

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

JOSE ALVARADO, *Applicant*

vs.

EMPLOYNET, INC.; AMTRUST, *Defendants*

**Adjudication Number: ADJ11228281; ADJ11633165
Fresno District Office**

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

Cost Petitioner Matrix Document Imaging, Inc. (Cost Petitioner) seeks removal in response to an order issued by a Workers' Compensation Administrative Law Judge (WCJ) issued on May 22, 2023, denying Cost Petitioner's Petition to Compel Non-Medical Discovery from Defendant.

Cost Petitioner contends the WCJ's summary denial of its Petition fails to state the basis for the denial, depriving Cost Petitioner of due process of law and the right to a meaningful appeal.

We have received a Report and Recommendation on Petition for Removal from the WCJ, which recommends 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, and for the reasons discussed below, we will grant the Petition, rescind the WCJ's decision, and return this matter to the trial level for the WCJ to create a record, and for further proceedings and decision.

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).)

On April 21, 2023, Cost Petitioner filed a Petition to Compel Non-Medical Discovery from Defendant. Cost Petitioner also filed a proposed Order.

On May 22, 2023, the WJC issued a denial of the Petition. The Order overlays the words "Petition Denied" on the first page of the Petition to Compel along with a signature and designates service of the order to defense counsel pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10629. (Cal. Code Regs., tit. 8, § 10629.)

Cost Petitioner avers the WCJ's May 22, 2023 Order is a due process violation because it does not state a basis for the decision, and thus denies Cost Petitioner the "ability to intelligently appeal, and present argument or evidence to the contrary." (Petition, at p. 3:11.)

We agree. All parties to workers' compensation proceedings retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant..." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission ... must find facts and declare and enforce rights and liabilities - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The WCJ's Report asserts that "Petitioners' contention that a judge must provide [a] rationale in every single decision is simply without merit." (Report, at p. 4.) However, we observe that decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and

the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.) 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].)

We also observe that WCAB Rule 10515 prohibits demurrers, petitions for judgment on the pleading and petitions for summary judgement. (Cal. Code Regs., tit. 8, § 10515.) Thus, summary judgements on the pleadings are not permissible in workers’ compensation proceedings.

Here, the WCJ’s May 22, 2023 Order does not create an adequate record with respect to the evidence relied upon, or the reasoning employed by the WCJ in reaching his decision to deny the discovery petition. In the absence of any rationale for the denial of the order, Cost Petitioner is deprived of a meaningful right of appeal, and the Appeals Board has no basis upon which to determine the legal merit of the WCJ’s decision with respect to the discovery petition. (*Hamilton, supra*, at p. 476.)

Accordingly, we will grant Cost Petitioner’s Petition, rescind the May 22, 2023 order denying the Petition to Compel Non-Medical Discovery from Defendants, and return this matter to the trial level for the WCJ to create an evidentiary record and for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of May 22, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of May 22, 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 16, 2024

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

**MATRIX IMAGING, INC.
LITIGATION AND CONSULTING ASSOCIATES
CIPOLLA, BHATTI, HOYAL & ROACH**

SAR/abs

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