

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

MARTIN AGUILAR, *Applicant*

vs.

**ANTON SEITZ DBA KARLS CUSTOM SASH AND DOORS;
OAK RIVER INSURANCE COMPANY DBA BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ14635315
Van Nuys District Office**

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

Lien claimant, The Dental Trauma Center Hawthorne, seeks removal and an immediate stay in response to the workers' compensation administrative law judge's (WCJ) April 22, 2025 order granting defendant's request to allow defense witnesses to testify remotely at the scheduled lien trial (Order).

Lien claimant contends if defendant's witnesses are permitted to testify virtually it will be significantly prejudiced and will suffer irreparable harm, and reconsideration is not an adequate remedy.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on the Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the Answer and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the WCJ's April 22, 2025 Order, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

We will briefly review the relevant facts. On May 13, 2021, applicant filed an application for adjudication alleging he sustained specific injury to the face, jaw, neck, and chest arising out of and during the course of employment by defendant on March 22, 2021. Defendant denied liability for the claim, raising the initial aggressor defense. The case in chief settled by way of compromise and release approved on September 30, 2022.

On February 8, 2023, lien claimant filed a Notice and Request for Allowance of Lien. Defendant asserted the lien should be disallowed.

A lien trial was scheduled for April 22, 2025 to resolve liability for applicant's self-procured medical treatment. On April 8, 2025, defendant filed a Petition to Allow Witnesses to Testify Remotely at Lien Trial.

On April 22, 2025, representatives for lien claimant and defendant appeared at the scheduled hearing, and, at which time, the WCJ issued the Order granting defendant's petition to allow remote witness testimony. The Minutes of Hearing (MOH) state in relevant part, "def[endant] filed petition for order granting virtual appearances of witnesses. Lien claimant objects to petition. WCJ finds good cause to grant petition and orders trial witnesses may testify via courtcall." The MOH also reflects the lien trial was re-set for June 5, 2025. Other than the MOH, no documentary record was made of the April 22, 2025 hearing.

Thereafter, lien claimant sought removal of the Order via the Petition for Removal.

DISCUSSION

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); *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).)

All 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.)

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” 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*, at p. 476., citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and 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. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by Labor Code section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Here, although the WCJ’s Report provides sound rationale for finding good cause to grant defendant’s petition for remote witness testimony, no actual record was made of the parties’ arguments in support or in opposition of the April 22, 2025 Order. Without the ability to review the record, we cannot complete a meaningful review of the Petition for Removal.

Accordingly, due process requires that we grant lien claimant’s Petition for Removal, rescind the April 22, 2025 Order, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Removal of the April 22, 2025 order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the April 22, 2025 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 29, 2025

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

**MARTIN AGUILAR
THE DENTAL TRAUMA CENTER
LAW OFFICE OF RAPHAEL HEDWAT
LAW OFFICE OF SAAM AHMADINIA
PEATMAN LAW GROUP**

DC/cs

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