

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

**SACARIAS MENDEZ, TOMAS MENDEZ, PEDRO MENDEZ, LAZARO LOPEZ,  
FRANCISCO MENDEZ, *Applicants***

**vs.**

**BETTER LIVING SO CAL GROUP CORP.;  
MID-CENTURY INSURANCE CO., FARMERS INSURANCE, *Defendants***

**Adjudication Numbers: ADJ12924233; ADJ12881283; ADJ12881284;  
ADJ12883225; ADJ12883276  
Santa Ana District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the separate Orders Dismissing Case issued by the workers' compensation administrative law judge (WCJ) on August 3, 2023 in each respective case, and return these matters to the trial level for further proceedings and a new decision.

The WCJ provided the following statement of facts in the Report:

Four separate employees worked in the construction field under contractor Carlos Caudillo. They filed 4 separate applications for adjudication of claim alleging orthopedic cumulative trauma injuries while working for Better Living Social Group Corporation insured by Farmers Insurance Company. A fifth application alleging a specific injury along with the cumulative trauma claim was filed by Francisco Mendez. The cases were consolidated for hearings on the issue of employment using case Sacarias Mendez ADJ12924233 as the master file and set for mandatory settlement conference before WCJ Halprin. At that hearing, it was explained to the WCJ that one out of three potential employers had been joined. The homeowner had not been joined and neither had the uninsured contractor. Judge Halprin ordered applicant's counsel to perfect

joinder on the other two necessary parties. That never occurred, as various hearing notes indicate that the applicant's counsel represented to the court that he could not obtain the names or addresses of the other necessary parties.

The matter was originally set for trial before the undersigned Judge on July 12, 2021. No pretrial conference statements had been filed due to arguments between the attorneys. The applicant's counsel, Mr. Ozeran, told the undersigned WCJ that he could not obtain the name and address of the homeowner or the contractor who technically employed all 4 applicants, despite the fact that the 4 injured workers were at the home every single day and were in telephonic contact with the uninsured contractor. Applicant's counsel was told to obtain that information, and he made representations to the court that after a great deal of effort, he was unable to obtain that information. The parties then prepared pretrial conference statements and exhibit lists and the matter was continued to October 20, 2021. At that trial date, defendants represented to the undersigned WCJ that the only named employer was actually a real estate agency who had assisted the homeowner in giving money to the injured workers when the uninsured employer stopped paying them. Applicant's hearing representative appeared at the trial, and was told to join the 2 necessary parties. He admitted to the court that the joinder never took place because his boss did not like handling UEBTF cases and insisted on going forward to trial without all parties being joined. That trial was taken off calendar, resulting in a removal filed the same afternoon. The removal was denied on December 23, 2021.

On February 14, 2022, an amended application was filed, adding homeowner Guido Sendowsky as a potential employer. No homeowner's insurance company was identified on the amended application. The actual employer, uninsured contractor Carlos Caudillo, was never joined.

In February 2023, an attorney for Farmers Insurance sent a letter to applicant's counsel and all 4 of the injured workers advising them that there had been no activity on their cases for over a year and the matters would be dismissed if they failed to respond. There was no response to the "30 day notice" or petition for dismissal, which was filed on April 21, 2023. That original petition was denied because defense counsel failed to serve all parties on the official address record. A corrected petition and proof of service was filed on May 3, 2023. There having been no response to either of the petitions, an order vacating the consolidation of cases was issued on May 24, 2023. Individual Notices of Intent to dismiss the cases were issued for all 5 cases on May 25, 2023.

On June 5, 2023 an objection to the notice of intent was issued on the case of Sacarias Mendez. Over the course of the next week and a half, four more objections were filed; one for each case. Each was identical, stating that the attorney continues to litigate the case and requests that the notice of intent be rescinded.

The matter was set for hearing on August 3, 2023. No applicant appeared at the hearing, but they were represented by a hearing representative from the law firm. Just as at trial in October 2021, that was no letter- [sic] filed on any of the 5 cases allowing a hearing representative to appear. At the hearing, there was a very long and detailed discussion at which time no good cause was shown, and individual orders dismissing all 5 cases were issued. A single petition for reconsideration for all 5 cases was filed. The defendant filed an answer on August 29, 2023.

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The petition for reconsideration continues to attempt to litigate the employment trial that was taken off calendar in October 2021, arguing that it should be defendant's burden to join necessary parties as it is difficult to track them down. That argument will not be addressed as the removal was denied in December 2021.

(Report, at pp. 2-4.)

Applicants jointly filed a single Petition for Reconsideration in the five (5) consolidated cases arguing that the WCJ erred in dismissing their cases and in failing to allow a trial on the issue of employment against the only insured employer joined in these cases.

We are not able to provide meaningful review here because there is no record of proceedings in these matters. It is well established that decisions by 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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Moreover, while the request for removal regarding the issue of the October 20, 2021 Order Taking Off Calendar was previously denied, that denial does not prevent the same issue from being addressed on reconsideration.<sup>1</sup>

Turning to the issue of joinder, we note that the joinder of parties pursuant to WCAB Rule 10382<sup>2</sup> is permissive rather than mandatory, as evidenced by the word “may.” It serves judicial economy to join all parties “whose presence is necessary for the full adjudication of the case,” and such joinder should be accomplished to the extent that it is possible. However, despite the passage of a significant amount of time and effort and several hearings, such joinder has not occurred in these cases. The WCJ did not cite nor did we find any authority for the notion that applicant is the

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<sup>1</sup> Part of petitioner’s burden on removal is to 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).)

<sup>2</sup> WCAB Rule 10382 states, in relevant part: “The Appeals Board or a workers’ compensation judge may order the joinder of additional parties not named in the Application for Adjudication of Claim, whose presence is necessary for the full adjudication of the case. A party shall not be joined until 10 days after service of either a petition for joinder by a party or a notice of intention to order joinder issued by a workers’ compensation judge, unless the party to be joined waives its right to this notice period. The Workers’ Compensation Appeals Board may designate the party or parties who are to make service.

(a) Any person in whom any right to relief is alleged to exist may appear, or be joined, as an applicant in any case or controversy before the Workers’ Compensation Appeals Board.

(b) Any person against whom any right to relief is alleged to exist may be joined as a defendant.” (Cal. Code Regs., tit. 8, § 10382(a)-(b).)

party obligated to secure these joinders. Therefore, the issue of employment against the currently joined insured employer may proceed, so long as the issues dual employment, general-special employment, and any other related issues are deferred.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 3, 2023 Order Dismissing Case in each respective case is **RESCINDED**, and that these matters are **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**OCTOBER 17, 2023**

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

**SACARIAS MENDEZ C/O THE LAW OFFICES OF ROBERT OZERAN  
TOMAS MENDEZ C/O THE LAW OFFICES OF ROBERT OZERAN  
PEDRO MENDEZ C/O THE LAW OFFICES OF ROBERT OZERAN  
FRANCISCO MENDEZ C/O THE LAW OFFICES OF ROBERT OZERAN  
LAZARO LOPEZ  
THE LAW OFFICES OF ROBERT OZERAN  
STRATMAN, SCHWARTZ & WILLIAMS-ABREGO**

**PAG/cs**

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