

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

**OMAR MURO, *Applicant***

**vs.**

**RND CONTRACTORS, INC.;**  
**OLD REPUBLIC GENERAL INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ12660350  
Bakersfield District Office**

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

Defendant RND Contractors, Inc., (RND) seeks removal of the Order Granting Change of Venue (Order) issued on January 25, 2022 by the San Francisco Presiding Workers Compensation Judge (PWCJ). Defendant contends that the Order changing venue from San Francisco to Bakersfield without a hearing deprives them of the opportunity to be heard, since no petition for change of venue was ever filed in this matter. Defendant asserts that their pending petition to consolidate this matter pursuant to WCAB Rule 10398 (Cal. Code Regs., tit. 8, § 10398) does not provide authority for a venue transfer as an automatic part of the consolidation process.

We did not receive an Answer from applicant. We received a Report and Recommendation (Report) from the PWCJ, which recommends denial of the Petition for Removal.

We have considered the allegations of the Petition for Removal and the contents of the Report. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the PWCJ's Order, and return this matter to the San Francisco district office for further proceedings.

**BACKGROUND**

Applicant sustained industrial injuries while employed by defendant on October 9, 2019, when an elevated steel beam upon which applicant and another employee were sitting collapsed.

According to defendant's Petition, the incident resulted in injuries to applicant, the death of the co-employee, and a claim by the father of the deceased co-employee for psychiatric injury.

Applicant's claim was resolved by way of Compromise and Release, which was approved by a WCJ on January 11, 2021. Applicant's petition for increased benefits due to serious and willful misconduct against the employer pursuant to Labor Code section 4553, which was filed on June 4, 2020, remains pending.

On January 13, 2022, defendant RND filed a petition to consolidate applicant's case, which was venued in San Francisco, with two other cases filed by applicant's deceased co-employee and his father. The other cases are venued in the Bakersfield district office, and another attorney is representing both of those applicants.

On January 25, 2022, the PWCJ issued the Order stating that:

**IT APPEARING THAT** defendant **RND CONTRACTORS, INC.** has filed a petition to transfer venue in this matter to the **BAKERSFIELD DISTRICT OFFICE** of the Division of Workers' Compensation so that it may be consolidated with two other claims for serious and willful misconduct filed against **RND CONTRACTORS, INC.**, arising out of the same set of facts, and

**GOOD CAUSE APPEARING**

**IT IS HEREBY ORDERED** that venue be changed to the **BAKERSFIELD** District Office.

On January 26, 2022, the PWCJ from the Bakersfield district office issued a Notice of Intention to Consolidate Cases on this case and the two other pending cases involving defendant RND.

On February 4, 2022, defendant RND filed an objection to the Order changing venue on the basis that they never petitioned to transfer venue in this matter, and that any Order changing venue is premature, given the lack of a hearing on their petition for consolidation in accordance with WCAB Rule 10398.

On February 15, 2022, defendants filed their Petition for Removal.

On February 16, 2022, the Bakersfield PWCJ issued a Rescission of Notice of Intention to Consolidate Cases, without prejudice.

## **DISCUSSION**

Labor Code section 5501.6 provides that:

(a) An applicant or defendant may petition the appeals board for a change of venue and a change of venue shall be granted for good cause. The reasons for the change of venue shall be specifically set forth in the request for change of venue.

(b) If a change of venue is requested for the convenience of witnesses, the names and addresses of these witnesses and the substance of their testimony shall be specifically set forth in the request for change of venue.

This section indicates that applicant or defendant may petition for change of venue, and if such petition is filed, the reasons must be specifically set forth in such request.

In the instant case, no party, applicant or defendant, has petitioned for a change of venue. The petition that was filed by defendant on January 13, 2022 was instead a petition for consolidation of applicant's case, which was venued in San Francisco, with two other cases venued in Bakersfield involving the same incident for which petitions for serious and willful misconduct have all been filed. The basis for the petition is listed as consolidation for discovery purposes.

Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board taking into consideration any relevant factors. (Cal. Code Regs, tit. 8, § 10396.)

WCAB Rule 10398, discusses assignment of consolidated cases provides, and provides in pertinent part:

\*\*\*

(c) Any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation judges at different district offices, or that have not been assigned but are venued at different district offices shall be referred to the chief workers' compensation judge or their designee.

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c), the chief workers' compensation judge or their designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the chief workers' compensation judge or their designee shall determine the place of hearing and may determine the workers' compensation judge to whom the cases will be assigned, giving consideration to the factor set for in rule 10396. In reaching any determination, the chief workers' compensation judge or their designee may assign a workers' compensation judge to hear any discovery motions and disputes in the action and to report their findings and recommendations to the chief workers' compensation judge or their designee.

In other words, such a request for consolidation of cases involves notice, an opportunity to be heard, and due process. If, in the discretion of the chief WCJ or their designee, good cause is

also found for a venue transfer for a hearing to a particular location of one or more cases, that decision would presumably occur after such a hearing.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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).)

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 is "one of 'the rudiments of fair play' assured to every litigant..." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) 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. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Here, the PWCJ issued the Order changing venue of this matter to the Bakersfield district office based upon defendant's petition for consolidation of the case with two other cases, but without a proper request to change venue under Labor Code section 5501.6, without creation of a record, and without providing the parties with an opportunity to offer evidence in rebuttal or otherwise object. Thus, the Order violated due process thereby causing defendant substantial prejudice and irreparable harm.

Accordingly, we conclude that removal is warranted and we rescind the Order changing venue and return this matter to the San Francisco district office for further proceedings. As appropriate, defendant's pending petition for consolidation should be referred to the Chief Judge or their designee for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal of the Order Granting Change of Venue issued by the San Francisco PWCJ on January 25, 2022 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order of January 25, 2022 is **RESCINDED** and the matter is **RETURNED** to the San Francisco district office for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



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

**March 19, 2024**

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

**OMAR MURO  
JONES CLIFFORD  
DONNELL, MELGOZA & SCATES LLP**

**LAS/ara**

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