

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

**CALVIN WRIGHT, *Applicant***

**vs.**

**HEALTH NET, INC.;  
ARCH INSURANCE CO., adjusted by  
SEDGWICK MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ7508584  
Marina del Rey District Office**

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

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision<sup>1</sup>.

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<sup>1</sup> Commissioner Sweeney, who was on the panel that issued the order no longer serves on the Appeals Board. Another panel member has been assigned in her place.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal of the decision of March 7, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of March 7, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

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



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

**April 14, 2025**

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

**CALVIN WRIGHT  
GRAIWER, KAPLAN, VERNIK & EVANS, LLP  
COLEMAN CHAVEZ & ASSOCIATES, LLP**

**AS/mc**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL**

### **I INTRODUCTION**

1. Applicant's Occupation: Claims Supervisor
2. Applicant's Age: 59
3. Date of injury: 3/26/1990 TO 11/21/2008
4. Parts of Body Injured: various
5. Identity of Petitioner: Defendant
6. Timeliness: The petition was timely filed.
7. Verification: A verification is attached.
8. Date of Order: 3/7/2024
9. Petitioner's contention: The Defendant will be significantly prejudiced and irreparably harmed by the WCJ's Order setting the issues for trial.

## II

### **RELEVANT PROCEDURAL HISTORY**

The Applicant, resolved indemnity issues via Joint Compromise & Release leaving future medical open. The 3<sup>rd</sup> amended Joint Order Approving Compromise & Release was issued by Judge Elena Jackson on 11/3/2021. Subsequent to 11/3/2021, the parties have been set for at least five MSC's and five Trials before Judge Jackson. The most recent MSC took place on 3/7/2024. On that date, Judge Jackson set the matter for trial before herself on 4/17/2024. The comments section on the MOH reflects the following language in Judge Jackson's writing, "set trial MPN issue and Home Care". It is from this order that Defendant has filed his timely and verified Petition for Removal dated 3/26/2024. Please note that although the Compromise and Release contained two case numbers, Defendant has only filed a Petition for Removal on ADJ7508584. Applicant filed an Answer to Petition for Removal and Request for the Imposition of Sanctions and Costs on 4/3/2024. The case is currently set for trial before Judge Jackson on 8/14/2024.

For some unknown reason, Judge Jackson failed to either rescind her order or prepare a Report and Recommendation on said Removal. The undersigned became aware of this omission while Judge Jackson was unavailable just recently. As Judge Jackson is presently unavailable to prepare the Report and Recommendation at issue, the undersigned Presiding Judge is preparing this report on her behalf.

Due to a clerical oversight, WCJ Jackson failed to identify the Petition as one for Removal, [and] did not prepare a timely report and recommendation or act within the statutory time frame set forth in CCR Section 10843. Based on a review of FileNet, the undersigned also notes that although both parties appear to identify the issues that are purportedly set for trial in their respective Petition and Answer, there is no joint signed pretrial conference statement located in FileNet uploaded by any party. Without a fully executed pretrial conference statement that identifies both the stipulations and issues no trial may proceed on the record. Additionally, the "facts" set forth by both parties seem to be in conflict with one another. For the reasons set forth in the Petition for Removal and the Answer, the Petition for Removal should be granted and the case should be returned to Judge Jackson so that she may address the issues raised in the parties' respective pleadings.

The undersigned is certain that had it not been for her error of omission[,] especially in light of the document not filed in EAMS and the factual discrepancies between the parties that Judge Jackson would have rescinded her order setting the matter for trial.

### **III**

#### **DISCUSSION**

A Petition for Removal is an extraordinary remedy, rarely exercised by the appeals Board, and is generally available only where the petitioner has established that substantial prejudice or irreparable injury will result if removal is not granted. Swedlow, Inc. v WCAB (Smith) (1983) 48 CCC 476 (writ denied); Lubin v. Berkeley East Convalescent Hospital (1976) 41 CCC 283 (Board Panel); Hardesty v. McCord & Holdren, Inc. et. al. (1976) 41 CCC 111 (Board En Banc).

Further CCR section 10843 requires a showing that reconsideration will not be an adequate remedy after issuance of a final order, decision or award.

In the instant case, the undersigned presiding judge agrees that the Petition for Removal should be granted and the matter should be returned to WCJ Jackson to set for further hearing. The WCJ is unable to act as she no longer has jurisdiction to do so. Therefore, the undersigned humbly requests that the WCAB remand this matter back the WCJ to address accordingly.

### **IV**

#### **RECOMMENDATION**

As the Petition for Removal was not addressed in a timely manner and for the reasons set forth above, it is respectfully recommended that the Petition Removal be granted and the matter be remanded back to the WCJ Jackson to address accordingly.

Respectfully submitted,

**CIRINA A. ROSE**  
Workers' Compensation Judge

Date: 07/08/24