIGAN HOLZMAN**

MWH/oo/mc

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