

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

ROBERT BEACH, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants*

**Adjudication Numbers: ADJ9141358, ADJ9141354
San Bernardino District Office**

**OPINION AND ORDER DENYING
PETITION FOR REMOVAL**

Applicant Robert Beach seeks reconsideration of the November 8, 2023 Minutes of Hearing, wherein the workers' compensation administrative law judge (WCJ) continued the Mandatory Settlement Conference to February 1, 2024 because "Discovery is necessary in the reductions issues." (Minutes of Hearing dated November 8, 2023.)

Applicant contends that it is inappropriate to reopen discovery after discovery closed as the question of credits and offsets have already been litigated, the WCJ had ruled that SIBTF is entitled to credits but left the amount of credits to be adjusted by the parties with jurisdiction reserved to the court, and that failing resolution by the parties, the determination as to the amount of credits must be based on the evidence already presented at trial.

We received an answer from Subsequent Injuries Benefits Trust Fund. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We also received applicant's Request to Consider Supplemental Legal Brief and Legal Brief. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We accept and review applicant's supplemental brief.

We have considered the Petition for Reconsideration, the Answer, the supplemental pleading, and the contents of the Report, and we have reviewed the record in this matter. Based

on the Report, which we adopt and incorporate, and for the reasons discussed below, we deny applicant's Petition for Removal.

A party may petition for removal of an interim order. (Cal. Code Regs., tit. 8, § 10955.) Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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 conclude that there is no substantial prejudice or irreparable harm by continuing the mandatory settlement conference for approximately 90 days to allow further discovery.

For the foregoing reasons,

IT IS ORDERED that applicant Robert Beach's Petition for Removal of the November 8, 2023 Minutes of Hearing is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 17, 2024

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

**ROBERT BEACH
GHITTERMAN, GHITTERMAN & FELD
OD LEGAL – LOS ANGELES**

LSM/oo

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE
ON PETITION FOR REMOVAL**

**I
INTRODUCTION**

- | | |
|---|--|
| 1. Applicant's Occupation: | Aircraft Mechanic |
| Date of Injury: | May 1, 2011 - February 29, 2012 |
| Parts of body alleged: | Right and left upper
extremity/wrists and hands. |
| 2. Identity of Petitioner: | Applicant |
| 3. Verification: | The Petition was appropriately verified. |
| 4. Timeliness: | Petition was timely filed. |
| 5. Date of Issuance of Order
appealed: | November 2, 2023 |
| 6. Issue presented: | (1) Was the matter appropriately reset for
Mandatory Settlement Conference as
opposed to providing a trial setting and
closing discovery? |

**II
FACTS, CONTENTIONS AND ISSUES**

Applicant, Robert Beach, has caused to be filed a Petition for Removal seeking removal of this matter to the Workers' Compensation Appeals Board based upon the workers' compensation judge's determination at Mandatory Settlement Conference that the matter should be reset for a second Mandatory Settlement Conference to allow further development of the record on the issues regarding offsets against benefits for prior settlements and benefits received in this Subsequent Injury Benefits Trust Fund case. It was the judge's opinion that the parties failure to provide a detailed pretrial statement at the time of MSC and their failure to adequately develop the record prior to the MSC regarding offsets required the Mandatory Settlement Conference to be reset as opposed to providing a trial date. Based upon the parties inability to adequately develop the record, good cause existed to continue the matter to a Mandatory Settlement Conference to ensure fairness and prevent double recovery.

Review of the record demonstrates a complex Subsequent Injuries Benefit Trust Fund matter which was returned for further trial proceedings by the WCAB on April 18th, 2023. The matter was ultimately resubmitted for judicial decision on September 7th, 2023. A Findings and

Award issued, for the second time, on September 22, 2023, with the Court reserving jurisdiction over the underdeveloped offsets issue. On October 18, 2023, the Decision of the trial court, having gone unappealed, became final. The offsets issue proceeded to a Mandatory Settlement Conference, with defendant's petitioning the Court for additional time for discovery due to the complex array of prior injuries suffered by the applicant, with awards as well as Social Security payments.

At the hearing of November 2nd, 2023, the workers' compensation judge agreed that due process required additional time to investigate the newly-awarded benefits and the potential offsets against such benefits. Neither party, at the time of the Mandatory Settlement Conference, offered a completed Pretrial Conference Statement setting forth the issues in evidence. Further, defendant's represented that they had set the deposition of the applicant for approximately two weeks hence, indicating that such deposition was necessary to adequately investigate previous benefits which might be subject to credit received by the applicant. Accordingly, the WCJ set the matter for a Mandatory Settlement Conference on February 7, 2024 to permit further development of the offsets issue.

The matter remains unready for a trial date. Applicant's Petition for Removal followed the Order by the WCJ setting the matter for Mandatory Settlement Conference as opposed to trial.

III RECOMMENDATION

In accordance with the foregoing, this Petition should be denied, and the matter should proceed to MSC on February 7th, 2024 at which time the parties can complete an MSC statement setting forth the issues for trial.

November 8, 2023

Respectfully submitted
JAMES M. ZERBONI
Workers' Compensation Judge