

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

MICHAEL WERLE, *Applicant*

vs.

**CITY OF ROHNERT PARK,
PERMISSIBLY SELF-INSURED, ADMINISTERED BY ATHENS ADMINISTRATORS,
*Defendants***

**Adjudication Number: ADJ14659603
San Francisco District Office**

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

Defendant seeks removal of the Order Denying Petition for Change of Venue and Second Order Denying Petition for Change of Venue (Orders) issued by the workers' compensation administrative law judge (WCJ) on June 14, 2021 and July 27, 2021, respectively. As relevant herein, the WCJ denied defendant's two Petitions for Change of Venue to the Santa Rosa District Office on the grounds that the captions and petitions did not identify whether the employer was permissibly self-insured.

Defendant contends, as relevant herein, that the WCJ erred in denying the petitions since the second Petition stated that the employer was permissibly self-insured.

Applicant did not file an answer. We received a Report and Recommendation (Report) on defendant's Petition for Removal from the WCJ recommending that we deny removal.

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 order the change of venue.

FACTUAL BACKGROUND

Applicant claims injury to various body parts on April 19, 2021 while employed by the defendant as a public safety officer fire captain. The applicant filed the Application for Adjudication of Claim in the San Francisco District Office on May 13, 2021.

Counsel for defendant filed its first Notice of Representation on June 4, 2021. The name of the defendants in the caption read “City of Rohnert Park and Athens Administrator Concord.” Defendant filed its first Petition for Change of Venue on June 4, 2021. The name of the defendants in the caption read “City of Rohnert Park (Athens Administrator Concord)”. Defendant contends that transferring venue to the Santa Rosa District Office is proper pursuant to Labor Code¹ section 5501.5(c).

The WCJ issued the first Order Denying Petition for Change of Venue on June 14, 2021. The Order states, in relevant part, “defendant has not included a proper caption nor filed a proper notice of representation pursuant to California Code of Regulations, title 8, section 10390. Defendant may refile an amended petition with a proper caption. There is no indication on the petition for change of venue as to whether the employer is permissibly self-insured and if so, the identity of the third-party administrator.”

Defendant filed a second Petition for Change of Venue on July 2, 2021. The defendants’ name in the caption in that Petition read “City of Rohnert Park and Athens Administrators Concord”. The Petition in relevant part says “Applicant alleges that he sustained an industrial injury on or about 04/19/2021 in Rohnert Park, California while employed by the City of Rohnert Park, permissibly self-insured, and with Athens Administrators Concord serving as its Third Party Administrator.” Counsel for defendant filed a second Notice of Representation on July 2, 2021. In that notice, the name of the defendants in the caption read “City of Rohnert Park and Athens Administrators Concord”.

On July, 27, 2021, the WCJ issued a Second Order Denying Petition for Change of Venue stating that defendant’s Petition was being denied on the grounds that defendant had again failed to include a proper caption on its Petition and Notice of Representation as there was no indication on either document whether the employer was permissibly self-insured. The Order goes on to say “[a] third petition will not be considered”.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Defendant filed a third Notice of Representation on August 13, 2021. The name of the defendant in the caption reads “City of Rohnert Park”; however the body of Notice states defense counsel was retained for “CITY OF ROHNERT PARK, permissibly self-insured with ATHENS ADMINISTRATORS CONCORD serving as its Third Party Administrator, in the above-entitled matter.”

In its petition, defendant seeks removal and requests that the change of venue to the Santa Rosa District Office petition be granted.

The WCJ issued a Report and Recommendation on the Petition for Removal recommending that we deny removal on the grounds that defendant did not properly identify the defendant as being permissibly self-insured in its Petitions for Change of Venue and Notices of Representation.

DISCUSSION

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); see also *Cortez, supra*; *Kleemann, supra*.) Here, we will grant removal because we are persuaded that petitioner has shown that substantial prejudice or irreparable harm will result if removal is not granted.

Labor Code section 5501.5(a) sets forth the locations where an application for adjudication of claim may be filed: 1) the county where the injured employee or the dependent of a deceased employee resides, 2) the county where the injury allegedly occurred, and 3) the county where the employee’s attorney maintains his or her principal place of business. (Lab. Code, § 5501.5(a).) Subsection 5501.5(c) provides that, if the employer objects to venue selected on the basis of the employee’s attorney’s principal place of business, within 30 days of receipt of the information request form, then the application shall be filed pursuant to the first two paragraphs of subdivision (a), i.e., in the county where the employee, or dependent of a deceased employee, resides or where the injury allegedly occurred. WCAB Rule 10488 provides that a timely objection to venue pursuant to section 5501.5(c) must be filed within 30 days of receipt of the notice of the adjudication number. “A timely objection shall result in venue being assigned in accordance with

Labor Code section 5501.5(a)(1) or (a)(2).” (Cal. Code Regs., tit. 8, § 10488.) Labor Code section 5501.5 is mandatory if the objection is timely. Here the Application for Adjudication of Claim was filed on May 19, 2021, and the first Petition for Change of Venue was filed on June 14, 2021; therefore the petition is timely. The applicant resides in Santa Rosa and the injury occurred in Rohnert Park. Both Labor Code sections 5501.5(a)(1) and (a)(2) mandate that venue be changed to Santa Rosa since the petition was timely.

Next we will turn to the issue of whether the WCJ may “exercise [her] powers under California Code of Regulations, title 8, section 10330 and deny defendant’s petition for change of venue” (Report, p. 5). The WCJ is correct in her Report that the WCJ has “full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case” under WCAB Rule 10330. While we are sympathetic to the WCJ’s concerns, we are constrained by the language of the Labor Code section 5501.5. We remind defendant that it needs to comply with WCAB Rule 10617 and we acknowledge its apology for non-compliance.

Under WCAB Rule 10617, the WCJ must consider the merits of the petition, and she may sanction under subdivision (e) for non-compliance with the rules of the Workers’ Compensation Appeals Board. Here, the WCJ states in her Report that in lieu of ordering sanctions, she gave defendant an opportunity to correct the error in the caption. WCAB Rule 10390 does not provide for any consequences for failure of a party to comply with a rule. When a rule is silent about the consequences, the WCJ is limited to sanctioning for failure to comply. Again, we are sensitive to the WCJ’s frustrations, however under Labor Code section 5501.5(c), the transfer of venue is mandatory as the petition was timely.

Accordingly, pursuant to Labor Code section 5501.5(c), we will order venue transferred to Santa Rosa.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the July 27, 2021 Second Order Denying Petition for Change of Venue is **RESCINDED** and that **VENUE** is **TRANSFERRED** to the Santa Rosa District Office.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2021

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

**MICHAEL WERLE
BROWN & DELZELL
R. MICHAEL ASH**

HAV/ara

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