

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

**CAROL BOYAN HELD, *Applicant***

**vs.**

**MORENO VALLEY UNIFIED SCHOOL DISTRICT, permissibly self-insured,  
administered by KEENAN & ASSOC., *Defendants***

**Adjudication Number: ADJ15052580  
Marina del Rey District Office**

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

Defendant seeks removal of the December 31, 2021, Order Denying Petition for Change of Venue Without Prejudice (Order), wherein the workers' compensation administrative law judge (WCJ) found that defendant's petition for change of venue was untimely under Labor Code<sup>1</sup> section 5501.5. Defendant contends that the Order is based on an improper interpretation of section 5501.5 and therefore caused defendant significant prejudice and irreparable harm.

We have received applicant's answer. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the Petition for Removal and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Removal, rescind the WCJ's Order, and return this matter to the WCJ for further proceedings.

**FACTS**

Applicant claimed that, while employed as the director of elementary education on July 27, 2021, she sustained an industrial injury to her head, neck, shoulders (scapula), arm, and nervous system (psychiatric/psych) due to a car accident.

On September 24, 2021, defendant filed a Petition for Change of Venue pursuant to Labor Code section 5501.5 and a Timely Objection to Venue pursuant to WCAB rule 10488. Defendant stated that its objection to venue was timely because notice of the adjudication case number and

---

<sup>1</sup> All statutory references not otherwise identified are to the Labor Code.

venue was received by defendant on August 24, 2021. Therefore, defendant contended that it objected within 30 days pursuant to WCAB Rule 10488. Defendant requested that venue be transferred to the Riverside office because applicant resided in Riverside County.

On September 29, 2021, the WCJ issued a Notice of Intention to Change Venue (NIT) providing notice that an order changing venue from Marina del Rey to Riverside would issue unless written objections showing good cause were filed within 15 days. On September 29, 2021, applicant filed its objection to the change of venue and claimed that defendant's objection to venue was untimely.

On November 30, 2021, defendant filed an Amended Petition for Change of Venue pursuant to section 5501.5 and Timely Objection to Venue pursuant to WCAB Rule 10488. In this petition, defendant contended that applicant did not show good cause in its objection to the NIT. Defendant also attached Exhibit A to its petition to show that the original petition was timely.

At a hearing on December 29, 2021, the WCJ noted that an order denying change of venue would be forthcoming. On December 31, 2021, the WCJ issued an order denying the Petition for Change of Venue without prejudice because it was untimely.

## **DISCUSSION**

### I.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); *Cortez v. Workers' Comp. Appeals Bd.*, *supra*, 136 Cal.App.4th at p. 599, fn. 5; *Kleemann v. Workers' Comp. Appeals Bd.*, *supra*, 127 Cal.App.4th at p. 280, fn. 2.) Additionally, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) We find that removal is appropriate in this matter.

### II.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what

must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*)).) 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.” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.) The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) Judgments on the pleadings are not permitted in Workers’ Compensation. (Cal. Code Regs., tit. 8, § 10515.)

The issue that we face on removal is that there is an insufficient record to evaluate the WCJ’s Order. The December 29, 2021, minutes are silent as to what evidence was considered, what stipulations were entered into at the conference, if any, or whether any evidence was admitted into the record. The information before the Board is insufficient to determine whether the petition for change of venue was correctly denied. For example, there is no summary of evidence and no exhibits were entered into evidence. Accordingly, we grant the Petition, rescind the Order, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal of the December 31, 2021, Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Removal of the Workers' Compensation Appeals Board, that the December 31, 2021, Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**FEBRUARY 22, 2022**

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

**CAROL BOYAN HELD  
WACHTEL LAW  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**JMR/pc**

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