

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

JUAN LOPEZ, *Applicant*

vs.

**BARETT BUSINESS SERVICES. INC.;
CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ7745966, ADJ7909061
Van Nuys District Office**

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

Defendant has filed a petition for removal, requesting that the appeals board rescind the Order dated October 6, 2021, wherein the workers' compensation administrative law judge (WCJ) vacated submission and ordered this matter off calendar to allow the parties to develop the record.

Defendant contends that the matter should be decided on the existing record because applicant has had ample time to develop the record and because the parties have requested that he issue a decision.

The WCJ prepared a Report and Recommendation on Petition for Removal (Report) recommending that removal be denied. For the reasons discussed below, we will grant removal, close discovery, and return this matter to the trial level for the WCJ to resubmit the case on the existing record and issue a final decision.

In this case, the parties have submitted the case for decision three times and the WCJ has vacated submission three times. This is defendant's third petition for removal. The medical record has not been developed as directed by the WCJ despite ample opportunity to do so.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].) However, the duty to develop the record must be balanced with the parties' obligation to exercise due diligence to complete necessary discovery

prior to a mandatory settlement conference. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp. Cases 986].)

For the foregoing reasons,

IT IS ORDERED that defendant's petition for removal is **GRANTED**.

IT IS FURTHER ORDERED, as the decision after removal of the Workers' Compensation Appeals Board, that the order taking this matter off calendar dated October 6, 2021, is **RESCINDED** and that discovery is **CLOSED**.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level to be set for trial and such further proceedings and decisions by the WCJ as may be required.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 28, 2022

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

**JUAN LOPEZ
PETER BROWN
HINSHAW & CULBERTSON**

MWH/mc

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