

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

***ALMA AGUERO, Applicant***

**vs.**

**BRIAN HUNT DPI, INC.; CHECKMATE STAFFING INC.;  
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ121643 (MON 0296090)  
Long Beach District Office**

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

Defendant Luis Perez seeks removal in response to the “Order Joining Substantial Shareholders” (Order of Joinder) issued by a workers’ compensation administrative law judge (WCJ) on December 16, 2021, and served on December 17, 2021, wherein the WCJ granted defendant Uninsured Employers Benefits Trust Fund (UEBTF)’s request to join defendants and substantial shareholders Laurie Holcomb, Liz Waldo, and Luis E. Perez.

Defendant contends that the WCJ issued the Order without providing time for objection and without considering his objection, and that the delay in filing the petition to join of more than 19 years should bar the petition.

We received an Answer from UEBTF. We did not receive a Report and Recommendation (Report) from the WCJ.

We have considered the allegations of the Petition for Removal and the Answer. Based on our review of the record and for the reasons stated below, we will grant the Petition for Removal, rescind the WCJ’s Order of Joinder, and return this matter to the WCJ for further proceedings consistent with this opinion.

## **BACKGROUND**

On December 2, 2021, UEBTF filed and served a petition to join substantial shareholders Holcomb, Waldo, and Perez. On December 16, 2021, the WCJ issued the Order of Joinder, which was served on December 17, 2021 by UEBTF.

On December 20, 2021, Perez, through newly retained legal counsel, filed an opposition to the petition to join (Opposition), alleging unresolved insurance issues as well as potential laches.

Additionally, on January 3, 2022, defendant Perez filed a Petition for Removal of the Order of Joinder requesting that the court vacate the order alleging significant prejudice and irreparable harm on the grounds that such order issued prior to petitioner's ability to oppose and respond to UEBTF's petition.

## **DISCUSSION**

WCAB Rule 10382 (Cal. Code Regs., tit. 8, § 10382) states in pertinent part:

The Appeals Board or a workers' compensation judge may order the joinder of additional parties not named in the Application for Adjudication of Claim, whose presence is necessary for the full adjudication of the case. A party shall not be joined until 10 days after service of either a petition for joinder by a party or a notice of intention to order joinder issued by a workers' compensation judge, unless the party to be joined waives its right to this notice period. ...

(d) If an objection is received within 10 days of service of a petition for joinder or a notice of intention to order joinder, the workers' compensation judge shall consider the objection before joining the party and, if requested in the objection, shall provide the objector the opportunity to be heard before ordering joinder. (Cal. Code Regs., tit. 8, § 10382.)

We note that WCAB Rule 10382 is permissive and not mandatory. Joinder "may" be ordered for additional parties whose presence is necessary for the full adjudication of the issues, and an order shall not be issued if there is an objection received within 10 days of either the service of a petition or a notice of intention to order joinder.

In this case, we note that the petitioner, who was unrepresented at the time of the filing and service of the petition for joinder on December 2, 2021, filed an objection, date-stamped received on December 20, 2021, or 18 days later. This was beyond the 10 days provided in WCAB Rule 10382 and beyond the 5 day extension for mailing. (Cal. Code Regs., tit. 8, § 10507.). In his Petition, Perez alleges that he believed that the objection period was 20 days and that the WCJ should not have issued the Order of Joinder within 15 days without reviewing his objection.

Here, while she was not required to issue a notice of intention under WCAB 10832 since the petition was served on Perez, in keeping with due process, the better practice is to issue a notice of intention. WCAB Rule 10832 states in relevant part that:

The Workers' Compensation Appeals board may issue a notice of intention for any proper purpose, including but not limited to: . . . (a)(2) Granting, denying, or dismissing a petition. (c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision ; or (3) Set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832(a) and (c).)

If the WCJ had served a notice of intention, any confusion as to the response time for the objection by an unrepresented party, unfamiliar with the WCAB procedure, could have been avoided.

Moreover, as pointed out in both petitioner's opposition to joinder filed on December 17, 2021, and subsequent petition for removal filed on January 3, 2022, this case is over 19 years old, and as such, petitioner raises issues related to both insurance coverage as well as laches, equitable estoppel and/or waiver due to the delay in joining said defendant.

Thus, we will treat the opposition to joinder filed on December 17, 2021 as a petition for removal of the order of joinder issued on December 17, 2021.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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).)

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 Supreme Court of California 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].)

Further, 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).) 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, § 10787.) “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*, 66 Cal.Comp.Cases at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787; *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) Section 5313 requires that together with findings of fact, orders, and/or awards, a WCJ “shall” serve “a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22.) 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.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, there was no hearing and thus no minutes and summary recording stipulations, defining the issues, and identifying the evidence related to the potential joinder of the substantial shareholders. In addition, the WCJ issued the Joinder Order without an opinion on decision. As a result, there is no meaningful opportunity to review the WCJ's decision to join petitioner. More significantly, 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, we grant defendant's Petition for Removal, rescind the December 16, 2021 Joinder Order, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal in response to the Order Joining dated December 16, 2021 by the WCJ and served on December 17, 2021 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that Order Joining dated December 16, 2021 and served on December 17, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**April 16, 2024**

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

**ALMA AGUERO  
OFFICE OF THE DIRECTOR-LEGAL UNIT  
GIBBS & WHITE P.C.**

**LAS/ara**

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