

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

ROSA REYES, *Applicant*

vs.

STAFFING NETWORK; ESIS, INC., *Defendants*

**Adjudication Number: ADJ12575329
Oakland District Office**

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

Applicant seeks removal in response to the Order issued by the workers' compensation administrative law judge (WCJ) on January 19, 2021, wherein the WCJ found in pertinent part that defendant obtained a valid Qualified Medical Examiner (QME) panel list and the WCJ found no good cause to invalidate the panel.

Applicant contends that defendant's QME panel was invalid and that the WCJ should have found applicant's QME panel to be valid.

We received a Report and Recommendation on Petition for Removal (Report) from the WCJ recommending that we deny removal. We received an Answer from defendant.

We have considered the allegations in the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will rescind the January 19, 2021 Order and return the matter to the WCJ for further proceedings and decision.

BACKGROUND

Applicant filed an application for adjudication on September 25, 2019, alleging cumulative injury to her back while employed by defendant as a packer, during the period from July 29, 2018 to July 29, 2019. On November 22, 2019 and November 16, 2020, applicant filed amended

applications to correctly identify the employer and/or insurance carrier. On December 16, 2020, applicant filed a declaration of readiness (DOR), which states in pertinent part:

“Applicant's attorney obtained panel 7379434 on December 14, 2020. On December 7, 2020, defense counsel obtained panel 7377843 using the wrong date of injury, April 15, 2020. The correct date of injury is a cumulative trauma from July 29, 2018 through July 29, 2019. Defense counsel's date of injury is 262 days after applicant's last day of the CT period. The April 15, 2020 date seems to have been created out of thin air. Consequently, the defense panel is invalid. Additionally the employers on the panels are different. Applicant's attorney believes that WWIL is the proper employer. WCAB assistance is respectfully requested to resolve this issue.” (DOR, p. 2 (all caps. omitted).)

On January 19, 2021, the parties proceeded to a status conference on the issue of whether defendant's request for a QME panel list was valid.

DISCUSSION

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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); *Cortez, supra*; *Kleemann, supra*.) Additionally, 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).)

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.¹ An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc)

¹ All statutory references not otherwise identified are to the Labor Code.

(*Hamilton*).²) 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.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, former § 10544, now § 10750 (eff. Jan. 1, 2020).) Here, documents referenced in the WCJ’s Report were not admitted into evidence and are not in the Electronic Adjudication Management System (EAMS) adjudication file. As such, they are not part of the record.

In the absence of an evidentiary record, we are unable to evaluate the basis of the WCJ’s Order. Therefore, we must return this matter to the trial level for further proceedings. Accordingly, we grant applicant’s petition, rescind the January 19, 2021 Order, and return the matter to the WCJ for further proceedings consistent with this decision.

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, former § 10341, now § 10325(a) (eff. Jan. 1, 2020); *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of January 19, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of January 19, 2021 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 19, 2021

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

**ROSA REYES
HYNDMAN LAW
LAUGHLIN FALBO LEVY & MORESI**

JB/abs

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