

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

**JENNIFER REVELES, *Applicant***

**vs.**

**STATE OF CALIFORNIA SIERRA CONSERVATION CENTER,  
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ16783231  
Stockton District Office**

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

Applicant seeks removal in response to the Findings of Fact and Orders (F&O) issued by the Workers' Compensation Administrative Law Judge (WCJ) on August 1, 2023. Therein, the WCJ ordered applicant to list the medical treatment received during the last 10 years to the neck, bilateral upper extremities, and bilateral wrists. The WCJ further ordered that any additional information sought by defendant would need to be obtained by deposition.

Applicant contends that the order to disclose medical treatment is not authorized under Labor Code<sup>1</sup> section 4663(d), and that the WCJ's order is premised on defendant's demand for information, which is functionally equivalent to written interrogatories.

We have not received an Answer from any party. We received a Report and Recommendation on Petition for Removal (Report) from the WCJ, recommending that removal be denied.

We have considered the allegations of the Petition for Removal and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant the Petition for Removal, rescind the WCJ's decision, and substitute

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

a new order denying defendant's Petition to Compel applicant to sign and return medical release forms.

On May 8, 2023, defendant filed a petition seeking an order compelling applicant to complete, sign and return medical releases, and that should applicant fail to do so, that the Workers' Compensation Appeals Board (WCAB) suspend applicant's entitlement to benefits.<sup>2</sup> (Petition to Compel, dated May 8, 2023, at p. 3:3.)

On June 29, 2023, the parties proceeded to trial, framing for decision defendant's May 8, 2023 Petition to Compel, and "whether defendant has to depose Applicant if further information is required [that is] not contained in the medical release." (Minutes of Hearing, dated June 29, 2023, at p. 2:9.)

On July 31, 2023, the WCJ issued the F&O, ordering that applicant list the medical treatment received during the past 10 years to the neck, bilateral upper extremities, and bilateral wrists. (Order No. "a".) The WCJ further ordered that defendant "obtain additional information from applicant by deposition if it chooses." (Order No. "b".) The WCJ's Opinion on Decision notes that the order complies with section 4663(d), and that section 5708 allows depositions to be admitted into evidence as part of proceedings before the WCAB.

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 [38 Cal. Rptr. 3d 922, 71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [25 Cal. Rptr. 3d 448, 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); see also *Cortez, supra*; *Kleemann, supra*.) Also, 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).)

Applicant's Petition avers the WCJ's order exceeds the disclosure mandated under section 4663(d). Applicant further asserts that scope of the compelled disclosure will require applicant to list medical treatment she has received during the last 10 years, including doctors, medical facilities, addresses, locations, parts of body treated, types of treatment, and the approximate

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<sup>2</sup> Defendant's petition to compel does not specify statutory or case law authority for suspending benefits to the applicant for failure sign a records release authorization. Insofar as the relief sought by defendant was sought under the auspices of Labor Code section 4053, we observe that such relief is only available in instances were the employee, after written request of the employer, fails or refuses to submit to a medical examination.

date(s) of treatment. (Petition for Removal (Petition), dated August 7, 2023, at p. 4:12.) Applicant cites to our decision in *Lubin v. Berkley East Convalescent Hop. & Mission Ins. Co.*<sup>3</sup> (1976) 41 Cal.Comp.Cases 283 [1976 Cal. Wrk. Comp. LEXIS 2480], wherein a panel of the Appeals Board noted that “in most cases the specific provisions of the Labor Code and of our rules relating to discovery will provide adequate tools to the practitioner,” and that only “in very rare instances, submission of written interrogatories to an opposing party may be the only practical and feasible way of obtaining adequate discovery.” (*Id.* at p. 287, citing *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406].) Applicant asserts that the record does not support the necessity of interrogatories in lieu of other discovery vehicles available to defendant.

Section 4663(d) requires that, “[a]n employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.” (Lab. Code, § 4663(d).) Thus, while the section contemplates disclosure of specified *disability* or *impairment*, it does not require the employee to disclose all prior *medical treatment*. We therefore agree with applicant that the order that she disclose prior medical treatment to specified body parts does not comport with the disclosure required by section 4663(d).

Similarly, defendant’s May 8, 2023, Petition to Compel Applicant to Complete, Sign and Return the Medical Release asserts section 4663(d) as legal basis for the defendant’s right to compel applicant to sign medical releases authorizing defendant to obtain her medical treatment records. (Petition to Compel, dated May 8, 2023, at p. 1:24.) However, defendant’s petition fails to explain how compelling applicant’s authorization to disclose an *unlimited medical treatment history* comports with the requirement for disclosure of *disability* or *impairment* pursuant to section 4663(d).

Irrespective of the requirements of section 4663(d), however, the WCJ retains significant discretion in resolving discovery disputes arising under the provisions of the Labor Code and our rules regarding pre-trial discovery. In *Hardesty, supra*, 41 Cal. Comp. Cases 111, we explained

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<sup>3</sup> Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

that “in most cases the specific provisions of the Labor Code and of our rules relating to discovery will provide adequate tools to the practitioner, and that he should not be encouraged to go beyond them in search of other remedies.” (*Id.* at p. 114.) In those cases where the Labor Code and our rules do not provide a sufficient remedy, “the trial judge has, and should exercise[,] the authority conferred on him by § [10330] of our rules to issue such interlocutory orders relating to discovery as he determines are necessary to insure the full and fair adjudication of the matter before him, to expedite litigation and to safeguard against unfair surprise.” (*Ibid.*)

Thus, and insofar as the defendant seeks to compel discovery in the form of written disclosure of prior medical treatment, defendant must establish why the specific provisions of the Labor Code and our rules relating to discovery are otherwise inadequate. Here, defendant offers no argument for the need to resort to written discovery, nor does it aver previously unsuccessful discovery efforts. Because defendant does not assert that less burdensome vehicles for discovery are unavailable to defendant, and because the record reflects no such requests, we are persuaded that defendant’s requests for written disclosures are unduly burdensome.

Based on the above, we conclude that defendant’s request for written disclosure of past medical treatment does not comport with the required disclosure under section 4663(d) and is unduly burdensome. We further conclude that defendant’s petition to compel applicant to sign medical releases is unsupported by section 4663(d). Accordingly, we will rescind the F&O and substitute a new order denying defendant’s May 8, 2023 Petition to Compel. We will then return this matter to the trial level for further proceedings. Upon return of this matter to the trial level, we encourage the parties to meet and confer in an effort to craft a discovery agreement in lieu of further judicial proceedings, including the possible disclosures required under section 4663(d) of “previous permanent disabilities or physical impairments,” as well as the possible deposition of the applicant pursuant to section 5710.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal of the decision of August 1, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers’ Compensation Appeals Board that the decision of August 1, 2023 is **RESCINDED**, and the following **SUBSTITUTED** therefor:

**ORDERS**

- a. Defendant’s Petition to Compel Applicant to Complete, Sign and Return the Medical Release, Dated May 8, 2023, is denied.

**IT IS FURTHER ORDERED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS’ COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 15, 2024**

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

**JENNIFER REVELES  
KELLY, DUARTE, URSTOEGERE & RUBLE  
STATE COMPENSATION INSURANCE FUND**

**SAR/abs**

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