

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

CHRISTOPHER KENDALL (DECEASED), *Applicant*

vs.

**SUNRUN, INC.; LIBERTY INSURANCE CORPORATION,
administered by LIBERTY MUTUAL, *Defendants***

**Adjudication Number: ADJ15137561
Sacramento District Office**

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

Defendant seeks removal in response to a May 16, 2023 Order issued by the workers' compensation administrative law judge (WCJ) taking the case off calendar and directing the parties to complete their discovery prior to litigating issues including whether compensation is barred by the statute of limitations.

Defendant avers that the record is unclear as to the identity of the applicant, and that defendant would suffer significant prejudice if the threshold issues of the identity and standing of the applicant and the applicability of the statute of limitations are not heard prior to medical-legal discovery.

We have not received an Answer from any party. The WCJ has prepared a Report on Petition for Removal, recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the report of the WCJ with respect thereto. Based on our review of the record we will grant the Petition for Removal, rescind the order taking the matter off calendar, and return this matter to the WCJ for further proceedings and decision.

BACKGROUND

Decedent Christopher Kendall claimed injury to the lower leg, head and “cognitive” on December 18, 2019, while employed by Sunrun, Inc. as a Solar Installer. Defendant admits injury to the left leg.

On March 27, 2021, decedent died by suicide.

On August 6, 2021, decedent’s counsel filed an Application for Adjudication of Claim, averring a specific injury on December 18, 2019. The Application is not signed by the decedent.

On December 21, 2021, decedent’s counsel filed an Application for Adjudication of Claim (Death Case), averring a date of death on March 27, 2021. The Application lists the decedent as the applicant, indicates the decedent had no dependents, and is not signed by the applicant.

On April 18, 2023, defendant filed a Declaration of Readiness to Proceed (DOR), requesting a Mandatory Settlement Conference (MSC), and further averring issues of the statute of limitations and standing.

On May 2, 2023, applicant’s counsel filed an objection to the DOR, asserting that decedent’s father, Paul Kendall, “claims that his son’s suicide relates to the underlying industrial injury.” (Objection to Defendant’s Declaration of Readiness to Proceed, May 2, 2023, at p. 1.)

On May 16, 2023, the parties proceeded to MSC. The WCJ’s hearing minutes indicate that “further discovery [via] QME” was necessary, and that the parties should complete discovery before litigating issues of injury arising out of and in the course of employment, and whether compensation is barred by the statute of limitations. (Minutes of Hearing, dated May 16, 2023, at p. 1.) The WCJ ordered the matter off calendar over defense objection. The WCJ further appended to the Minutes a list of the various assertions of defendant with respect to the standing of the parties, and the applicability of the statute of limitations. (*Id.* at p. 2.)

On May 24, 2023, defendant filed the instant Petition for Removal (Petition) averring threshold issues of the identity of the parties claiming benefits, their standing, if any, and the need to adjudicate the issue of whether compensation is barred by the running of the statute of limitations. Defendant contends the August 6, 2021 Application for Adjudication was filed after decedent’s date of death, and was not signed by decedent. Defendant therefore asserts that applicant’s counsel lacks the standing to file the August 6, 2021 application, and that there is no “party” identified in the record as claiming benefits. Defendant further avers that the application for death benefits filed on December 21, 2021, was filed more than one year from the date of death

and is barred by section 5406. Accordingly, defendant submits it will suffer “significant prejudice if the threshold matters regarding standing and Statute of Limitation were not heard prior to medical discovery.” (Petition, at p. 4:2.)

The WCJ’s Report observes that “a defendant having to participate in the QME process does not amount to significant prejudice or irreparable harm,” and that the parties have failed to join the Death Without Dependents Unit. The WCJ concludes that it is premature to proceed to trial, and recommends we deny the Petition, accordingly.

DISCUSSION

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).)

The correct identification of parties is essential to assure that issues of jurisdiction and liability are properly addressed. The importance of timely and proper identification of parties is part of the Appeals Board’s Rules of Practice and Procedure and has been emphasized by the Appeals Board in its decisions. (Cal. Code Regs., tit. 8, § 10390 [“[a]ny party that appears at a hearing or files a pleading, document or lien shall ... [s]et forth the party’s full legal name on the record of proceedings, pleading, document or lien”]; *cf. Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc); *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 1466 (Appeals Board en banc).) Moreover, it is expected that attorneys appearing before the WCAB will timely and properly identify their clients. (*Id.*; Rules Prof. Conduct, rule 5-200.)

Here, the August 6, 2021 Application for Adjudication was filed after decedent’s date of death on March 28, 2021, and does not identify an applicant other than the decedent. The Application is not signed by the applicant or by any person other than the filing attorney. Nor does

the Application identify an applicant other than injured worker. Accordingly, the identity of the person(s) claiming benefits is unclear. We acknowledge that the May 2, 2023 Objection to DOR identifies decedent's father as the party seeking benefits. However, this information is not reflected in an Amended Application or other supplemental pleading filed with the Appeals Board.

In addition to ambiguity in the record as to the identity of the person(s) claiming benefits, the record is not clear as to the basis for such a claim. Labor Code¹ section 4700 provides that “[t]he death of an injured employee does not affect the liability of the employer,” and that “[a]ny accrued and unpaid compensation shall be paid to the dependents, or, if there are no dependents, to the personal representative of the deceased employee or heirs or other persons entitled thereto, without administration.” (Lab. Code, § 4700.) Here, however, it is not clear if decedent's estate has a personal representative, dependent, or heir or other persons entitled thereto, and on what basis.

Similarly, the December 21, 2021 Application for Adjudication of Claim (Death Case) does not reflect an applicant other than decedent, and further lists the decedent as having no dependents.²

Thus, the current pleadings filed with the Appeals Board do not adequately identify the nature of the person or persons claiming benefits, or the legal relationship of that person or persons to the decedent.

While a dependent's right to death benefits is independent and severable from the injured employee's claim for compensation (*Clark v. Workers' Comp. Appeals Bd.* (1991) 230 Cal.App.3d 684, 690 [56 Cal.Comp.Cases 331]; *Berkebile v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940 [48 Cal.Comp.Cases 438]), both the pending application for *inter vivos* benefits, as well as the application for death benefits, must appropriately identify the parties claiming such benefits, and their relationship to the injured worker, if applicable.

We acknowledge that WCAB Rule 10787(a) provides that “[t]he parties shall submit for decision all matters properly in issue at a single trial and produce at the trial all necessary evidence,” and that the WCJ is accorded wide latitude in addressing and resolving discovery disputes. (See, e.g., *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 [1976

¹ All further references are to the Labor Code unless otherwise noted.

² In addition, the December 21, 2021 application does not appear to have been served on the Department of Industrial Relations Death Without Dependents Unit as required under Workers' Compensation Appeals Board Rule 10632(a). (Cal. Code Regs., tit. 8, § 10632(a).)

Cal. Wrk. Comp. LEXIS 2406] (Appeals Board en banc.) However, we also note that per Rule 10787, “a workers’ compensation judge may 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 are persuaded that all parties to this matter should be clear as to the identity of the individuals claiming benefits, and their legal relationship to the decedent, if any.

Accordingly, we will grant defendant’s Petition and rescind the May 16, 2023 Order taking the matter off calendar and return this matter to the trial level for further proceedings. We recommend the WCJ take appropriate action to identify the person or persons claiming benefits, both with respect to any accrued benefits as well as any separate claim for death benefits, including the possible amendment of current pleadings.

Upon return of this matter to the trial level, we remind the parties that insofar as the sufficiency of the pleadings is in issue, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers’ Comp. Appeals Bd.*, (1992) 4 Cal.App.4th 1196, 1205; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478, “when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.”) This is particularly true in workers’ compensation cases, where there is a constitutional mandate “to accomplish substantial justice in all cases.” (Cal. Const., art. XIV, § 4.)

Therefore, in workers’ compensation proceedings, it is settled law that: (1) pleadings may be informal (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd. (Cairo)* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500]; *Bland v. Workmen’s Comp. Appeals. Bd.* (1970) 3 Cal.3d 324 [15 Cal.Comp.Cases 513]; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 1452, 1456 [52 Cal.Comp.Cases 151]; *Liberty Mutual Ins. Co v. Workers' Comp. Appeals Bd. (Aprahamian)* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 594-595 [40 Cal.Comp.Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204, 207- 210 [35 Cal.Comp.Cases 245]); (2) claims should be adjudicated based on substance rather than form (*Bland v. Workmen’s Comp. Appeals Bd., supra*, 3 Cal.3d 324, 328-334; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502]; *Rivera, supra*, 190 Cal.App.3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274]); (3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim (*Sarabi v. Workers’ Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, at

pp. 925-926 [72 Cal.Comp.Cases 778]); *Martino v. Workers' Comp. Appeals*, *supra*, 103 Cal.App.4th 485, 490; *Rubio v. Workers' Comp. Appeals Bd.*, *supra*, 165 Cal.App.3d 196, 199-201; *Aprahamian*, *supra*, 109 Cal.App.3d at pp.152-153; *Blanchard*, *supra*, 53 Cal.App.3d at pp. 594-595; *Beaida*, *supra*, 263 Cal.App.2d at pp. 208-209); and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction. (*Bland v. Workmen's Comp. Appeals Bd.*, *supra*, 3 Cal.3d 324, 331-332 & see fn. 13; *Rivera*, *supra*, 190 Cal.App.3d at p. 1456; *Aprahamian*, *supra*, 109 Cal.App.3d at pp. 152-153; *Blanchard*, *supra*, 53 Cal.App.3d at pp. 594-595; *Beaida*, *supra*, 263 Cal.App.2d at pp. 208-210).)

Reflecting these principles, WCAB Rule 10617 provides:

(a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

- (1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;
- (2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or
- (3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(Cal. Code Regs., tit. 8, § 10617(a).)

The Rule thus provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain “a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.” (Cal. Code Regs., tit. 8, former § 10397, now §10617(b).) Similarly, Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, former § 10492, now §10517.) These rules represent the application of California’s public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. Additionally, we observe, “the Board’s procedural rules serve the convenience of the tribunal and the [litigants] and facilitate the proceedings. They do not deprive the tribunal of the power to dispense with compliance when the purposes of justice require it, particularly when the

violation is formal and does not substantially prejudice the other party.” (*Beaida v. Workmen's Comp. App. Bd.*, *supra*, 263 Cal.App.2d at p. 210; *Blanchard*, *supra*, 53 Cal.App.3d at p. 595.)

Once the parties have been identified and the pleadings amended, the parties may thereafter address the substance of those claims, including any defenses raised by the employer in response thereto.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of May 16, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers’ Compensation Appeals Board that the decision of May 16, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 13, 2024

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

**PAUL KENDALL
MCMONAGLE STEINBERG
PURINTON, JIMENEZ, LABO & WU
LAW OFFICES OF LYNN YEMPUKU**

SAR/abs

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