

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

**JOSE ARCIGA, *Applicant***

**vs.**

**SKANSKA-TRAYLOR-SHEA A JOINT VENTURE;  
ZURICH AMERICAN INSURANCE COMPANY,  
administered by ZURICH INSURANCE GROUP NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ17410564; ADJ17410565  
Van Nuys District Office**

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

Defendant seeks removal of the workers' compensation administrative law judge's (WCJ) order granting Employment Development Department's (EDD) motion to quash subpoena duces tecum, which was filed and served on June 25, 2024 (Order).

Defendant contends it will be significantly prejudiced and irreparably harmed, and that removal is the only manner for which defendant may obtain relief in this case.

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

We have considered the allegations in the Petition for Removal and the contents of the Report, and we have reviewed the record. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the WCJ's Order, and return the matter to the trial level for further proceedings consistent with this decision.

**FACTUAL BACKGROUND**

We will briefly review the relevant facts. Applicant alleges sustaining a specific injury to multiple body parts arising out of and during the course of employment on January 20, 2023. Applicant also alleges cumulative injury to multiple body parts while employed by defendant during the period February 23, 2018 to January 19, 2023.

Defendant served the Employment Development Department (EDD) with a Workers' Compensation Appeals Board (WCAB) Subpoena Duces Tecum.

On June 14, 2024, EDD filed a “Motion to Quash Subpoena Duces Tecum (Disability Insurance)” (Motion to Quash). In support of its Motion to Quash, EDD cited Unemployment Insurance Code (UI Code) sections 1094, 2111, and 2714 asserting disclosure was expressly prohibited by law. EDD also noted it had not and did not plan to file a lien claim pursuant to Labor Code (LC) section 4903 or UI Code sections 1255.5, 2629, or 2629.1.

The WCJ signed an Order on June 15, 2024, which was filed and served on June 25, 2024, granting EDD’s Motion to Quash as follows:

Having read the Employment Development Department's (EDD) Motion to Quash Subpoena Duces Tecum (Disability Insurance) and good cause appearing,

It is hereby ORDERED that the Workers' Compensation Appeals Board Subpoena Duces Tecum served by Defendants requesting Disability Insurance records is quashed and EDD's Motion is GRANTED.

(Order, filed June 25, 2024.)

There was no hearing held to address the Motion to Quash or Order, and thus no evidence was admitted on the record.

On July 8, 2024, defendant sought removal of the Order via the Petition for Removal.

### **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, § 10955(a); *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).)

All 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 California Supreme Court 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.)

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at p. 476., citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and 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].) As required by Labor Code 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 p. 475.)

Here, the WCJ summarily issued the Order granting the Motion to Quash without issuing a notice of intent and without conducting a hearing on the motion. (Cal. Code Regs., tit. 8, § 10832.) No record was created to support the Order granting the Motion to Quash, and without an ability to review the evidentiary record and the stipulations and issues, we cannot complete a meaningful review of the Petition.

Accordingly, due process requires that we grant defendant’s Petition for Removal, rescind the Order filed on June 25, 2024, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal of the Order filed on June 25, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order filed on June 25, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**SEPTEMBER 5, 2025**

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

**JOSE ARCIGA  
MICHAEL BURGIS AND ASSOCIATES  
THE LAW OFFICES OF HIRSCHL MULLEN**

**DC/cs**

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