

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

DIANE CLAY, *Applicant*

vs.

COUNTY OF LOS ANGELES, Permissibly Self-Insured; TRISTAR, *Defendants*

**Adjudication Number: ADJ11166250
Pomona District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR RECONSIDERATION;
GRANTING PETITION FOR REMOVAL AND
DECISION AFTER REMOVAL**

Applicant in pro per seeks reconsideration of the Order Taking Off Calendar (OTOC) issued on July 28, 2021, wherein the workers' compensation administrative law judge (WCJ) ordered that the matter be taken off calendar.

Applicant argues that the OTOC erroneously failed to address the issue of whether Solimon Rodgers is her attorney of record.

We did not receive an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and as discussed below, we will dismiss the Petition as a petition for reconsideration; we will grant the Petition as a petition for removal, rescind the OTOC, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

While employed as a typist-clerk by defendant during the period of October 16, 2017 through January 5, 2018, applicant allegedly sustained a cumulative trauma injury to her left leg, left knee, left thigh, left foot and back.

On July 21, 2020, the Page Law firm filed a Notice of Dismissal of Attorney, dismissing applicant in pro per as applicant's attorney of record. (Notice of Dismissal of Attorney, July 21, 2020.) The document does not identify any prior attorney of record for applicant. (*Id.*)

Also on July 21, 2020, the Page Law firm filed a Substitution of Attorneys, substituting the Page Law firm for applicant in pro per as applicant's attorney of record. (Substitution of Attorneys, July 21, 2020.) The document identifies "Page Law-Paris Page" as applicant's present attorney and is signed by Paris Page. (*Id.*) The document does not identify any prior attorney of record for applicant.

On September 21, 2020, Solimon Rodgers filed a Notice and Request for Allowance of Lien and an Original Bill, asserting a lien for legal services as to any claim of applicant's and referencing case numbers ADJ11756941 and ADJ12428226. (Notice and Request for Allowance of Lien, September 21, 2020; Original Bill, September 21, 2020.)

A review of the record in EAMS reveals no dismissal, substitution, or order relieving Solimon Rodgers as applicant's attorney of record.

On June 21, 2021, applicant filed a Declaration of Readiness to Proceed (DOR), seeking "clarification regarding who is my attorney of record" on the following grounds:

Page Law submitted sub./dismissal documents earmarked for 3 unrelated cases to remove my original attorney of record – Solimon & Rodgers. This action was conducted in July of 2020 without my knowledge.

(Declaration of Readiness to Proceed, June 21, 2021, pp. 1-2.)

On July 28, 2021, the matter proceeded to a status conference at which applicant and defendant appeared. (Minutes of Hearing, July 28, 2021.) The WCJ ordered that the matter be taken off calendar and checked two boxes on the minutes of hearing form: one indicating that the parties jointly requested that the matter be taken off calendar; the other indicating that the request was opposed. (*Id.*) The WCJ commented as follows: "Tony Vertiz advised that Solimon Rogers is not attorney of record." (*Id.*)

The WCJ designated defendant's counsel Dacia Caswell, of Robinson Di Lando, to serve a copy of the July 28, 2021 minutes on all parties. (*Id.*)

On August 3, 2021, defendant filed a proof of service of the July 28, 2021 minutes upon various parties, including Paris Page of Page Law, Peter Solimon of Solimon Rodgers, and not including applicant. (Proof of Service, August 3, 2021.)

In the Report, the WCJ writes:

On or about 01/15/2018, the law firm of Solimon Rodgers filed an Application for Adjudication of Claim with the Pomona Workers' Compensation Appeals Board. . . . On or about 09/10/2018, Solimon Rogers amended the Application to add injury to back. (EAMS Doc. ID # 27244041.)

On or about 07/21/2020, Page Law-Paris Page filed a Dismissal of Attorney dated 07/20/2020 allegedly signed by applicant/petitioner (EAMS Doc. ID # 33139085). Also on or about 07/21/2020, Page Law-Paris Page filed a Substitution of Attorneys dated 07/20/2020 allegedly signed by applicant/petitioner and Page Law-Paris Page appointing Page Law-Paris Page as applicant's attorney (EAMS Doc. ID # 33139084).

However, on or about 04/07/2021, Page Law-Paris Page filed a 04/05/2021 petition seeking to be relieved as applicant's attorney for ADJ11166250. (EAMS Doc. ID # 36210359.) On 04/07/2021, Judge Bather issued an order relieving Page Law-Paris Page from serving as applicant's attorney for ADJ11166250. (EAMS Doc. ID # 74063084.)

On or about 06/21/2021, applicant/petitioner filed a Declaration of Readiness to Proceed requesting a status conference to address all issues, as well as "requesting clarification regarding who (sic) is my attorney of record . . ." (EAMS Doc. ID # 74346982.)

. . .

The Declaration of Readiness to Proceed resulted in a status conference on 07/28/2021. During the 07/28/2021 status conference, applicant/petitioner stated, among other things, that she signed a blank substitution of attorney form but that she did not authorize Page Law-Paris Page to file the document. Applicant/petitioner argued during the 07/28/2021 status conference that Solimon Rogers should therefore be required to represent her.

Solimon Rogers did not initially appear for the 07/28/2021 status conference. However, hearing representative Tony Vertiz was eventually located and stated to the court his firm's position that Solimon Rogers was subbed out by Page Law-Paris Page and therefore no longer represents applicant/petitioner. Mr. Vertiz further represented that Solimon Rogers is no longer interested in representing applicant/petitioner, but nonetheless suggested that applicant/petitioner might further discuss this with one of his firm's named partners.

It initially appeared that the 07/28/2021 status conference might result in a continuance to another hearing regarding the disputed substitution of attorney and whether Solimon Rogers represents applicant/petitioner. However, the disposition was changed to a joint request that the matter go off calendar to allow for settlement discussion with indication that another Declaration of Readiness to Proceed might be filed if the claim and/or issue(s) did not resolve.

...

In addition to the above, it is noted that applicant/petitioner filed several Applications for Adjudication of Claim with the Los Angeles Workers' Compensation Appeals Board. These Applications were assigned Board Numbers ADJ7597612 (Award issued 05/23/2019); ADJ6995603 and ADJ59551033 (Order Approving Compromise and Release issued 05/23/2019); and ADJ10240855 (Award issued 05/23/2019).

...

Solimon Rogers has yet to petition to be relieved from representing applicant/petitioner for ADJ11166250, relying instead solely on the disputed substitution of attorney.
(Report, pp. 2-6.)

DISCUSSION

A petition for reconsideration is the mechanism by which a party may challenge a final order, decision, or award. (Labor Code § 5900¹.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075, [65 Cal.Comp.Cases 650, 650-651, 655-656].) The Court of Appeal has given examples of threshold issues to include “whether the injury arises out of and in the course of employment, the territorial jurisdiction of the appeals board, the existence of an employment relationship or statute of limitations issues.” (*Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 (citations omitted).) “Such issues, if finally determined, may avoid the necessity of further litigation.” (*Id.*) (internal quotation marks and citations omitted.)

By contrast, removal may be requested to challenge interim and non-final orders issued by a WCJ. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Cal.Comp.Cases 155, 157, fn. 5]; *Kleeman v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 275, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) Removal is discretionary and is generally employed only as an extraordinary remedy upon a showing of substantial prejudice or irreparable harm and a showing that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 272, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].)

In this case, the OTOC does not adjudicate any substantive right or liability and is therefore a non-final order. Accordingly, we will dismiss the Petition as one for reconsideration and treat it as one seeking removal.

Before evaluating the merits of the Petition, we note that defendant's proof of service fails to show that it served the OTOC upon applicant. (Proof of Service, August 3, 2021.) However, WCAB Rule 10629 requires that service be made on the injured employee, regardless of whether the employee is represented. (Cal. Code Regs., tit. 8, § 10629(c).) Therefore, we admonish defendant to comply with all service requirements applicable to these proceedings.

As to the merits of the Petition, we observe that when a pleading or other statement of appearance is filed by an attorney on behalf of a party, the attorney's name and address is entered on the Official Address Record of the Workers' Compensation Appeals Board. Thereafter, the attorney remains on record for that party until a subsequent substitution or dismissal is entered. The substitution or dismissal must be made in the manner provided by California Code of Civil Procedure sections 284, 285 and 286. (Cal. Code Regs., tit. 8, former § 10774, now § 10402 (eff. Jan. 1, 2020); *In re White & Bunch* (1981) 46 Cal.Comp.Cases 810 (Appeals Board en banc).) More specifically, the substitution or dismissal may be effected upon the filing of the consent of the party and the attorney, or upon the application of either the party or the attorney and a court order granting the application. (See Code of Civil Proc., § 284.) In the absence of a substitution or dismissal in the record, a new attorney will not be recognized by the court, and the acts of the new attorney will be ineffective unless a substitution of attorney of record is entered. (See State Bar of California, Standing Committee on Professional Responsibility and Conduct, Formal Opinion No. 1994-134 (citing *McMunn v. Lehrke* (1915) 29 Cal.App. 298, 307; *Davis v. Rudolph*

(1947) 80 Cal.App.2d 397, 402; *In re Marriage of Warner* (1974) 38 Cal.App.3d 714, 720).²

Here, Solimon Rodgers appeared as applicant's attorney of record by filing her application for adjudication and subsequent amendment thereto. (Report, p. 2.) However, the record contains no pleadings showing Solimon Rodgers's substitution or dismissal, and no order relieving it as applicant's attorney of record. (Report, p. 6.) Rather, the substitution and dismissal on file pertain solely to applicant in pro per and her purported subsequent attorney of record, Page Law. (Notice of Dismissal of Attorney, July 21, 2020; Substitution of Attorney, July 21, 2020.) In the absence of a pleadings record showing the substitution or dismissal of Solimon Rodgers as applicant's attorney of record, we are unable to discern the reasons or grounds for the OTOC.³ Accordingly, we will grant the Petition for Removal.

We observe that a WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (§ 5313; see also *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at p. 476, (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]).)

Here, the WCJ issued the OTOC at a status conference, effectively setting aside applicant's contention that Solimon Rodgers remains her attorney of record without a hearing or otherwise establishing a record from which we may discern the reasons or grounds for his decision. (Minutes of Hearing, July 28, 2021.) However, given the absence of a pleadings record showing Solimon Rodgers's substitution, dismissal, or order to be relieved as applicant's attorney of record, we are persuaded that the WCJ should have issued a Notice of Intention (NIT) to Peter Solimon and

² We note that the California Rules of Professional Conduct prohibit an attorney from terminating a representation without first obtaining permission from the tribunal where the matter is pending if the tribunal's rules require its permission. (See Cal. Rules of Prof. Conduct, Rule 1.16(c).)

³ We note that Solimon Rodgers's representative, Tony Vertiz, asserted at the July 28, 2021 status conference that it substituted out as applicant's attorney of record. (Report, p. 3.) However, the record does not show that Mr. Vertiz's assertion was made under oath or admitted in evidence.

Solimon Rodgers to produce evidence regarding the substitution of attorneys, or lack thereof, and for failure to appear at the status conference on behalf of applicant. Upon the issuance of a NIT, the parties, including lien claimant Solimon Rodgers, would be in a procedural position from which they could develop the record regarding whether or not Solimon Rodgers is applicant's attorney of record.⁴ Accordingly, we will rescind the OTOC and return the matter to the trial level for development of the record as to whether or not Solimon Rodgers remains applicant's attorney of record and further proceedings as appropriate. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also § 5313.)

Accordingly, we will dismiss the Petition as a petition for reconsideration; we will grant the Petition as one for removal, rescind the OTOC, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Order Taking Off Calendar issued on July 28, 2021 is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal of the Order Taking Off Calendar issued on July 28, 2021 is **GRANTED**.

⁴ We note that the WCJ maintains jurisdiction over Solimon Rodgers based upon its September 21, 2020 lien claim. (§ 4903.05; Notice and Request for Allowance of Lien, September 21, 2020; Original Bill, September 21, 2020.)

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order Taking Off Calendar issued on July 28, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 25, 2021

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

**DIANE CLAY
PAGE LAW
SOLIMON RODGERS
ROBINSON DI LANDO**

SRO/ara

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