

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

**RICHARD VATTER, *Applicant***

**vs.**

**COUNTY OF SANTA BARBARA; administered by CORVEL OXNARD; SUBSEQUENT  
INJURIES BENEFIT TRUSTS FUND, *Defendants***

**Adjudication Number: ADJ7169486  
Santa Barbara Satellite Office**

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

Applicant seeks removal of the June 1, 2022, Order Denying Change of Venue (Order), wherein the workers' compensation administrative law judge (WCJ) denied applicant's April 8, 2022, Petition for Change of Venue from Santa Barbara to Oxnard. On June 7, 2022, the WCJ issued an Amended Order denying applicant's petition for change of venue.

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 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 the Amended Order<sup>1</sup>, and return this matter to the WCJ for further proceedings.

**FACTS**

Applicant claimed that, while employed by defendant County of Santa Barbara as a fire engineer inspector on October 7, 2008, he sustained an industrial injury to his circulatory system, nervous system, and other body parts. The case was settled by way of a Compromise and Release (C&R), and the order approving of the C&R issued on January 15, 2021.

---

<sup>1</sup> The June 7, 2022 Amended Order was ostensibly an order correcting a clerical error. However, in order to avoid confusion, we will rescind both Orders.

Applicant filed a request for Subsequent Injuries Benefits Trust Fund (SIBTF) benefits on May 22, 2017. The WCJ ordered that SIBTF be joined as a party on June 29, 2021.

On April 8, 2022, applicant filed his Petition for Change of Venue from Santa Barbara to Oxnard and contended that Oxnard was a proper venue because the Santa Barbara district office only hears SIBTF cases on the third Wednesday of the month while Oxnard was able to handle more SIBTF cases.

On April 14, 2022, the WCJ issued a notice of intention (NIT) to grant the Petition to Change Venue. On April 26, 2022, the SIBTF filed an objection to the NIT. On June 1, 2022, the WCJ issued the Order, and applicant filed the Petition for Removal on June 6, 2022. On June 7, 2022, the WCJ issued an Amended Order.

On June 23, 2022, SIBTF withdrew its objection to the NIT.

## 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, former § 10843, now § 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).) In light of the considerations discussed below, we conclude that granting removal is appropriate in this matter.

### II.

On June 23, 2022, following applicant's filing of the Petition, SIBTF withdrew its objection to the NIT. In its Withdrawal of Objection to Notice of Intention to Grant Change of Venue, SIBTF stated that "an Order Changing Venue may now issue as appropriate."

"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].) 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 determine whether the Petition for Change of Venue was correctly denied as SIBTF withdrew its objection after the Order issued and the Petition for Removal was filed. The WCJ did not have the opportunity to consider SIBTF’s withdrawal of its objection to the NIT in the first instance and create an appropriate record. (See *Gangwish vs. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th1284, 1295 [66 Cal.Comp. Cases 584].)

Accordingly, we grant the Petition, rescind the Order and the Amended Order, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Removal of the June 1, 2022, Order Denying Change of Venue is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the June 1, 2022, Order Denying Change of Venue and the June 7, 2022, Amended Order Denying Change of Venue are **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

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



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

**SEPTEMBER 21, 2022**

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

**GHITTERMAN, GHITTERMAN & FELD  
OFFICE OF THE DIRECTOR LEGAL  
RICHARD VATTER**

**JMR/pc**

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

CS