

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

YVETTE DANIELS, *Applicant*

vs.

**LOIS FREEMAN LIVING TRUST;
STATE FARM FIRE AND CASUALTY COMPANY/SEDGWICK CLAIMS
MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11199891
Oakland District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of a decision issued on December 6, 2022 by a workers' compensation administrative law judge (WCJ) denying applicant's request for electronic appearance¹ by a trial witness. Applicant learned the morning of the trial that the witness was unable to testify in person and contends that the witness intended to testify she was applicant's manager and that applicant reported the work injury to her prior to applicant's termination. Applicant alleges the WCJ's decision was a violation of her due process rights.

We have received an Answer from the defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record and for the reasons stated below, we will rescind the Order denying virtual testimony by witnesses found in the December 6, 2022 Minutes of Hearing and Summary of Evidence and the December 21, 2022 Findings and return the matter for further proceedings consistent with this decision.

¹ Although the rules describe such appearances as "electronic appearances," such appearances may also be referred to as "remote appearances" or "virtual appearances," and the terms are frequently used interchangeably by practitioners and judges.

FACTS

Applicant claimed that while employed by defendant as a caretaker she sustained an industrial injury in August of 2016 to the knee, back, and shoulder. (Minutes of Hearing and Summary of Evidence, December 6, 2022, p. 4.) On December 6, 2022, the matter proceeded to trial. The morning of the trial, applicant through her attorney requested that a witness and another attorney be allowed to appear electronically.² This request was denied by the WCJ:

The Court responded that there was no petition filed with the Court requesting the Court to allow the witness or Mr. Brown to appear remotely. Since the first time this was even brought to the Court's attention was at 8:30 this morning, the request is denied.

(*Id.* at p. 3.)

The WCJ explained her decision to deny applicant's request in her Report:

Since applicant failed to make a timely request for a remote hearing and since no good cause was present as to why the witness should be allowed to testify remotely, the request for a remote appearance of the witness was appropriately denied. (Report, p. 5.)

The WCJ ultimately issued a Finding on December 21, 2022 indicating that applicant's claim was time barred due to a post termination defense as the injury was not reported prior to applicant's separation from the employer.

DISCUSSION

WCAB Rules 10816 and 10510 govern electronic appearances. WCAB Rule 10816 states: "If a party intends to appear electronically at any hearing, they shall file a petition showing good cause pursuant to rule 10510." (Cal. Code Regs., tit. 8, § 10816.) WCAB Rule 10510 requires, among other things, that "a request for action by the Workers' Compensation Appeals Board...shall be made by petition." (Cal. Code Regs., tit. 8, § 10510.)

Here, applicant's request for an electronic appearance lacked the formality typically associated with such a request under the rules, but the Board's rules "serve the convenience of the tribunal and the [litigants] and facilitate the proceedings. They do not deprive the tribunal of the

² An attorney for the applicant was already present at the December 6, 2022 hearing, but a request was made for electronic appearance by a second attorney from the same firm.

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. Appeals Bd.* (1968) 263 Cal.App.2d 210 [35 Cal.Comp.Cases 245]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 595 [40 Cal.Comp.Cases 784].) Further, “the informality of pleadings in workers' compensation proceedings before the Board has been recognized.” (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal.Comp.Cases 513].) The courts have therefore rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200–01 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152–153 [45 Cal.Comp.Cases 866].) The courts have also long indicated that claims should be adjudicated based on substance rather than form. (*Bland, supra*, at pp. 328–334; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp. Cases 502]; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 1456 [52 Cal.Comp.Cases 141]; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274].)

The WCJ argues that applicant’s request was untimely as it was made the morning of the December 6, 2022 hearing. (Minutes of Hearing and Summary of Evidence, December 6, 2022, p. 3.) The rules, however, do not indicate a specific timeline for when requests for electronic appearances must be made. Although it is preferable that a request be made prior to a hearing, we recognize that in some instances, this may not be possible.

The WCJ further writes that no good cause was present as to why the witness should be allowed to appear electronically. (Report, p. 5.) Although good cause as a standard provides the WCJ with significant discretionary powers, the WCJ is still tasked with considering the arguments of the petitioning party and Section 5313 requires that the WCJ produce "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (See *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "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 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, there is simply not enough information in the record for us to make a determination on the issue of good cause as there is no summary of evidence received. Although the WCJ presents reasons for the denial, they are not supported by the applicable rules and regulations. Further, under the California and United States Constitutions all parties to a proceeding retain the fundamental right to due process and a fair hearing. (*Rucker v. Workers' Comp. Appeals Bd. (Rucker)* (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.) 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].) Based upon the current record, it appears applicant was not provided due process and a fair hearing.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 6, 2022 Order denying virtual testimony by witnesses and the December 21, 2022 Finding be **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 18, 2024

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

**YVETTE DANIELS
THE FLETCHER B. BROWN LAW FIRM
ALBERT AND MCKENZIE**

RL/abs

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