

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

**MATTHEW WARE, *Applicant***

**vs.**

**ARIZONA CARDINALS FOOTBALL CLUB, LLC;  
GREAT DIVIDE INSURANCE COMPANY C/O BERKLEY ENTERTAINMENT,  
*Defendants***

**Adjudication Numbers: ADJ13302605; ADJ15813943  
Santa Ana District Office**

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

Defendant seeks removal in response to the order issued by the Workers' Compensation Administrative Law Judge (WCJ), dated August 31, 2022, setting this matter for Mandatory Settlement Conference (MSC) on "all issues." Defendant seeks to limit trial to the bifurcated issue of jurisdiction, and any attendant exceptions and exemptions.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal (Petition) and the contents of the report of the WCJ with respect thereto. Based on our review of the record, we will grant the Petition, rescind the WCJ's decision setting the matter for MSC "on all issues," and will return this matter to the WCJ to bifurcate the issues of California subject matter and personal jurisdiction, and to set those matters for trial.

## BACKGROUND

On July 15, 2022, defendant filed a Declaration of Readiness to Proceed (DOR), requesting a Mandatory Settlement Conference on the issue of jurisdiction. (Declaration of Readiness to Proceed, dated July 15, 2022, p. 2.) Defendant averred it was specially appearing and requested a “bifurcated trial regarding jurisdiction and exemptions/exceptions to jurisdiction.” (*Ibid.*)

On July 21, 2022, applicant objected to the DOR, asserting California retained subject matter jurisdiction over the claim, that discovery was ongoing, and requesting a status conference. (Objection to Declaration of Readiness to Proceed, dated July 21, 2022, at pp. 1-2.) Applicant asserted that, “[t]rial is premature in that at the current time discovery is still ongoing and a trial at this early stage in the litigation process would be a waste of the Court’s time and resources.” (*Ibid.*)

On August 31, 2022, the parties proceeded to Mandatory Settlement Conference (MSC). The minutes of hearing state:

The defense attorney filed DOR requesting bifurcated trial on jurisdiction. Applicant attorney wants to proceed on all issues. The WCJ continues the present MSC, set on only DOR for bifurcated trial, to another MSC where applicant requests trial on all issues. (Minutes of Hearing, dated August 31, 2022.)

The WCJ ordered that the matter be continued to another MSC on October 26, 2022 over defendant’s objection.

## DISCUSSION

Defendant’s Petition for Removal (Petition) asserts that setting this matter for an MSC “on all issues” is premature pending a determination of whether California has jurisdiction over this claim. Defendant observes that the WCJ is empowered to bifurcate and try separate issues upon a showing of good cause, and thus contends that, “[w]ithout the ability to obtain a bifurcated trial on a critical threshold issue such as subject matter jurisdiction and/or personal jurisdiction, Defendant will be exposed to unreasonable and unnecessary litigation costs and medical expenses which they would otherwise be able to avoid altogether if they prevail at a bifurcated trial.” (*Id.* at 4:13; 5:5.)

The WCJ’s Report observes that bifurcated proceedings on jurisdiction would require the expenditure of time and judicial resources for separate proceedings, and may also require parties

to travel to California from locations possibly outside the state. (Report, at pp. 2-3.) The WCJ asserts that the trial judge will be in the best position to evaluate defendant's request for bifurcated proceedings following a review of the evidence, and that the defendant has not demonstrated it will suffer irreparable harm or prejudice by having the issue of jurisdiction considered at the time of trial with all other issues. (Report, at p. 4.)

We observe, however, that defendant is specially appearing in this matter for the purpose of contesting jurisdiction. (Petition, at 2:11.) Defendant's July 15, 2022 DOR reiterates that it is specially appearing, and requests bifurcated trial proceedings limited to jurisdiction and possible exemptions and/or exceptions thereto.

We further observe that applicant's objection to defendant's DOR averred that trial was premature pending ongoing discovery, and requested that "no action be taken until all discovery has been completed." (Objection to DOR, dated July 21, 2022, at 2:10.) Despite his prior objection, however, applicant advocated for trial on all issues at the August 31, 2022 MSC, which the WCJ granted over defense objection. (Minutes of Hearing, dated August 31, 2022.)

While the parties to a matter are generally expected to "submit for decision all matters properly in issue at a single trial," the WCJ may also order that the issues in a case be "bifurcated and tried separately upon a showing of good cause." (Cal. Code Regs., tit. 8, § 10787(a).)

Here, we believe there is good cause to bifurcate and decide the issues of subject matter and personal jurisdiction. Applicant has indicated he is ready to proceed on all issues including jurisdiction, while defendant has indicated readiness to proceed on jurisdictional issues only. If defendant prevails, there will be no need for further discovery or proceedings. If applicant prevails, the parties will then be able to develop the record on the merits of applicant's claim, and if there is a determination that injury arose out of and in the course of employment, the defendant will no longer require a judicial determination of California jurisdiction prior to delivering any benefits due the applicant.

We are further mindful of the constitutional mandate that cases be determined "expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) Here, we conclude that bifurcation and trial on threshold jurisdictional issues best meets the requirements for expedited resolution of threshold issues in furtherance of the prompt delivery of reasonable benefits.

Accordingly, we will grant defendant’s petition and return the case to the trial level with instructions that the matter be set for MSC forthwith, and that the matter thereafter be set for trial on issues of California subject matter and personal jurisdiction.<sup>1</sup>

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal of the order of August 31, 2022 is **GRANTED**.

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<sup>1</sup> We further observe that pursuant to Labor Code section 5502(d), discovery will close as to “the dispute” being set for trial from the MSC. (Lab. Code § 5502(d)(2)-(3).) Accordingly, the parties may continue to gather information regarding their own case, and may further continue to undertake discovery pertaining to issues not set for trial. (Lab. Code § 5502; see also *Grupe Co. v. Workers' Comp. Appeals Bd.* (2005) 132 Cal.App.4th 977, 987 [34 Cal. Rptr. 3d 98].)

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the order of August 31, 2022 is **RESCINDED** and that the matter is **RETURNED** with the following **SUBSTITUTED** therefor:

**ORDER**

**IT IS HEREBY ORDERED** that the matter is continued to a Mandatory Settlement Conference forthwith, and that the matter be set for trial on the issues of subject matter and personal jurisdiction.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 7, 2023**

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

**MATTHEW WARE  
PRO ATHLETE LAW  
PEARLMAN, BROWN & WAX**

**SAR/abs**

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