

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

**HUMBERTO ALVAREZ, *Applicant***

**vs.**

**CONCORDE BATTERY CORPORATION; BERKSHIRE HATHAWAY  
HOMESTATE COMPANIES, *Defendants***

**Adjudication Numbers: ADJ15899336, ADJ15899216  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

Applicant Humberto Alvarez petitioned for removal of the February 23, 2023 Order taking the expedited hearing of this matter off calendar by the workers' compensation administrative law judge (WCJ) over his objection. In that Order Taking the Matter Off Calendar (OTOC), the WCJ stated as follows:

“OTOC ON THE OBJECTION [OF] AA. AA RELYING ON A[N] IMR REVERSAL FROM 10/22. WCJ DOES NOT HAVE JURISDICTION ON THIS IMR MATTER OTOC ON OBJECTION OF THE APPLICANT.”

Applicant contends, in pertinent part, that the WCJ's order taking the matter off calendar without allowing applicant the opportunity to present his position and make a record for purposes of review constitutes substantial prejudice and irreparable harm. Applicant requests that the petition for removal be granted and that the case be returned to the trial calendar for a hearing.

Defendant filed a response to the Petition for Removal, and the WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We granted reconsideration to further study the factual and legal issues presented.<sup>1 2</sup>

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<sup>1</sup> Commissioner Dodd, who was previously a member of this panel, is currently unavailable. Another panelist has been substituted in her place.

<sup>2</sup> Reconsideration was granted of the petition for removal since the WCJ's finding on the Minutes regarding lack of jurisdiction is a threshold issue. . (See, *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

Subsequently, the parties participated in a commissioners' settlement conference at our request.

On November 14, 2023, the parties filed a Joint Stipulation to Remand the Matter to the trial judge to create a record and issue a decision based upon the evidence presented. In consideration for this matter being expeditiously returned to the trial level, the applicant agreed to withdraw his Petition for Removal and defendant agreed to withdraw their objection to the issue being submitted to the trial judge for decision.

Further, the parties reserved all rights and issues brought before the trial judge, in order to expedite a remand of the matter back for admission of evidence and a finding based upon a complete record.

Based upon this joint stipulation of the parties, as our Opinion and Decision After Reconsideration, we will rescind the Order of the workers' compensation administrative law judge dated February 23, 2023 taking the matter off calendar, and return this matter to the WCJ for further proceedings consistent with the parties' stipulation. The WCJ may conduct such further proceedings as is deemed appropriate.

Finally, we commend the parties for successfully resolving this matter by joint agreement without the need for further action by the Appeals Board.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order of the workers' compensation administrative law judge taking the matter off calendar on February 23, 2023 is hereby **RESCINDED**.

**IT IS FURTHER ORDERED** that this matter be **RETURNED** to the workers' compensation administrative law judge for further proceedings consistent with the stipulations of the parties.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**DECEMBER 14, 2023**

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

**HUMBERTO ALVAREZ  
SOLOV AND TEITELL  
MOKRI VANIS & JONES, LLP**

*LAS/ara*

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