

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

NORA CORADO, *Applicant*

vs.

**SHERRI GHODSIAN; FEDERAL INSURANCE COMPANY,
administered by CHUBB GROUP LOS ANGELES, *Defendants***

**Adjudication Number: ADJ13608876
Van Nuys District Office**

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

Applicant seeks removal of the Minute Order (Order) issued by the workers' compensation administrative law judge (WCJ) on July 22, 2021. By the Order, the WCJ took the matter off calendar on the basis that expedited hearings are limited to claims with one or more accepted body parts.

Applicant contends that Labor Code¹ section 5502 permits an expedited hearing regarding entitlement to a medical-legal examination and she is precluded from obtaining an examination under section 4060 without an expedited hearing. (Lab. Code, §§ 5502, 4060.)

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we grant removal and issue a decision finding that WCAB Rule 10782 and the WCAB Policy and Procedural Manual are invalid to the extent they prohibit an expedited hearing in conflict with section 5502. (Cal. Code Regs., tit. 8, former § 10552, now § 10782 (eff. Jan. 1, 2020).)

We have considered the allegations of applicant's Petition for Removal, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

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

FACTUAL BACKGROUND

Applicant claims injury to the head, headaches, cervical spine, thoracic spine, lumbar spine, bilateral arms, bilateral wrists, bilateral hands, bilateral legs, bilateral feet, psyche, internal system, sleep and dental on September 8, 2020 while employed as a housekeeper by Sherri Ghodsian. Defendant has denied this claim in its entirety.

On June 15, 2021, applicant filed a declaration of readiness to proceed (DOR) citing entitlement to medical treatment and reported the disputed issue as:

ENTITLEMENT TO MEDICAL LEGAL EXAMINATION PURSUANT TO
LC SECTION 5502(B)(3) AND LC SECTIONS 4060 AND 4062.2.

(Applicant's DOR, June 15, 2021, p. 2.)

Defendant filed an objection to applicant's DOR.

At the July 22, 2021 expedited hearing, the matter was taken off calendar at defendant's request over applicant's objection. The Order from the hearing states:

Today's expedited hearing is ordered OTOC, over applicant's objection, based on California Code of Regulations, title 8, section 10782(a) and (b), and WCAB Policy and Procedure Manual Index No. 1.20, which limit expedited hearings to claims with one or more admitted body parts, notwithstanding the lack of such an express requirement under Labor Code section 5502(b).

(Order, July 22, 2021.)

No evidence or testimony was taken at the hearing.

DISCUSSION

Preliminarily, defendant in its answer states that applicant has already undergone a medical-legal examination with a chiropractic qualified medical evaluator (QME) in March 2021 per section 4060. It is therefore unclear if there remains a viable dispute regarding entitlement to a medical-legal examination when applicant has already been evaluated by a QME.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970)

3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at p. 475.)

The Order in this matter was issued without creation of an evidentiary record. We are unable to address whether the WCJ's decision is supported by substantial evidence in the absence of a record.

Additionally, WCAB Rule 10782(c) permits the WCJ assigned to a case to re-designate an expedited hearing to a mandatory settlement conference. (Cal. Code Regs., tit. 8, former § 10552(c), now § 10782(c) (eff. Jan. 1, 2020).) If the matter is set for an expedited hearing, the WCJ may re-designate the matter to a mandatory settlement conference as warranted in order to permit the parties to adjudicate the dispute.

Upon return of this matter to the trial level, we recommend the trier of fact create a complete evidentiary record regarding this dispute (if the dispute has not been rendered moot as discussed above) and issue a new decision. Either party may then challenge that decision.

Therefore, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Minute Order issued by the WCJ on July 22, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minute Order of July 22, 2021 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 4, 2021

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

**BARKHORDARIAN LAW FIRM
LAW OFFICES OF WEITZMAN & ESTES
NORA CORADO**

AI/pc

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