

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

EVELYN JIRON GARCA, *Applicant*

vs.

**EMPLOYERS OUTSOURCING, LLC., uninsured; PRIME ADMINISTRATORS;
*Defendants***

**Adjudication Number: ADJ18995801
Anaheim District Office**

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

Defendant Employer's Outsourcing, LLC, seeks removal of the Notice of Intention to impose Sanctions (NIT) and Order to Produce (Order) issued on January 30, 2025 by a workers' compensation administrative law judge (WCJ). The NIT states that sanctions will be imposed against defendant in the sum of \$400.00 for violating WCAB Rule 10390 (Cal. Code Regs., tit. 8, § 10390). The Order requires defendant to produce and disclose documents regarding the issue of insurance coverage and/or lack thereof.

Defendant contends that sanctions are not warranted because WCAB Rule 10390 only requires disclosure of the identity of an employer; and that the Order for documents issued without notice and an opportunity to be heard, thereby violating defendant's right to due process.

We did not receive an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the Report. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the WCJ's "Order to Produce; and Notice of Intent to Impose Sanctions," and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) alleging that on June 8, 2023, she sustained a specific injury to the left ankle as a janitor, while employed by Employer's Outsourcing, Inc. The insurance carrier on the Application is listed as Prime Administrators Fresno.

On April 12, 2024, defendant's then attorneys Korey Richardson LLP filed a notice of representation, indicating representation for "Firestone Labor Union, Association of Employee Participants for Affordable Benefits and Employers Outsourcing, Inc."

On November 5, 2024, Korey Richardson LLP filed a "Notice and Motion of Korey Richardson LLP to withdraw as attorneys of record for Prime Administrators." Because Prime Administrators was neither a party to the case nor mentioned in the original notice of representation, the WCJ issued an "Order Deferring Action on Motion to be Relieved as Attorney of Record and Order to Show Cause re: Sanctions" and set the matter for status conference to be held on December 10, 2024.

On November 19, 2024, Employer Defense Group, LLP filed a substitution of attorney and notice of representation in place of Korey Richardson, LLP. In both the substitution of attorney and the notice of representation, they claim to represent "Employers Outsourcing, Inc. insured by Prime Administrators Fresno."

The status conference was held on January 14, 2025. At that time, the WCJ issued an Order taking the matter off calendar.

The Comments section on the Minutes of Hearing (MOH) indicated as follows:

Employer Defense subbed in as atty of record on 11/19/2024; Employers Outsourcing uninsured; E.O. not sure who hired the applicant or where the applicant was assigned or for what periods; sub of atty does not state E.O. is uninsured; proper notice must be filed with court per reg 10390.

On January 14, 2024, Employer Defense Group filed an amended substitution of attorney noting Employer's Outsourcing's uninsured status.

On January 30, 2025, WCJ issued the NIT and Order. The WCJ ordered production of a variety of documents, including insurance and underwriting policies relevant to the period of the date of injury for Prime Administrators or any other involved entity; contracts between Prime Administrator and any other entity that might be involved; a complete personnel file for the

applicant; evidence that defendant has complied with Labor Code section 3602(d)(1)¹; evidence of the entity paying applicant and controlling applicant's employment; and WCIRB insurance coverage reports for any other entity involved applicant's alleged employment.

DISCUSSION

We first address the defendant's objection to the notice of intent to impose sanctions. Per WCAB Rule 10832, "The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including, but not limited to: ... (3) Sanctioning a party." (Cal. Code Regs. tit. 8 § 10832.) A notice of intention (NIT) is neither an order, decision, or action ripe for removal or reconsideration. As such, the petition for removal as to the NIT is premature, and thus further proceedings on the issue of potential sanctions must be addressed by the WCJ in the first instance upon return of this matter.

We agree with the WCJ that all parties must identify their full legal name including the names of the employer, insurance company, and any third-party administrator and failure to do so may subject the offending party to sanctions. (Cal. Code Regs., tit. 8, §§ 10390, 10400, 10402; *DiFusco v. Hands On Spa et al* (2025) 90 Cal.Comp.Cases __ (Appeals Bd. en banc); *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc).) Moreover, all parties have an ongoing obligation to promptly update the official participant record if changes occur throughout the span of a case. (Cal. Code Regs., tit. 8, § 10205.5.) *Coldiron* specifically outlines that the responsible entity must inform the Board of the appropriate parties at the earliest opportunity and no later than "at least the commencement of any litigation in the case." (*Coldiron, supra*, at p. 294.)

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).)

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Here, as explained below, we agree with defendant that the Order to produce documents caused substantial prejudice and irreparable harm because defendant was not provided with notice and an opportunity to be heard. In addition, without a record, we are unable to determine whether the WCJ appropriately issued the Order. Thus, we will rescind the decision.

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].)

It is also well-established that "[WCJs] have authority to decide discovery disputes." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 662 [64 Cal.Comp.Cases 624]; *DiFusco, supra*, 90 Cal.Comp.Cases __.) In the event that the statutory provisions of the Labor Code are not adequate or convenient, "on appropriate motion and on appropriate showing of good cause, the trial judge has and should exercise the authority conferred on him by § [10330] of our rules to issue such interlocutory orders relating to discovery as he determines are necessary to insure the full and fair adjudication of the matter before him, to expedite litigation and to safeguard against unfair surprise." (*Hardesty v. Mccord & Holdren* (1976) 41 Cal.Comp.Cases 111, 114)

While the WCJ does have the power to resolve and encourage discovery, here there was no hearing on the issue of document production and no record created.

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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), 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 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, without a record, there is no meaningful opportunity to review the WCJ’s decision to determine whether good cause exists for issuance of an order to produce documents.

With respect to the notice regarding sanctions, while we do not consider the merits of whether sanctions are appropriate, it may be that defendant has engaged in conduct that is sanctionable under *DiFusco*, 90 Cal.Comp.Cases ___ and *Coldiron* 67 Cal.Comp.Cases 289. Thus, while we rescind the entire decision, upon return, the WCJ can of course revisit whether a new notice of intention for sanctions is appropriate in keeping with due process and the requirement of an evidentiary record under *Hamilton*.

Accordingly, we grant defendant’s Petition for Removal, rescind the January 30, 2025 “Order to Produce; and Notice of Intent to Impose Sanctions” issued by the WCJ, 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 January 30, 2025 "Order to Produce; and Notice of Intent to Impose Sanctions" issued by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the "Order to Produce; and Notice of Intent to Impose Sanctions" issued on January 30, 2025 by the WCJ is **RESCINDED** and that this matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 10, 2026

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

**EVELYN JIRON GARCA
ARTURO NIETO
GOLDEN & TIMBOL, P.C.
EMPLOYER DEFENSE GROUP, LLP
ROXBOROUGH, POMERANCE, NYE & ANDREANI, LLP
KOREY RICHARDSON LLP**

TF/md

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