

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

CHRISTINA BRUCE, *Applicant*

vs.

KERN COUNTY SHERIFF'S DEPARTMENT, *Defendants*

**Adjudication Numbers: ADJ9682785; ADJ9909187;
ADJ4353387; ADJ7995114; ADJ11767169
Bakersfield District Office**

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

Applicant seeks removal in response to the September 13, 2023 trial order issued by the Workers' Compensation Administrative Law Judge (WCJ) continuing the matter to status conference.

Applicant contends she is substantially prejudiced as a result of multiple continuances of judicial proceedings without a determination as to whether applicant should receive an in-person reevaluation with the Qualified Medical Evaluator (QME).

We have not received an Answer from any party. We have received a Report and Recommendation on Petition for Removal (Report) from the WCJ, recommending that we deny the Petition.

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 for Removal, rescind the WCJ's decision, and return this matter to the WCJ 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); see also *Cortez, supra*; *Kleemann, supra*.) Also, 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).)

Here, the parties have selected QME Brian Solberg to evaluate applicant's claimed injuries, and per applicant's Petition, Dr. Solberg has issued four reports. (Petition, at p. 1:26.) Applicant's Petition avers a dispute regarding the manner in which the QME would receive additional history and documentation regarding her work duties, as relevant to her claimed cumulative injury. (*Id.* at p. 2:6; 5:1.)

On September 13, 2023, the parties appeared for trial. The minutes of hearing reflect that the matter was ordered continued to a status conference over applicant's objection. (Minutes of Hearing (Minutes), dated September 13, 2023.) The Minutes also reflect the WCJ's comments that, "[p]arties will filter personnel records and send them, with the photo to Dr. Solberg." (*Ibid.*)

Applicant contends that the WCJ erred in not deciding the disputed issue of the manner in which additional information would be provided to the QME. Applicant contends that, "[i]nstead of submitting the matter for the trial court determine the method of delivering her history, the trial court continued the matter to a status conference, ordering the parties to submit the photo and agreed upon personnel records to PQME Solberg, without any additional history."

The WCJ's Report avers that "[t]he Order is taking the first step in providing Dr. Solberg with the history of Applicant's injury. After reading the records and viewing the photo, Dr. Solberg will either give his opinion on causation, or request additional information, including whether he needs to examine or question Applicant." (Report, at p. 3.)

A WCJ is required to ". . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order, or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Board en banc).) 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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) (*Hamilton*), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] (*Evans*).) Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) 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.” (*Id.* at p. 475.) In *Hamilton*, we held that the record of proceeding must contain at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Furthermore, 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, supra*, 66 Cal.Comp.Cases at p. 475.) 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.” (*Id.* at p. 475.)

Here, the Minutes do not set forth a discussion of the issues that were decided or the basis for the WCJ’s determination to continue the matter from a trial setting to a status conference. Consequently, we are unable to ascertain the basis for the WCJ’s decision.

Accordingly, we will grant applicant’s petition, rescind the September 13, 2023 order continuing the matter to status conference, and return the matter to the trial level for further proceedings. Upon the return of this matter to the trial level, we recommend the WCJ create an evidentiary record to address the contentions of the parties and document the court’s analysis and determination. In this way, “the parties, and the Board if reconsideration is sought, [may] ascertain

the basis for the decision, [making] the right of seeking reconsideration more meaningful.” (*Evans, supra*, 68 Cal.2d at p. 755.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of September 13, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers’ Compensation Appeals Board that the decision of September 13, 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



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.

**CHRISTINA BRUCE
GHITTERMAN, GHITTERMAN & FELD
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

SAR/abs

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