

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

**GLOREN CASAMENTO, *Applicant***

**vs.**

**ADVANCED CELL DIAGNOSTICS INC.;  
CHUBB GROUP LOS ANGELES, *Defendants***

**Adjudication Number: ADJ15626544  
Sacramento District Office**

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

Defendant seeks removal of the March 23, 2022 order directing discovery by deposition and denying petition to compel written response to written discovery request (Order), wherein the workers' compensation administrative law judge (WCJ) directed defendant to proceed with discovery of Labor Code<sup>1</sup> section 4663 issues via the deposition of applicant. Defendant contends that there is no preference for discovery by deposition and that it would be more expeditious for applicant to answer its written discovery request.

The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the Petition for Removal and the contents of Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Removal, rescind the WCJ's Order, and return this matter to the WCJ for further proceedings.

**FACTS**

Applicant claimed that, while employed as a sales operation associate, she sustained a cumulative injury from January 6, 2006, to November 18, 2021, to her neck, back, shoulders, hand, and multiple body parts due to repetitive duties.

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<sup>1</sup> All statutory references not otherwise identified are to the Labor Code.

On February 25, 2022, defendant filed a petition to compel applicant's compliance with disclosure required by Labor Code section 4663(d) as well as a Declaration of Readiness to Proceed. The WCJ issued a Notice of Intention to dismiss defendant's petition (NIT) on March 17, 2022. Defendant filed an objection to the NIT on March 21, 2022. The WCJ addressed this discovery issue at the mandatory settlement conference on March 21, 2022. The WCJ issued the Order on March 23, 2022. Defendant filed the Petition for Removal on March 28, 2022.

## DISCUSSION

### I.

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 v. Workers' Comp. Appeals Bd.*, *supra*, 136 Cal.App.4th at p. 599, fn. 5; *Kleemann v. Workers' Comp. Appeals Bd.*, *supra*, 127 Cal.App.4th at p. 280, fn. 2.) Additionally, 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).) We find that removal is appropriate in this matter.

### II.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*)). 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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record."

(*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The 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. . . . 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.) The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The minutes of hearing and summary of evidence (MOH/SOE) shall be prepared at the conclusion of each trial and filed in the record of proceedings. (Cal. Code Regs., tit. 8, § 10787(c).) The MOE/SOE must include the “admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same).” (Cal. Code Regs., tit. 8, § 10787(c)(3).) “Even at a conference, the record must be properly maintained, especially if documents were accepted and a decision issued.” (*Hernandez v. AMS Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 349 [2011 Cal. Wrk. Comp. LEXIS 49, \*12-13].)

The issue that we face on removal is that there is an insufficient record to evaluate the WCJ’s Order. There was no SOE from the March 21, 2022 conference. The March 21, 2022 minutes are silent as to what stipulations were entered into at the conference, if any. Further, while there were “court exhibits” ordered into evidence, there was no descriptive listing and admission into evidence in an SOE. The information before the Board is insufficient to determine whether the petition to compel applicant’s compliance with disclosure required by Labor Code section 4663(d) was correctly denied. Accordingly, we grant the Petition, rescind the Order, and return the 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 March 23, 2022 Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Removal of the Workers' Compensation Appeals Board, that the March 23, 2022 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ 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**

**March 29, 2023**

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

**GLOREN CASAMENTO  
LOUIE & STETTLER  
PACIFIC WORKERS' COMPENSATION LAW CENTER**

*JMR/pc*

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