

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANA DIAZ,

Applicant,

vs.

SAMBRAILO PACKAGING, INC.;
ZENITH INSURANCE CO.,

Defendants.

Case No. ADJ8387626
(Oxnard District Office)

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION AND
ORDER DENYING REMOVAL**

Maria Ruby Trujillo (Trujillo) seeks reconsideration of the August 6, 2014 Minute Order (Order) wherein the workers' compensation administrative law judge (WCJ) ordered Trujillo to personally appear at a rescheduled lien conference to explain the billings of San Diego Imaging.

Trujillo contends that she has unspecified personal and family responsibilities as well as work duties that would be "severely and unreasonably impacted" in unspecified ways by her personal appearance in Oxnard, and contends in essence that the Order was an abuse of discretion and a product of bias against her and/or lien claimant California Imaging by the WCJ.

We have considered the Petition for Reconsideration, and we have reviewed the record in this matter. We have not received an answer. The WCJ has filed a Report and Recommendation on Petition for Removal (Report), treating the Petition as a petition for removal and recommending that removal be denied.

Based on our review of the record, we will dismiss the petition for reconsideration as there was no final order subject to reconsideration, and we will deny removal for the reasons set forth below.

BACKGROUND

Applicant filed an Application for Adjudication of Claim for injuries allegedly sustained while employed as a line worker¹ on May 10, 2011 to her right shoulder, right arm, right hand fingers, and

¹ Or "box maker" per the Compromise and Release.

1 lower back. It appears that at least some of the alleged injuries were accepted by defendant as industrial,
2 and applicant's claim was resolved by Compromise and Release approved on April 30, 2014. Several
3 outstanding lien claims remained unresolved, and the matter was set for lien conference on August 6,
4 2014.

5 Hearing representative Javier Jimenez appeared at the lien conference on behalf of lien claimant
6 California Imaging, who filed a lien for photocopying services. According to the WCJ's Report,
7 defendant contended that California Imaging was not a properly licensed professional photocopier as
8 required by the Business and Professions Code. The WCJ further states that Mr. Jimenez was unable to
9 respond to defendant's contention and unaware of lien claimant's licensing status; was unable to explain
10 billing characterized by the WCJ as "less than clear"; and was generally unable to respond to inquiries
11 regarding the issues in dispute and appeared unfamiliar with the file. Mr. Jimenez advised the WCJ that
12 his only authority was to set the matter for lien trial. When asked by the WCJ to identify the person most
13 knowledgeable at California Imaging regarding the licensing and billing issues, Mr. Jimenez named
14 Trujillo, and further stated that Trujillo advised him that the "proper" name of lien claimant California
15 Imaging is actually San Diego Imaging.

16 The WCJ then continued the lien conference to August 22, 2014, and ordered Trujillo to
17 personally appear in order to explain lien claimant's billing, address the licensing issue, and explain the
18 relationship between California Imaging and San Diego Imaging to determine the true identity of the lien
19 claimant. Trujillo's Petition followed.

20 DISCUSSION

21 A petition for reconsideration is properly taken only from a "final" order, decision or award (Lab.
22 Code, §§ 5900(a); 5902; 5903²). A "final" order has been defined as one "which determines any
23 substantive right or liability of those involved in the case." (*Rymer v. Hagler* (1989) 211 Cal.App.3d
24 1171; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39,
25 45 [43 Cal.Comp.Cases 661, 665].) Interlocutory procedural or evidentiary decisions, entered in the
26

27 ² All further statutory references are to the Labor Code.

1 midst of the workers' compensation proceedings, are not considered to be "final" orders because they do
2 not determine any substantive issue (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th
3 1068, 1075 [65 Cal.Comp.Cases 650, 655]; *Rymer, supra*; *Kaiser Foundation Hospitals, supra*; see also
4 2 Cal. Workers' Comp. Practice (4th ed Cal CEB 2000) §§ 21.8, 21.9). Pretrial orders regarding
5 evidence, discovery, trial setting, venue, or similar issues are non-final interlocutory orders that do not
6 determine any substantive right of the parties. The August 6, 2014 Order requiring Trujillo's personal
7 appearance is an interlocutory procedural order that does not determine any substantive issue.
8 Accordingly, the Petition, to the extent it seeks reconsideration, must be dismissed (*Elwood v. Workers'*
9 *Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 272 (writ den.); *Jablonski v. Workers' Comp. Appeals Bd.*
10 (1987) 52 Cal.Comp.Cases 399 (writ den.); *Beck v. Workers' Comp. Appeals Bd.* (1979) 44
11 Cal.Comp.Cases (90 (writ den.)).

12 Instead, we will treat Trujillo's Petition as a petition for removal pursuant to section 5310.
13 Removal is an extraordinary remedy, granted only when the petitioner establishes that substantial
14 prejudice or irreparable harm will result if removal is not granted (Cal. Code Regs., tit. 8, § 10843³;
15 *Swedlow, Inc. v. Workers' Comp. Appeals Bd. (Smith)* (1983) 48 Cal.Comp.Cases 476 (writ den.);
16 *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 (Appeals Board Panel Opinion);
17 *Lubin v. Berkeley East Convalescent Hospital* (1976) 41 Cal.Comp.Cases 283 (Appeals Board Panel
18 Opinion)). Trujillo has not established that either substantial prejudice or irreparable harm will result if
19 removal of the August 6, 2014 Order is not granted.

20 The Workers' Compensation Appeals Board (WCAB) and individual WCJs have broad power to
21 do all things necessary or convenient to fully adjudicate the disputed issues and to ascertain the
22 substantial rights of the parties and carry out justly the spirit and provisions of the Labor Code. (§§ 133,
23 5310, 5708; Rule 10348.) This includes the inherent power to control the WCAB's practice and
24 procedure to prevent frustration, abuse, or disregard of its processes (*Crawford v. Workers' Comp.*
25 *Appeals Bd.* (1989) 213 Cal.App.3d 156, 164 [54 Cal.Comp.Cases 198, 201]), which in turn includes the
26

27 ³ All further regulatory references (Rules) are to the California Code of Regulations, title 8.

1 power to order the personal appearance of parties at hearings (Rule 10240(d); *Henkel v. State Comp. Ins.*
2 *Fund* (2010) 38 Cal. Workers' Comp. Rptr. 218 (ADJ4197101, Appeals Board Panel Opinion)).⁴

3 Trujillo acknowledges at the end of her Petition that "there is clear authority of the WCAB and
4 WCJ to order the appearance of individuals before the WCAB" as set forth above. However, she
5 contends that the Order in this case is improperly motivated by judicial bias and is an abuse of discretion.
6 We disagree.

7 Trujillo's allegation of bias is completely unsupported by any facts or evidence. A vague
8 allegation of complaints about the WCJ made to the Ethics Advisory Committee by unknown parties in
9 another case is not substantial evidence of bias and is irrelevant in this case. The Appeals Board cannot
10 take judicial notice of "the records contained in EAMS of the myriad of other hearings" before the WCJ
11 without more specific information. The one specific case cited by Trujillo involved a similar appeal of
12 an order to personally appear; the appeal was denied and the order stood. An order to personally appear,
13 standing alone, is not evidence of bias.

14 Where broad judicial discretion exists, it must be exercised reasonably to avoid abusing the power
15 granted to the WCAB by the Legislature. An abuse of discretion occurs when a WCJ acts in an arbitrary
16 or capricious manner, or when an order is unreasonable or results from an improper motive. There is no
17 evidence of an abuse of discretion in this case.

18 Rule 10770.1, subdivision (e), provides in relevant part that every party or representative
19 appearing at a lien conference or lien trial "shall have sufficient knowledge of the lien dispute(s) to
20 inform the Workers' Compensation Appeals Board as to all relevant factual and/or legal issues in
21 dispute." As explained by the WCJ in his Report, the representative for lien claimant California Imaging
22 was unable to respond to reasonable inquiries regarding the licensing issue, nor was he able to provide
23 more basic information such as an explanation or clarification of the disputed billing. Because the
24 representative was unable to comply with Rule 10770.1(e), the WCJ was unable to meaningfully discuss
25

26
27 ⁴ New Rules 10563 and 10563.1 will replace Rule 10240 effective January 1, 2015, and expressly provide that the WCAB
may order any appearance that would otherwise not be required.

1 the issues with the parties or determine whether there were disputes that required a lien trial. It was
2 within the WCJ's discretion to continue the matter to another date and to require lien claimant's person
3 most knowledgeable to appear, so that a meaningful conference could be held. The Order for Trujillo to
4 personally appear was not arbitrary, capricious, unreasonable, or improperly motivated.

5 We recognize that litigation of lien issues is highly contentious and can be very tedious. We
6 understand that WCJs can become frustrated when lien representatives are unable to discuss the evidence
7 or articulate any reasonable basis for recovery. Nevertheless, lien claimants are entitled to due process
8 and a fair hearing (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26
9 Cal.App.4th 789 [59 Cal.Comp.Cases 461]), and WCJs must be vigilant to ensure that their actions and
10 orders in lien cases, as in all other cases, serve the goal of ascertaining the substantial rights of the parties
11 and carrying out justly the spirit and provisions of the Labor Code. A WCJ must not take any action or
12 make any order for purely punitive or retaliatory reasons.

13 On the other hand, lien claimants also have an obligation to comply with the law and to respect
14 the time and resources the WCAB gives to lien issues (see *Torres v. AJC Sandblasting* (2012) 77
15 Cal.Comp.Cases 1113 (Appeals Board en banc)). One of the most common ways that lien claimants
16 frustrate, abuse, and disregard the processes of the WCAB is to send representatives to lien hearings
17 without apprising them of the facts or issues involved in the case and without providing them with
18 necessary documentation to support the liens, thus rendering the lien representatives unable to
19 meaningfully discuss the issues with defendants or the WCJ. That practice is disrespectful of the time of
20 defendants, other lien claimants who are prepared for the hearing, and the WCAB. It is also, as discussed
21 above, a violation of WCAB Rules. When that occurs, a WCJ has broad discretion to fashion a remedy
22 that will move the case forward and impress upon the offending party the importance of complying with
23 the law.

24 For the foregoing reasons,

25 **IT IS ORDERED** that the Petition for Reconsideration of the August 6, 2014 Minute Order is
26 **DISMISSED.**

27 ///

1 IT IS FURTHER ORDERED that the Petition for Removal of the August 6, 2014 Minute Order
2 is DENIED.

3
4 **WORKERS' COMPENSATION APPEALS BOARD**

5
6 
7 **MARGUERITE SWEENEY**

8 I CONCUR,

9
10 
11 **RONNIE G. CAPLANE**

12
13 
14 **FRANK M. BRASS**



15 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

16 **OCT 20 2014**

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

19 CALIFORNIA IMAGING, Attn.: MARIA RUBY TRUJILLO
20 ZENITH INSURANCE CO.

21
22 
23
24
25 PD/ec