

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

VAROJ SARKISSIAN, *Applicant*

vs.

**FOUR SEASONS HOTEL; ZURICH NORTH AMERICA INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ11130849
Marina Del Rey District Office**

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

Defendant seeks removal of the Order Vacating Findings of Fact and Award and Ordering Development of the Medical Record (Order) issued by the workers' compensation administrative law judge (WCJ) on May 17, 2021. By the Order, the WCJ vacated submission of this matter and ordered the parties to appear for trial.

Defendant contends that it was improper to set the matter for trial when it is unclear what issues are being ordered developed by the WCJ.

We did not receive an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of defendant's Petition for Removal and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the Order and issue a new Order setting the matter for a status conference instead of trial.

This matter has proceeded to trial on several dates. On August 25, 2020, the WCJ issued an order that the matter was to be submitted as of September 30, 2020. On December 21, 2020, the WCJ issued an order vacating submission of the matter and submitting it to the DEU for a permanent disability rating. The WCJ subsequently issued a Findings of Fact and Award on April 22, 2021.

Both applicant and defendant sought reconsideration of the Findings of Fact and Award. In response, the WCJ issued the May 17, 2021 Order vacating submission again and ordering the parties to appear for trial citing Labor Code¹ section 5803. (Lab. Code, § 5803.) It is from this Order that defendant seeks relief.

The Appeals Board may remove to itself the proceedings on any claim. (Lab. Code, § 5310.) Removal is discretionary and is generally employed only as an extraordinary remedy which must be denied absent a showing of significant prejudice or irreparable harm, or that reconsideration will not be an adequate remedy after issuance of a final order, decision or award. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); *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 WCJ cited to section 5803 in the disputed Order. Within 15 days of the timely filing of a petition for reconsideration, the WCJ retains the authority to issue an order regarding the challenged decision per WCAB Rule 10961. (Cal. Code Regs., tit. 8, former § 10859, now § 10961 (eff. Jan. 1, 2020).) After 15 days from the filing of a petition for reconsideration has elapsed, the WCJ “shall not issue any order in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.” (*Id.*) The Order here was issued within 15 days of applicant’s Petition for Reconsideration of the Findings of Fact and Award and therefore, we will treat it as a timely order per Rule 10961 and revise the Order to cite this Rule in lieu of section 5803.

It is acknowledged that a WCJ has broad authority to issue orders to ensure proper adjudication of each claim, including “any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.” (Cal. Code Regs., tit. 8, former § 10348, now § 10330 (eff. Jan. 1, 2020).) This includes the discretionary authority to develop the record when the medical record is not substantial evidence or when necessary to adjudicate the issues in dispute. (See Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) It is further acknowledged that WCAB Rule 10961 broadly permits the WCJ to initiate further proceedings upon rescission of a decision.

¹ All further statutory references are to the Labor Code unless otherwise stated.

However, it is unclear how this matter is in a posture to be set for trial if there are disputed issues that require development of the record before they may be adjudicated. A trial is generally appropriate in cases in which there are issues ready to be submitted for decision. (Cal. Code Regs., tit. 8, former § 10560, now § 10787 (eff. Jan. 1, 2020).) The WCJ indicates in his Report that he wishes to discuss with the parties the discovery that will be needed for development of the record. A status conference is expressly “for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.” (Cal. Code Regs., tit. 8, former § 10301(kk), now § 10305(s) (eff. Jan. 1, 2020).) We therefore conclude that the most appropriate setting for this matter at this juncture is a status conference.

In conclusion, we will grant removal, rescind the Order and issue a new decision setting the matter for a status conference.

For the foregoing reasons,

IT IS ORDERED that defendant’s Petition for Removal of the Order Vacating Findings of Fact and Award and Ordering Development of the Medical Record issued by the WCJ on May 17, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Vacating Findings of Fact and Award and Ordering Development of the Medical Record issued by the WCJ on May 17, 2021 is **RESCINDED** and **SUBSTITUTED** with the following:

Pursuant to WCAB Rule 10961, submission of this matter is hereby vacated and the parties are ordered to appear for a status conference.

You will receive a separate notice of the status conference.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 29, 2021

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

**BERKOWITZ & COHEN
SALAH LAW
VAROJ SARKISSIAN**

AI/pc

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