

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

VI TRI LIEU (deceased), CHAI SAECHAO, *Applicant*

vs.

**BOTTLING GROUP dba PEPSICO; administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ15071496 (Oakland District Office)
ADJ14868756 (Sacramento District Office)**

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

Defendant seeks Removal regarding the Order issued by the workers' compensation administrative law Judge (WCJ) on January 12, 2022, whereby the WCJ denied defendant's Petition for Change of Venue in case number ADJ15071496, and ordered that the injury claims be consolidated for trial.

We have received a Report and Recommendation (Report) on Petition for Removal (Petition) from the WCJ recommending that the Petition be denied. We received an Answer from Applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant removal, rescind the January 12, 2022 Order, and return the matter to the WCJ to conduct further proceedings consistent with this decision.

BACKGROUND

Applicant, Chai Saechao (decedent's putative spouse), claimed that while employed by defendant as a warehouse product certifier, Vi Tri Lieu (decedent) sustained a work related COVID-19 infection that resulted in his death on December 27, 2020. On July 7, 2021, defendant filed an Application for Adjudication of Claim at the Sacramento district office (ADJ14868756). On August 24, 2021, applicant filed an Application for Adjudication of Claim at the Oakland

district office (ADJ15071496). Applicant filed a Petition for Consolidation and Change of Venue regarding both injury claims on August 25, 2021. Defendant filed a Petition for Change of Venue regarding case number ADJ15071496 on September 27, 2021. By his October 14, 2021 Order, the WCJ deferred ruling on defendant's Petition for Change of Venue.

At the October 20, 2021 Expedited Hearing, a WCJ determined that the denied injury claim was not subject to an Expedited Hearing so the matter was converted to a Mandatory Settlement Conference (MSC) and was continued. The parties were ordered "to submit declarations as to [the] venue dispute." (Minutes of Hearing October 20, 2021.) On October 22, 2021, an Order Appointing Guardian Ad Litem was issued, appointing applicant Chai Saechao as Guardian ad Litem and Trustee for minors Lana Lieu, Ellie Lieu, and Samuel Lieu.

The Order disputed by defendant was issued by the WCJ on January 12, 2022.

DISCUSSION

We must note that, "[T]he record of proceedings in a case submitted for decision on the record must be properly organized and must contain at the minimum: a list of the issues submitted to the WCJ for decision; the stipulations of the parties, if any; and the admitted evidence." (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 474 (Appeals Board en banc).) "The evidence submitted by the parties must be formally admitted and must be included in the record to enable the parties to comprehend the basis for the decision. Furthermore, a proper record enables any reviewing tribunal, be it the Board on reconsideration or a court of further appeal, to understand the basis for the decision." (*Hamilton, supra*, 475.) The Labor Code and the Appeals Board rules contain explicit instructions concerning the contents of the record of a case. (Lab. Code, § 5502; Cal. Code Regs., tit. 8, § 10759(b) and (c) [prior § 10629].) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record." (*Hamilton, supra*, 477.)

Appeals Board Rule 10670 states:

The filing of a document does not signify its receipt in evidence, and, except for the documents listed in section 10803 of these Rules, only those documents that have been received in evidence shall be included in the record of proceedings on the case.

(Cal. Code Regs., tit. 8, § 10670.)

Appeals Board Rule 10803 states that:

The Workers' Compensation 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. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. 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, § 10803.)

Here, we are unable to review and/or address the merits of the Petition because there is no trial record. In the Report the WCJ refers to declarations submitted by applicant, but as noted, there is no trial record and the declarations are not evidence. Again, there are no exhibits offered and/or admitted into evidence.

It is well established that any award, order or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].) Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton, supra*, 476.)

Based on our review of the Electronic Adjudication Management System (EAMS) ADJ file it is clear that there is not an adequate trial record and therefore we are not able to address the issues raised by the Petition and the Answer, or those discussed by the WCJ in the Report.

Accordingly, we will grant removal, rescind the January 12, 2022 Order, and return the matter to the WCJ to conduct further proceedings consistent with this decision. Upon return of this matter, if the parties are unable to resolve the disputed issues, it will be necessary for the WCJ to schedule and conduct a trial in order to have the parties submit evidence in support of their respective positions and to create a record in compliance with the rules and case law discussed above.

For the foregoing reasons,

IT IS ORDERED that defendant's February 2, 2022 Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED, as the Appeal's Board's Decision After Removal that the January 12, 2022 Order is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 21, 2022

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

STOCKWELL, HARRIS, WOOLVERTON & HELPHREY

SU LAW

VI TRI LIEU C/O SU LAW

TLH/pc

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