

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

DIANE CLAY, *Applicant*

vs.

COUNTY OF LOS ANGELES, Permissibly Self-Insured; TRISTAR, *Defendants*

**Adjudication Number: ADJ11166250
Pomona District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR RECONSIDERATION;
GRANTING PETITION FOR REMOVAL AND
DECISION AFTER REMOVAL**

Applicant in pro per seeks reconsideration of the Order Dismissing Attorney of Record for the Applicant (Order) issued on November 1, 2021, wherein the workers' compensation administrative law judge (WCJ) ordered that the Law Office of Solimon Rodgers be dismissed as applicant's attorney of record.

Applicant argues that the WCJ issued the Order without or in excess of his authority.

We did not receive an Answer.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and as discussed below, we will dismiss the Petition as a petition for reconsideration; we will grant the Petition as a petition for removal, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

While employed as a typist-clerk by defendant during the period of October 16, 2017 through January 5, 2018, applicant allegedly sustained a cumulative trauma injury to left leg, left knee, left thigh, left foot and back.

On July 21, 2020, the Page Law firm filed a Notice of Dismissal of Attorney, dismissing applicant in pro per as applicant's attorney of record. (Notice of Dismissal of Attorney, July 21,

2020.) The document does not identify any prior attorney of record for applicant. (*Id.*)

Also on July 21, 2020, the Page Law firm filed a Substitution of Attorneys, substituting the Page Law firm for applicant in pro per as applicant's attorney of record. (Substitution of Attorneys, July 21, 2020.) The document identifies "Page Law-Paris Page" as applicant's present attorney and is signed by Paris Page. (*Id.*) The document does not identify any prior attorney of record for applicant.

On September 21, 2020, Solimon Rodgers filed a Notice and Request for Allowance of Lien and an Original Bill, asserting a lien for legal services as to any claim of applicant's and referencing case numbers ADJ11756941 and ADJ12428226. (Notice and Request for Allowance of Lien, September 21, 2020; Original Bill, September 21, 2020.)

A review of the record reveals no dismissal, substitution, or order relieving Solimon Rodgers as applicant's attorney of record prior to the filing of its lien.

On June 21, 2021, applicant filed a Declaration of Readiness to Proceed (DOR), seeking "clarification regarding who is my attorney of record" on the following grounds:

Page Law submitted sub./dismissal documents earmarked for 3 unrelated cases to remove my original attorney of record – Solimon & Rodgers. This action was conducted in July of 2020 without my knowledge. (Declaration of Readiness to Proceed, June 21, 2021, pp. 1-2.)

On July 28, 2021, the matter proceeded to a status conference at which applicant and defendant appeared. (Minutes of Hearing, July 28, 2021.) The WCJ issued an order that the matter be taken off calendar (OTOC). (*Id.*) The WCJ commented as follows: "Tony Vertiz advised that Solimon Rogers is not attorney of record." (*Id.*)

On August 26, 2021, applicant sought reconsideration of the OTOC on the grounds that it was issued without addressing the merits of her contentions that Page Law had filed the substitution of attorneys without her authority and that Solimon Rodgers remained her attorney of record. (Petition for Reconsideration, August 26, 2021, pp. 1-5.)

The WCJ's report regarding applicant's August 26, 2021 petition states:

On or about 01/15/2018, the law firm of Solimon Rodgers filed an Application for Adjudication of Claim with the Pomona Workers' Compensation Appeals Board. . . . On or about 09/10/2018, Solimon Rodgers amended the Application to add injury to back. (EAMS Doc. ID # 27244041.)

On or about 07/21/2020, Page Law-Paris Page filed a Dismissal of Attorney dated 07/20/2020 allegedly signed by applicant/petitioner (EAMS Doc. ID # 33139085). Also on or about 07/21/2020, Page Law-Paris Page filed a Substitution of Attorneys dated 07/20/2020 allegedly signed by applicant/petitioner and Page Law-Paris Page appointing Page Law-Paris Page as applicant's attorney (EAMS Doc. ID # 33139084).

However, on or about 04/07/2021, Page Law-Paris Page filed a 04/05/2021 petition seeking to be relieved as applicant's attorney for ADJ11166250. (EAMS Doc. ID # 36210359.) On 04/07/2021, Judge Bather issued an order relieving Page Law-Paris Page from serving as applicant's attorney for ADJ11166250. (EAMS Doc. ID # 74063084.)

On or about 06/21/2021, applicant/petitioner filed a Declaration of Readiness to Proceed requesting a status conference to address all issues, as well as "requesting clarification regarding who (sic) is my attorney of record . . ." (EAMS Doc. ID # 74346982.)

...

The Declaration of Readiness to Proceed resulted in a status conference on 07/28/2021. During the 07/28/2021 status conference, applicant/petitioner stated, among other things, that she signed a blank substitution of attorney form but that she did not authorize Page Law-Paris Page to file the document. Applicant/petitioner argued during the 07/28/2021 status conference that Solimon Rogers should therefore be required to represent her.

Solimon Rogers did not initially appear for the 07/28/2021 status conference. However, hearing representative Tony Vertiz was eventually located and stated to the court his firm's position that Solimon Rogers was subbed out by Page Law-Paris Page and therefore no longer represents applicant/petitioner. Mr. Vertiz further represented that Solimon Rogers is no longer interested in representing applicant/petitioner, but nonetheless suggested that applicant/petitioner might further discuss this with one of his firm's named partners.

It initially appeared that the 07/28/2021 status conference might result in a continuance to another hearing regarding the disputed substitution of attorney and whether Solimon Rogers represents applicant/petitioner. However, the disposition was changed to a joint request that the matter go off calendar to allow for settlement discussion with indication that another Declaration of Readiness to Proceed might be filed if the claim and/or issue(s) did not resolve.

...

Solimon Rogers has yet to petition to be relieved from representing applicant/petitioner for ADJ11166250, relying instead solely on the disputed substitution of attorney. (Report, pp. 2-6.)

On October 25, 2021, we dismissed applicant's petition to the extent that it sought reconsideration and granted removal, stating:

[T]he record contains no pleadings showing Solimon Rodgers's substitution or dismissal, and no order relieving it as applicant's attorney of record. (Report, p. 6.) Rather, the substitution and dismissal on file pertain solely to applicant in pro per and her purported subsequent attorney of record, Page Law. (Notice of Dismissal of Attorney, July 21, 2020; Substitution of Attorney, July 21, 2020.) In the absence of a pleadings record showing the substitution or dismissal of Solimon Rodgers as applicant's attorney of record, we are unable to discern the reasons or grounds for the OTOC.

...

[T]he WCJ issued the OTOC at a status conference, effectively setting aside applicant's contention that Solimon Rodgers remains her attorney of record without a hearing or otherwise establishing a record from which we may discern the reasons or grounds for his decision. (Minutes of Hearing, July 28, 2021.) However, given the absence of a pleadings record showing Solimon Rodgers's substitution, dismissal, or order to be relieved as applicant's attorney of record, we are persuaded that the WCJ should have issued a Notice of Intention (NIT) to Peter Solimon and Solimon Rodgers to produce evidence regarding the substitution of attorneys, or lack thereof, and for failure to appear at the status conference on behalf of applicant. Upon the issuance of a NIT, the parties, including lien claimant Solimon Rodgers, would be in a procedural position from which they could develop the record regarding whether or not Solimon Rodgers is applicant's attorney of record.

(Opinion and Orders Dismissing Petition for Reconsideration; Granting Petition for Removal and Decision After Removal, October 25, 2021, pp. 6-7.)

On October 29, 2021, Solimon Rodgers filed a petition to be relieved as attorney of record for applicant on the grounds that it believed that the substitution and dismissal filed by Page Law operated to remove it as applicant's attorney of record and that it would be prejudiced in the event the WCJ found otherwise. (Petition to be Relieved as Attorney of Record for Applicant, October 29, 2021, pp. 1-6.)

In the Report, the WCJ states:

On 10/25/2021, the Board . . . ordered that the matter be returned to the WCJ for further proceedings.

As such, this matter was scheduled for another status conference on 11/24/2021.

In the meantime, on or about 10/29/2021, Solimon Rodgers petitioned to be relieved as attorney of record for applicant/petitioner. Also on 10/29/2021, an order issued dismissing Solimon Rodgers as attorney of record for applicant/petitioner.

During the 11/24/2021 Status Conference, applicant/petitioner objected to the order dismissing Solimon Rodgers and indicated that she would be filing the instant appeal.
(Report, p. 4.)

DISCUSSION

A petition for reconsideration is the mechanism by which a party may challenge a final order, decision, or award. (Labor Code § 5900¹.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075, [65 Cal.Comp.Cases 650, 650-651, 655-656].) The Court of Appeal has given examples of threshold issues to include “whether the injury arises out of and in the course of employment, the territorial jurisdiction of the appeals board, the existence of an employment relationship or statute of limitations issues.” (*Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 (citations omitted).) “Such issues, if finally determined, may avoid the necessity of further litigation.” (*Id.*) (internal quotation marks and citations omitted).)

By contrast, removal may be requested to challenge interim and non-final orders issued by a WCJ. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleeman v. Workers’ Comp. Appeals Bd.* (2005) 127

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Cal.App.4th 275, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) Removal is discretionary and is generally employed only as an extraordinary remedy upon a showing of substantial prejudice or irreparable harm and a showing that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 272, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].)

In this case, the Order does not adjudicate any substantive right or liability and is therefore a non-final order. Accordingly, we will dismiss the Petition as one for reconsideration and treat it as one seeking removal.

We observe that the determination of an issue without providing a party notice and a fair opportunity to be heard is a denial of due process. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284 [66 Cal.Comp.Cases 584] (due process violated when case decided on new rationale not addressed at trial); *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151 [65 Cal.Comp.Cases 805] (same).) All parties are entitled to due process in a workers' compensation proceeding. (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Abron v. Workmen's Comp. Appeals Bd.* (1973) 34 Cal.App.3d 232 [38 Cal.Comp.Cases 591]; *Cedeno v. American National Ins. Co.* (1997) 62 Cal.Comp.Cases 939.) "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449 [56 Cal.Comp.Cases 537].)

In this case, we previously decided that the WCJ's prior order to take the matter off calendar effectively set aside applicant's contention that Solimon Rodgers remains her attorney of record without a hearing or otherwise establishing a record. (Opinion and Orders Dismissing Petition for Reconsideration; Granting Petition for Removal and Decision After Removal, October 25, 2021, p. 6.) To avoid this error, we opined that the WCJ should have issued a Notice of Intention (NIT) to Peter Solimon and Solimon Rodgers to produce evidence regarding the substitution of attorneys, or lack thereof, and for failure to appear at the July 28, 2021 status conference on behalf of applicant. (*Id.*, pp. 6-7.) Such a procedure, we reasoned, would place the

parties “in a procedural position from which they could develop the record regarding whether or not Solimon Rodgers is applicant’s attorney of record.” (*Id.*)

Four days after our decision, Solimon Rodgers filed a petition to be relieved as applicant’s attorney of record; and, three days afterward, the WCJ granted the petition without providing applicant with notice or an opportunity to be heard. (Opinion and Orders Dismissing Petition for Reconsideration; Granting Petition for Removal and Decision After Removal, October 25, 2021, pp. 6-7; Petition to be Relieved as Attorney of Record for Applicant, October 29, 2021, pp. 1-6.) It is thus clear that the Order was issued in violation of applicant’s right of due process. Accordingly, we will grant the Petition for removal.

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (§ 5313; see also *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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]).)

In this regard, because the Order was issued without notice to applicant or an opportunity for her to be heard, we are left without a record of the evidence and argument of the parties with respect to whether or not Solimon Rodgers remains applicant’s attorney of record. Furthermore, the Report fails to state the legal or evidentiary grounds upon which the WCJ relied to dismiss Solimon Rodgers as applicant’s attorney of record. (Report, pp. 1-5.) Given the continued absence of a record concerning what, if any, evidence supports Solimon Rodgers’s contentions that it (1) has been substituted, dismissed, or otherwise deemed entitled to be relieved as applicant’s attorney of record and (2) was not required to appear at the July 28, 2021 status conference on behalf of applicant, we again recommend that the WCJ issue a NIT to Peter Solimon and Solimon Rodgers to produce evidence regarding the substitution of attorneys, or lack thereof, and for failure to appear at the status conference on behalf of applicant. Upon the issuance of a NIT, the parties may develop the record of the issue of whether or not Solimon Rodgers is applicant’s attorney of record,

and, if not, when its service to applicant ceased.² Accordingly, we will rescind the Order and return the matter to the trial level for development of the record as to whether or not Solimon Rodgers remains applicant's attorney of record and further proceedings as appropriate. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also § 5313.)

Accordingly, we will dismiss the Petition as a petition for reconsideration; we will grant the Petition as one for removal, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

² We note that the WCJ maintains jurisdiction over Solimon Rodgers based upon its September 21, 2020 lien claim. (§ 4903.05; Notice and Request for Allowance of Lien, September 21, 2020; Original Bill, September 21, 2020.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Order Dismissing Attorney of Record for the Applicant issued on November 1, 2021 is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal of the Order Dismissing Attorney of Record for the Applicant issued on November 1, 2021 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order Dismissing Attorney of Record for the Applicant issued on November 1, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 21, 2022

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

**DIANE CLAY
PAGE LAW
SOLIMON RODGERS
ROBINSON DI LANDO**

SRO/pc

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