

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

JAIME TARCISIO MOLINA MEJIA, *Applicant*

vs.

**BLACKHAWK HOMEOWNERS ASSOCIATION;
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ16688665
San Francisco District Office**

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

Applicant seeks removal in response to an order of dismissal issued by the workers' compensation administrative law judge (WCJ) on March 23, 2023, wherein the WCJ issued an order dismissing defendant Republic Indemnity Co (Republic).

Applicant contends that the WCJ erred in adopting defendant's proposed order dismissing Republic and failed to provide a hearing upon applicant's objection and denied applicant due process.

We received no answer from defendant.

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

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed herein, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision consistent with this opinion.

BACKGROUND

Applicant claims injury to his upper extremities from March 24, 2019 to March 24, 2020, while employed by defendant as a barback.

On March 22, 2023 the parties proceeded to a status conference. In the minutes, the WCJ notes: “Dismissal of Republic Indemnity.” (March 22, 2023, Minutes of Hearing.)

On March 23, 2023, the WCJ issued an order dismissing defendant Republic.

On April 8, 2023, applicant filed a petition for removal.

DISCUSSION

As a preliminary matter, if a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc3).) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.4) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues. Here, the dismissal of Republic is a final order.

An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313) A decision “must be based on admitted evidence in the record” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc) 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. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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 p. 475.) 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 pp. 475–476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, the only record provided is the WCJ’s note “Dismissal of Republic Indemnity” in the minutes of hearing from the March 22, 2023 status conference. Because there is no record of testimony or evidence documenting the basis of the WCJ’s Order, there is no evidence upon which we can base a decision. A record supporting any finding must still be established and petitioner

and defendant must be given an opportunity to present evidence to support their contentions. Consequently, a hearing must be held in order for evidence to be admitted and a decision rendered.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the March 23, 2023 Order Dismissing Party Defendant is **GRANTED**

IT IS FURTHER ORDERED as the decision after reconsideration of the Workers' Compensation Appeals Board that the WCJ'S order dated March 23, 2023 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 9, 2023

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

**JAIME TARCISIO MOLINA MEJIA
KENNETH MARTINSON LAW FIRM
LAUGHLIN FALBO LAW FIRM
REPUBLIC INDEMNITY**

LN/pm

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