

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

MARIAM DOLMAJIAN, *Applicant*

vs.

**DOORDASH, INC.;
BLUE STAR CLAIMS, LLC, *Defendants***

**Adjudication Number: ADJ14502172
Van Nuys District Office**

**OPINION AND ORDER DISMISSING
PETITION FOR REMOVAL**

Defendant seeks removal of the Minutes of Hearing and Order and Decision on Request for Continuance (MOH), issued on October 26, 2021 by a workers' compensation administrative law judge (WCJ). The WCJ set the case for priority conference, and ordered defendant to complete and file a joint pre-trial conference statement before the priority conference.

Defendant contends that this matter must be stayed pending final appellate review of Proposition 22 given the disputed threshold issue of whether applicant is an employee or independent contractor. Further, defendant contends that that it would be improper for the Workers' Compensation Appeals Board to assert jurisdiction in this case until final appellate review.

Applicant did not file an answer to the Petition for Removal. The WCJ filed a Report and Recommendation on Petition for Removal (Report), recommending dismissal given that the MOH was amended after the petition was filed to remove the harm complained of by defendant. The WCJ also requested guidance on the matter presented for review.

We have reviewed the record in this case, the allegations of the Petition for Removal, and the contents of the Report. We will dismiss the Petition for Removal as moot pursuant to WCAB Rule 10955, subdivision (d) (Cal. Code Regs., tit. 8, § 10955(d)).

The Petition for Removal was filed on November 2, 2021. The WCJ amended the MOH on November 4, 2021 in order to remove the order that defendant complete and file a joint pre-trial conference statement before the next hearing.

(d) A workers' compensation judge may, within 15 days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the workers' compensation judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above. (Cal. Code Regs., tit. 8, § 10955(d).)

We agree that the WCJ took action to resolve the issue raised in the Petition for Removal within 15 days of the filing of the petition. (Report, p. 3, § IV.) Thus, the Petition for Removal is “deemed automatically dismissed, requiring no further action by the Appeals Board.” (Cal. Code Regs., tit. 8, § 10955(d).) We will therefore dismiss the Petition for Removal.

We note that the WCJ left the matter on calendar for January 4, 2022 to afford the parties a hearing on the issues raised in defendant's petition for removal, which were first raised in defendant's Petition to Stay. (Report, p. 3, § IV.) We agree that this matter should go back on calendar for a hearing on defendant's Petition to Stay. All parties to a workers' compensation proceeding 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 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]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Consequently, we cannot interpose our own findings on defendant's Petition to Stay without violating the parties' rights to due process. (*Gangwish, supra*, 89 Cal.App.4th at p. 1295.)

We note that WCAB Rule 10530 requires that a “petition to stay an action by another party” be presented to the presiding judge of the district office having venue of the action, “pending a hearing.” (Cal. Code Regs., tit. 8, § 10530(a).) At the hearing, the presiding judge must either deny the petition; grant a temporary stay and set the petition for hearing; or, set the petition for hearing

with or without a temporary stay. (Cal. Code Regs., tit. 8, § 10530(d).) Further, we note that any order issued by the presiding judge on defendant's Petition to Stay must be based on admitted and substantial evidence. (See Lab. Code, §§ 5313, 5903, 5952(d); *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd. (Garza)* (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]).

Accordingly, given that the MOH was amended to remove the order complained of in the Petition for Removal, the Petition for Removal will be dismissed as moot pursuant to WCAB Rule 10955, subdivision (d).

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Minutes of Hearing and Order and Decision on Request for Continuance issued on October 26, 2021 by a workers' compensation administrative law judge is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 6, 2022

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

**MARIAM DOLMAJIAN
ARMAN KHACHIKYAN
SEYFARTH SHAW LLP**

AJF/abs

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