

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

CLARENCE METZGER, *Applicant*

vs.

**ATLANTA BRAVES; ST. LOUIS CARDINALS/ANHEUSER BUSCH INC., ACE
AMERICAN INSURANCE, ADJUSTED BY SEDGWICK CMS; SAN DIEGO PADRES;
PHILADELPHIA PHILLIES; ARGONAUT INSURANCE, NEW YORK METS; CIGA
GLENDALE, *Defendants***

**Adjudication Number: ADJ10504110
Santa Ana District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Defendant New York Mets (“Mets”) filed a Petition for Removal and/or Reconsideration (Petition) seeking review of the order re-joining them as party defendant, issued on June 30, 2023.

The Mets contend their joinder as party defendant is inappropriate because they were previously dismissed, and because their joinder is contrary to principles of res judicata.

Both applicant and co-defendant San Diego Padres, insured by Fremont Insurance Company, in liquidation, have filed Answers. We have received the WCJ’s Report and Recommendation on Petition for Reconsideration and/or Removal (Report), recommending that the petition be denied.

We have considered the allegations of the Petition for Removal and/or Reconsideration, and the contents of the report of the workers’ compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will treat the Petition as an objection to the petition for joinder, dismiss the Petition as premature, and return this matter to the WCJ for further proceedings and decision.

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 p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission...must find facts and declare and enforce rights and liabilities - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) 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].)

Labor Code¹ section 5313 also requires the WCJ to “make and file findings upon all facts involved in the controversy and [make and file] an award, order, or decision stating the determination as to the rights of the parties ... [and include] 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’s decision “must be based on admitted evidence in the record” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Bd. en banc)), and the decision 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. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) In *Hamilton*, we held that the record of proceedings must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton, supra*, at p. 475.)

Accordingly, any decision to rejoin parties previously dismissed should be based upon an adequate record after providing the parties an opportunity to be heard, in the same manner as any other order touching on the parties’ due process rights. (Lab. Code § 5313; Cal. Code Regs., tit. 8, § 10382; *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, the New York Mets seek reconsideration and/or removal from a June 30, 2023 order joining them as party defendants, following their dismissal without prejudice on March 13, 2020. (New York Mets Petition for Removal and/or Reconsideration, July 25, 2023, at p. 2:18; Order for

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

Dismissal Without Prejudice, March 13, 2020.) However, there is no record upon which to address the WCJ's decision to order the joinder of the Mets. Without an evidentiary record, we are unable to determine whether the WCJ's decision is supported by substantial evidence. (*Hamilton, supra*, at p. 476.)

We note that here, one of the procedural options available to the WCJ was the issuance of a Notice of Intention (NIT). WCAB Rule 10832 describes the process by which a WCJ may issue an NIT, and provides a framework designed to afford the parties with their "fundamental rights to due process." (*Rucker, supra*, at pp. 157-158.) Rule 10832 provides that following the filing of a petition, the WCJ may, "for any proper purpose," provide notice of its intended action, and thereafter provide the parties with corresponding opportunity to respond to the notice. (Cal. Code Regs., tit. 8, § 10832(a).) The process of issuing a Notice of Intention thus provides both notice to the parties of the court's intended course of action, and the opportunity for those parties to be heard. (*Ibid.*; *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [the essence of due process is notice and opportunity to be heard].) Issuing a notice of intention clearly sets out the next steps required of both the parties and the WCJ, and encourages the creation of a complete record which reflects the evidentiary and the legal bases for the WCJ's determination. (*Evans v. Workmen's Comp. Appeals Bd., supra*, at p. 755.)

Here, the WCJ issued the order² joining the Mets 15 days after the filing of the petition for joinder, without providing the parties with notice of intention under rule 10832 or setting the matter for further hearing, and accordingly, there is an insufficient basis upon which to evaluate the issues raised in the Mets' Petition. (Cal. Code Regs., tit. 8, § 10832.)

Therefore, we will treat the Mets' Petition as an objection to the June 15, 2023 Petition for Joinder, dismiss the Petition as premature, and return this matter to the trial level for the WCJ to prepare a record of the proceedings in accordance with section 5313 and *Hamilton, supra*. We recommend the WCJ set the matter for hearing so applicant and defendants may advance their

² The June 15, 2023 Petition for Joinder does not appear to have been served on the New York Mets, but rather on their counsel of record from 2020, approximately three years earlier. Similarly, the WCJ designated service of the June 30, 2023 Order of Joinder to co-defendant, who served the Order of Joinder on defense counsel for the Mets, but not directly on the team being ordered joined as party defendant. While service on counsel for a party of record is sufficient under most circumstances (see Cal. Code Regs., tit. 8, § 10625(a)), best practices require service of a petition and order for the joinder of a party to be effectuated on the *party to be joined*, as well as their counsel, if known. Service directly on the party to be joined ensures proper notice in service of due process, irrespective of whether the party has changed their legal counsel. (Cal. Code Regs., tit. 8, 10382.)

arguments and lodge supporting evidence in the record. When the WCJ issues his decision, any person aggrieved may thereafter seek reconsideration or removal.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Order of Joinder issued on June 30, 2023, is **DISMISSED**.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 25, 2023

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

SAR/abs

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

SERVICE LIST

**CLARENCE METZGER
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
BOEHM & ASSOCIATES
ACE AMERICAN INSURANCE
ARGONAUT
ATLANTA BRAVES
BLUE SHIELD
BOBER PETERSON
CIGA
MULLEN & FILIPPI
NEW YORK METS
ORTHOPEDIC SURGERY
PHILADELPHIA PHILLIES
PRO ATHLETIC LAW
SAN DIEGO PADRES
SEDGWICK
ST. LOUIS CARDINALS
UNITED MED RADIOLOGY NETWORK**