

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

**BRANDY CASTRO, *Applicant***

**vs.**

**BLACK OAK CASINO RESORT, Permissibly Self-Insured, Administered by  
TRIBAL FIRST AFFINITY, *Defendants***

**Adjudication Number: ADJ12552472  
Stockton District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Order for Dismissal of Application of February 4, 2020, the Workers' Compensation Judge ("WCJ") ruled as follows: "Applicant's objection to the Order Dismissing the Application of Adjudication fails to demonstrate good cause as to why dismissal would be improper. After review of applicant's objection and the Black Oak Casino responsive brief, good cause appearing, it is ordered that the Application for Adjudication of Claim in ADJ12552472 is hereby dismissed."

Applicant filed a timely petition for reconsideration of the WCJ's ruling. Applicant contends that the WCJ acted in excess of her powers because further discovery is needed on the issues of employment, tribal ownership and/or operation, waiver of immunity, and maintenance of a workers' compensation system comparable to California's system. Applicant further contends that defendant failed to provide any evidence that Black Oak Casino is tribally owned and operated, and that the WCAB may have jurisdiction. Applicant also contends that further discovery is needed to determine whether defendant has created and maintained workers' compensation system comparable to California's system, and that even if defendant is tribally owned and operated, it must maintain a tribal workers' compensation system or be subject to the WCAB's jurisdiction by default.

Defendant filed an answer.

The WCJ submitted a Report and Recommendation (“Report”). We adopt and incorporate the Report’s “Introduction” and “Procedure” sections, which provides an overview of the relevant procedural chronology. We do not adopt or incorporate the remainder of the Report.

Based on our review of this matter and applicable law, we conclude that the WCJ issued her decision in such a manner that applicant’s right to have her case determined on the merits was compromised. Therefore, we will rescind the WCJ’s decision and return this matter to the trial level for further proceedings and new decision by the WCJ.

We begin by noting that in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), the Board explained that a proper is record is required, and that the WCJ’s decision must be based on evidence:

The WCJ’s decision must be based on admitted evidence in the record. Such evidence may include: the recorded admissions and stipulations of the parties; the testimony of witnesses, if any; and documentary evidence including admitted medical records and physicians’ reports (Cal. Code Regs., tit. 8, § 10626), permanent disability evaluation reports (Cal. Code Regs., tit. 8, § 10602), and other documents such as employment, payroll, and vocational rehabilitation records, as appropriate (Cal. Code Regs., tit. 8, § 10601).

[...]

When a decision is reached, the WCJ must make and file findings upon all facts involved in the controversy and issue an award, order, or decision stating the determination as to the rights of the parties. The findings and the decision must be served upon all the parties together with a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (Lab. Code § 5313.)

The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on. (Lab. Code § 5313.) The opinion 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. (See *Evans v. Workers’ Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755, 68 Cal. Rptr. 825, 826, 33 Cal. Comp. Cases 350, 351 [441 P.2d 633].) For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.

In this case, the WCJ did not create a record and did not provide reasons for dismissing the Application for Adjudication of Claim until applicant filed a petition for reconsideration. The WCJ's approach is inconsistent with the requirements of *Hamilton, supra*.

We also note that WCAB Rule 10515 provides: "Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." (Cal. Code Regs., tit. 8, § 10515.) In issuing the decision challenged by applicant herein, it appears the WCJ handled the matter as if she were responding to a petition for judgment on the pleadings. This approach violated WCAB Rule 10515.

We need not belabor the point further. We will rescind the Order for Dismissal of Application of February 4, 2020, and we will return this matter to the trial level for further proceedings, including the creation of a proper record, and for a new decision by the WCJ. We express no opinion on the merits of the jurisdictional issues that have been raised in this case.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order for Dismissal of Application of February 4, 2020 is **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**AUGUST 26, 2022**

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

**BRANDY CASTRO  
LAW OFFICES OF JUAN J. VERA  
TROVILLION INVEISS & DEMAKIS**

**JTL/ara**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

**Petitioner BRANDY CASTRO aka BRANDY RYDER**, by and through her attorney of record, has filed a timely verified Petition for Reconsideration challenging the court's Order for Dismissal of Application dated 2-3-2020 and served on the parties on 2-4-2020.

This report and recommendation on reconsideration is consistent with CCR § 10860, Rules of Practice and Procedure § 10962, and the Policy and Procedure Manual § 1.80.

**PROCEDURE**

Petitioner/Applicant **BRANDY CASTRO aka BRANDY RYDER**, has filed a Petition for Reconsideration with signatures and verification dated March 2, 2020.

- On 11-05-2019, defendants filed a Petition to Dismiss for lack of Subject Matter Jurisdiction.
- On 11-25-2019, the court issued an Order Dismissing the Application of Adjudication in ADJ12552472. The Order included a self-executing revocation of the order if an objection was filed within 10 days.
- On 11-27-2019, the Petitioner/Applicant filed an Objection to the original Petition to Dismiss for Lack of Subject Matter Jurisdiction filed by defendants.
- On 12-9-2019, Petitioner/Applicant filed an objection to the Order Dismissing Application of Adjudication.
- On 1-29-2020, Respondent's filed Defendant's Reply to Applicant's Opposition to Petition to Dismiss.
- On 2-4-2020, the court issued an Order for Dismissal of the Application.