

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

FRANCISCO AMBRIZ, *Applicant*

vs.

**DANAHER CORPORATION (BECKMAN COULTER); ACE AMERICAN
INSURANCE COMPANY, administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ13460039
Anaheim District Office**

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

Applicant seeks removal of the April 6, 2022 Order Denying Request for Remote Trial, wherein the workers' compensation administrative law judge (WCJ) denied applicant's attorney's request to be allowed to proceed with the trial remotely, based on applicant's attorney's failure to seek a disability accommodation prior to filing the request. Applicant contends that the WCJ erred, because there is no such requirement under the governing regulations.

We did not receive an Answer. We did receive a Report and Recommendation on Petition for Removal (Report), 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, we will grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ to determine the best way to move forward with the case at this juncture.

PROCEDURAL BACKGROUND

On March 17, 2022, trial in this matter was set, based upon the joint request of the parties, with the WCJ noting that applicant intended to request a remote trial. (Minutes of Hearing, 3/17/22, at p. 1.) On April 4, 2022, applicant filed a letter petition, stating that applicant's attorney had a five-month old infant, and feared exposing his child to Covid-19. (Letter Petition, April 4,

2022, at p. 1.) Applicant's attorney therefore requested the WCJ issue an order either (1) setting the matter for a virtual trial, (2) allowing applicant and applicant's attorney to appear remotely, or (3) allowing applicant's attorney to appear remotely. (*Ibid.*)

On April 6, 2022, the WCJ issued her Order Denying Request for Remote Trial. The Order states in relevant part:

There are processes in place by which a person scheduled to present themselves for an in-person hearing can request an ADA accommodation at each district office. If Mr. Nosrat is requesting such an accommodation, said request needs to be formally submitted to Lisa Ngo, the ADA Coordinator for the Anaheim District Office. Until such time as an accommodation is granted, Mr. Nosrat's request does not demonstrate good cause.

(Order Denying Request for Remote Trial, at p. 1.)

This Petition for Removal followed.

DISCUSSION

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at 158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, 82 Cal.App.4th at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

The object of the workers' compensation system is to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) To that end, under Labor Code Section 5709, "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule[.]" (Cal. Lab. Code, § 5709.)

WCAB Rule 10745 authorizes the WCAB to conduct hearings electronically.¹ (Cal. Code Regs., tit. 8, § 10745.) WCAB Rules 10815 through 10817 lay out the basic framework governing remote hearings and remote appearances in WCAB proceedings. (Cal. Code Regs., tit. 8, § 10815–10817.) Even where the WCAB has not elected to hold a hearing electronically, any party may petition to appear electronically by filing a petition demonstrating good cause pursuant to WCAB Rule 10510. (Cal. Code Regs., tit. 8, §§ 10510, 10816(a).)

Here, although applicant’s request for a remote appearance lacks the formality normally associated with a petition, it appears substantially compliant with WCAB Rule 10510’s requirements for petitions, in that it contains a case caption, was served on all parties, is verified under penalty of perjury, and includes a proof of service. (Letter Petition, April 4, 2022, at p 1.) Moreover, the WCJ treated the petition as a proper request for remote appearance, issuing an order denying the request on the basis that applicant’s attorney had not sought an ADA accommodation before filing the petition, not upon any defect in the pleading.

After review of the governing regulations, we do not agree with the WCJ that a party must seek an ADA accommodation in order to demonstrate good cause for an electronic appearance. WCAB Rule 10816 authorizes parties to petition to be allowed to appear electronically, and nothing in that section or elsewhere in the WCAB’s Rules of Practice and Procedure suggests that such a request must be conditioned on seeking an ADA accommodation, nor was it our intent in enacting the regulatory framework to require such. Moreover, requiring an accommodation in every case would burden both practitioners and the WCAB personnel responsible for evaluating such requests, with deleterious consequences for those who need to seek ADA accommodations for other purposes.

We therefore cannot support the WCJ’s decision to deny applicant’s attorney’s request, at least not upon the record before us. Good cause is an inherently amorphous standard that vests the WCJ with significant discretion, but the WCJ must actually consider the specific good cause articulated, which did not occur here. Although applicant’s stated reason for an electronic appearance appears to us to demonstrate good cause in the abstract, we are cognizant that the WCJ is in the best place to assess the facts and circumstances of each particular case, and also that circumstances may have changed in the time since the petition was first presented. We also note

¹ Although the regulations describe such trials as “electronic trials,” such trials may also be referred to as “remote trials” or “virtual trials,” and the terms are frequently used interchangeably by practitioners and judges.

that applicant's attorney suggested several alternatives to the WCJ – an electronic trial, for electronic appearances by applicant's attorney and applicant, or for an electronic appearance only by applicant's attorney. Assuming good cause remains to grant some element of the petition, the WCJ is in the best place to assess which of these alternatives most serves the interests of the case.

Under the circumstances, we believe the best approach is to rescind the WCJ's Order Denying Request for Remote Trial, and to return the matter to the WCJ in order to confer with the parties and determine the most appropriate way to move the case forward.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the decision of April 6, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Denying Request for Remote Trial of April 6, 2022 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 1, 2022

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

FRANCISCO AMBRIZ
NOSRAT RAD
HARRISON EICHENBERG

AW/ara

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