

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

BYRNE MILLER, *Applicant*

vs.

**PELICAN BAY STATE PRISON, Legally Uninsured; administered by STATE
COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13793096
Santa Barbara District Office**

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

Applicant seeks reconsideration of the Order Granting Change of Venue (Order) issued on February 4, 2022, wherein the workers' compensation administrative law judge (WCJ) ordered that venue herein be transferred to the Eureka District Office.

Applicant argues that the WCJ issued the Order without or in excess of his authority because defendant failed to file a timely petition to transfer venue.

We received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, we will grant the Petition, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On December 29, 2020, defendant filed a Petition to Join Party Defendant; Objection to [Venue in Santa Barbara] and Petition for Change of Venue, seeking an order transferring venue to the Eureka District Office on the grounds that (1) venue was assigned based upon the location of applicant's attorney's office; (2) applicant resides in Brookings, Oregon; and, (3) Eureka is the nearest District Office to the Del Norte County location where applicant sustained injury. (Petition

to Join Party Defendant; Objection to and Petition for Change of Venue, December 29, 2020, pp. 1-4.)

On January 6, 2021, applicant filed an Objection to Change in Venue, objecting to the petition to transfer venue on the ground that defendant's petition was untimely—and seeking an “opportunity . . . to establish” this contention through documentary evidence. (Objection to Change in Venue, January 6, 2021, pp. 1-3.)

On December 16, 2021, defendant filed a Petition for Ruling on Venue Issue, seeking a determination on the petition to transfer venue to Eureka. (Petition for Ruling on Venue Issue, December 16, 2021, pp. 1-5.)

On December 22, 2021, applicant filed an Objection to Petition for Ruling on Venue Issue, contending that defendant failed to timely file its petition to transfer venue. (Objection to Petition for Ruling on Venue Issue, December 22, 2021, pp. 1-3.)

On January 3, 2022, defendant filed a response to applicant's objection, arguing that the petition to transfer venue should be granted based not only upon the merits of the original petition, but also upon evidence that the Department of Workers' Compensation mistakenly assigned venue to Santa Barbara and subsequently failed to correct its own mistake by transferring venue to Eureka. (State Fund's Response to Applicant's Objection and Amended Petition for Ruling on Venue Issue, January 4, 2022, pp. 1-5.)

On January 6, 2022, the WCJ issued a Notice of Intention (NIT) to Grant Petition to Change Venue unless applicant filed written objection thereto within fifteen days of service. (Notice of Intention to Grant Petition to Change Venue, January 6, 2022.)

On January 11, 2022, applicant filed an Objection to Notice of Intention to Grant Petition to Change Venue, objecting to the NIT on the grounds that (1) defendant's petition failed to establish that the Eureka District Office was the appropriate venue; and (2) venue in a district office located in Southern California would be appropriate based upon the location of applicant's treating physicians' offices, where applicant was expected to receive ongoing treatment. (Objection to Notice of Intention to Grant Petition to Change Venue, January 11, 2022.)

On January 19, 2022, the WCJ held a hearing after which he ordered that “Case is transferred to Eureka.” (Minutes of Hearing, January 19, 2022.)

A review of the record in EAMS reveals no Minutes of Hearing/Summary of Evidence showing what, if any, evidence was admitted at the January 19, 2022 hearing; what, if any,

testimony was presented; or otherwise revealing the reasons or grounds for the Order.

The Report states:

Applicant sustained an industrial injury while employed at Pelican State Prison in Crescent City, CA; located in Del Norte County. The closest DWC office is Eureka.

Applicant, through counsel, Jim Rademacher, caused to be filed an Application for Adjudication of Claim (Application) on October 29, 2020.

The application selected SBA (Santa Barbara) as venue based upon the “County of principle place of business of employee’s attorney.”

The application reflected applicant’s “street address” to be in Brookings, Oregon.

The application lists the employer as Pelican State Prison in Crescent city, CA.

Lastly, the application provides applicant counsel’s office is located in Westlake Village, CA.

SCIF objected and filed a petition for change of venue. A notice of intent to grant the change of venue was issued. Applicant attorney filed an objection to the notice of intent and a status conference was held by the PWCJ on January 19, 2022.

At the conclusion of the hearing and written on the Minutes of Hearing are the words, “Case transferred to Eureka IT IS SO ORDERED” and the signature of Scott J. Seiden.

A formal order changing venue to Eureka was issued on February 4, 2022 and served on the parties. Applicant filed a petition for removal from that order.
(Report, p. 2.)

DISCUSSION

We observe that a decision by the WCJ "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc)), and must be supported by substantial evidence. (§§ 5903, 5952, subd. (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.*

Workers' 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, the record shows that the WCJ adjudicated the transfer of venue issue at the January 19, 2022 status conference. (Report, p. 2.) In adjudicating the issue without a hearing, however, the WCJ failed to make a record of the evidence presented by the parties, leaving us unable to evaluate the merits of the Petition. Therefore, we will rescind the Order and return the matter to the trial level for development of the record as to the issue of whether venue should be transferred to the Eureka District Office and other related issues, as appropriate. (See *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also § 5313.)

Accordingly, we will grant the Petition, and our Decision After Removal, we will rescind the Order and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of Order Granting Change of Venue issued on February 4, 2022 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order Granting Change of Venue issued on February 4, 2022 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 27, 2022

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

**BYRNE MILLER
LAW OFFICES OF JIM T. RADEMACHER
STATE COMPENSATION INSURANCE FUND**

SRO/pc

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