

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

**CLAUDIA G. CERVANTES, *Applicant***

**vs.**

**KAWEAH DELTA HEALTH CARE DISTRICT, PERMISSIBLY SELF-INSURED,  
ADMINISTERED BY INTERCARE HOLDINGS INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ16979720  
Marina Del Rey District Office**

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

Defendant Kaweah Delta Health Care District, PSI (defendant), seeks removal from an Order Denying Petition for Change of Venue, dated February 16, 2023, wherein the Presiding Workers' Compensation Administrative Law Judge (PWCJ) denied defendant's January 30, 2023 Petition for Change of Venue pursuant to Labor Code section 5501.5(c) as untimely, because the employer was served with the Notice of Application on November 28, 2022.<sup>1</sup>

Defendant contends its petition was timely because the employer was not served with notice of applicant's venue selection until January 9, 2023.

We have received an Answer from applicant. The PWCJ has filed a Report and Recommendation on Petition for Removal, recommending we deny defendant's petition.

We have considered the allegations of the Petition for Removal and the contents of the report of the PWCJ with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant the Petition for Removal, rescind the PWCJ's decision, and return this matter to the PWCJ for further proceedings and decision.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise stated.

## BACKGROUND

Applicant alleged injury to the cervical spine, thoracic spine, lumbar spine, shoulders, arms, elbows, wrists, hands and fingers, head (headaches), brain (sleep problems), and psyche while employed as a Medical Assistant from November 1, 2013 to November 8, 2022 by defendant. The application was filed on November 23, 2022, and applicant selected the Marina Del Rey district office as the appropriate venue based on the county of principal place of business of employee's attorney. (Application for Adjudication, dated November 23, 2022, at p. 1.)

On January 30, 2023, defendant filed a Petition for Change of Venue, averring that applicant resided in Tulare County, and that pursuant Labor Code section 5501.5(c), the case should have venue at the Fresno District Office. (Petition for Change of Venue, at 3:1.)

On February 16, 2023, the PWCJ denied defendant's Petition for Change of Venue as untimely, noting that the "[e]mployer was served with the Notice of Application on 11/28/2022." (Order Denying Petition for Change of Venue, dated February 16, 2023.)

Defendant's March 6, 2023 Petition for Removal (Petition) avers it did not "become aware of the Application for Adjudication of Claim, the venue, and case number," until January 9, 2023. (Petition, at 4:20.)

Applicant's March 15, 2023 Answer contends her counsel served the claim form, disclosure statement, letter of representation and Venue Authorization form on the employer on or about November 18, 2022. (Answer, at 2:5.) Applicant asserts that defendant's Petition for Change of Venue filed on January 30, 2023 was untimely, as it was filed more than 30 days from the employer's receipt of notice of venue. The Answer also avers defective service of defendant's Petition for Change of Venue on applicant's counsel, because the petition was served via facsimile, and applicant's counsel has not consented thereto. (Answer, at 5:6.)

The PWCJ's Report observes that a review of the Electronic Adjudication Management System (EAMS) communications records indicates the Notice of Application was served on employer Kaweah Health Care on November 28, 2022 at the address of record. Accordingly, Defendant's Petition for Change of Venue, filed 63 days thereafter, was untimely. (Report, at p. 2.) The PWCJ recommends we deny defendant's Petition, accordingly.

## DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. “The Labor Code and the Board’s rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*)). The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at p. 476.) The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any...Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.) The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) Judgments on the pleadings are not permitted in Workers’ Compensation. (Cal. Code Regs., tit. 8, § 10515.)

Here, the record is insufficient to allow a meaningful review of the PW CJ’s determination of the issues presented. We acknowledge the PW CJ’s reference to the EAMS communications record, but note that the underlying Notice of Application is not present in the record, nor is proof of service of the Notice on the employer or other parties on November 28, 2022. This omission concerns us because the 30-day time for a defendant to object to venue selection based on applicant’s attorney’s principal place of business under Labor Code section 5501.5(a)(3) is measured from receipt of the actual notice of the adjudication case number and venue. (Cal. Code Regs., tit. 8, § 10488.)

Defendant avers non-receipt of the application for adjudication, venue selection, and also the Notice of Application, but does so in unverified “declarations” attached to the Petition for

Removal. (See Cal. Code Civ. Proc., § 2015.5.) Additionally, applicant avers improper service of defendant's Petition for Change of Venue by facsimile. (Answer, at 5:6.)

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*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, we believe that a full record is necessary to a complete adjudication of the dispute, and that the absence of an evidentiary record results in a lack of due process that rises to the level of irreparable harm. Accordingly, we will grant defendant's Petition, rescind the February 16, 2023 Order Denying Petition for Change of Venue, and return this matter to the PWCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal of the Order Denying Petition for Change of Venue, dated February 16, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Denying Petition for Change of Venue, dated February 16, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the PWCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

**I CONCUR,**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 5, 2023**

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

**CLAUDIA G. CERVANTES  
HINDEN & BRESLAVSKY  
LAW OFFICES OF BRADFORD & BARTHEL**

**SAR/abs**

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