

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **JULIO CEDENO,**

4 *Applicant,*

5 **vs.**

6 **AMERICAN NATIONAL INSURANCE**
7 **CO.; CNA INSURANCE CO.,**

8 *Defendant.*

Case No. LAO 729720

OPINION AND ORDER
GRANTING REMOVAL AND
DECISION AFTER REMOVAL

9
10 Lien claimants Beverly Radiology Medical Group, Internal
11 Associates Medical Group, and Neurologic Orthopedic Associates
12 Medical Group filed a Petition for Removal which asserts that they
13 were denied due process when they were not allowed to participate
14 in discovery and litigation of the issues. Although several
15 hearings were held in this case, the presentation of evidence was
16 not completed and no final decision or order was issued. For the
17 reasons discussed below, we agree with the lien claimants'
18 assertion that they were denied due process. We will grant
19 removal and return this matter to the trial level with guidance as
20 to how to proceed.

21 Applicant claimed that he suffered a injury on January 9,
22 1991, while working for American National Insurance Co., which was
23 then insured for workers' compensation liability by CNA Insurance
24 Co. The lien claimants alleged that they provided services to
25 applicant and that their liens were served upon defendants in 1991
26

1 and 1992. On May 31, 1996, applicant filed an Application for
2 Adjudication and a mandatory settlement conference was held on
3 August 15, 1996. Among the documents filed with the Application
4 was a copy of a lien of Neurologic Orthopedic Associates.
5 However, neither Neurologic Orthopedic Associates nor the other
6 lien claimants received notice of the mandatory settlement
7 conference.

8 At the mandatory settlement conference, the workers'
9 compensation referee (WCR) noted that "Discovery is closed" and
10 continued the matter to trial on September 20, 1996. The lien
11 claimants were not served with notice of the trial. There was
12 insufficient time to complete all of the testimony on September 20
13 so the matter was continued to October 28, 1996. The lien
14 claimants were not served with notice of the October 28 hearing
15 but they learned of it and appeared at that hearing and at
16 subsequent hearings. The lien claimants requested the opportunity
17 to conduct discovery but that request was denied on the ground
18 that discovery was closed at the time of the mandatory settlement
19 conference. The WCR also indicated that the lien claimants could
20 not cross-examine witnesses but could only submit proposed
21 questions to applicant's attorney, who could then ask the
22 questions. The lien claimants allege that they requested the
23 opportunity to file and exchange with defendants stipulations and
24 issues but that the WCR denied that request and indicated that he
25 would not allow the lien claimants to raise issues at the trial.
26 The lien claimants also allege that the WCR stated that the merits
of the lien claims would be addressed by "general" findings as

1 part of the outcome of applicant's case. The WCR's response to
2 this allegation in his report is not entirely clear but his report
3 tends to indicate that the WCR did not intend to resolve all of
4 the issues regarding the liens when he issued his decision.

5 The record demonstrates that the lien claimants have been
6 denied due process. That denial of due process will result in
7 substantial prejudice to the lien claimants. Therefore, we will
8 grant removal in this case. Cf. *Swedlow, Inc. v. Workers'*
9 *Compensation Appeals Board* (1983) 48 Cal.Comp.Cases 476 (writ
10 denied).

11 In *Beverly Hills Multispecialty Group, Inc. v. Workers'*
12 *Compensation Appeals Board* (1994) 26 Cal.App.4th 789, 59
13 Cal.Comp.Cases 461, the Court stated that "lien claimants are
14 entitled to due process." In that case, the lien claimant was not
15 allowed to conduct discovery before trial, was not served with
16 medical reports, was not allowed to cross-examine a witness or
17 make objections, and was not notified of one of the issues. The
18 Court stated the following:

19 "In *Fidelity & Cas. Co. of New York v. Workers' Comp.*
20 *Appeals Bd., supra*, 103 Cal.App.3d at page 1015, the
21 court stated: 'Due process requires that "[a]ll parties
22 must be fully apprised of the evidence submitted or to
23 be considered, and must be given opportunity to cross-
24 examine witnesses, to inspect documents and to offer
25 evidence in explanation or rebuttal. In no other way can
26 a party maintain its rights or make its defense."
[Citations.]' . . . we conclude that these rights also
apply to medical and medical-legal lien claimants. . .
It is fundamental that undue infringement on the right
of cross-examination is a denial of due process. (See
Hegglin v. Workmen's Comp. App. Bd. (1971) 4 Cal.3d 162,
175 [36 Cal. Comp. Cases 93].) Counsel also has the
right to make reasonable objections at trial. (See
Thompson v. Hickman (1948) 89 Cal.App.2d 356, 365; 3

1 Witkin, Cal. Evidence (3d ed. 1986) Introduction of
Evidence at Trial, § 2010, p. 1968.)

2 ". . .

3 "Although the California Constitution states that a goal
4 of workers' compensation proceedings is to 'accomplish
substantial justice in all cases expeditiously,
5 inexpensively, and without incumbrance of any character
. . . .' (Cal. Const., art. XIV, § 4), the right to due
6 process is paramount to the goal of conducting workers'
compensation proceedings expeditiously. . .

7 ". . .

8 ". . . At the hearings, [the lien claimant] must be
allowed to present relevant evidence, cross-examine
9 witnesses, and make reasonable objections. . ."

10 In applying these principles to the present case, the Appeals
Board believes that requiring the lien claimants to conduct their
11 cross-examination of witnesses by submitting questions to
12 applicant's attorney is an undue infringement and restriction
13 which denies them due process. The refusal of the opportunity to
14 conduct discovery also denies them due process. We find that lien
15 claimants have established that substantial prejudice will result
16 if removal is not granted. (*Swedlow, Inc. v. Workers'*
Compensation Appeals Board (1983) 48 Cal.Comp.Cases 476 (writ
17 denied); *Bulmer v. Circle K. Corp.* (1986) SAC 93830, 14
18 Cal.Workers'Comp.Rptr. 160 (Board panel)). Upon remand to the
19 trial level, the parties and lien claimants will have the
20 opportunity to frame stipulations and issues, and offer evidence.

21 On remand, the WCR should consider the Appeals Board's policy
22 concerning the handling of liens. WCRs are to make every effort
23 to resolve medical-legal and medical treatment liens without
24 resort to separate proceedings. Except for good cause

1 demonstrated by extraordinary circumstances, all lien issues shall
2 be resolved at the same time as the other issues raised in the
3 case in chief. This includes not only findings of liability but
4 findings as to the specific amounts, if any, to which lien
claimants are entitled.

5 The lien claimants also request that this matter be
6 reassigned to another WCR. Section 10452 of the Rules of Practice
7 and Procedure (Cal. Code Regs., tit. 8, section 10452) provides
8 that a petition seeking disqualification of WCR must be
9 accompanied by an affidavit or declaration under penalty of
10 perjury stating in detail the grounds for disqualification. No
11 such affidavit or declaration was attached to the petition in this
12 case, and neither the petition nor the record show any bias on the
13 part of the WCR or any other reason that the WCR cannot render a
14 fair and just decision. Therefore, the lien claimants' request
that this matter be reassigned will not be granted.

15 For the foregoing reasons,

16 IT IS ORDERED that removal be GRANTED and that as the
17 decision after removal of the Workers' Compensation Appeals Board
18 that this matter be REMANDED to the WCR for further proceedings
and decision consistent with this opinion.

19 WORKERS' COMPENSATION APPEALS BOARD

20 /s/ ROBERT N. RUGGLES

21 I CONCUR,

22 /s/ ARLENE N. HEATH

1 /s/ COLLEEN S. CASEY

2 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
3 JULY 21, 1997

4 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED
5 ON THE OFFICIAL ADDRESS RECORD
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