

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

DARIO MORALES DOMINGUEZ, *Applicant*

vs.

**SHIELD PLATINUM PROTECTION, LLC,
RENE GUTIERREZ;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number:ADJ14175141
Long Beach District Office**

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

Defendant seeks removal in response to the Order issued by the workers compensation administrative law judge (WCJ) on April 24, 2024. Therein, the WCJ ordered both defendants' claim adjuster and the adjuster's supervisor to appear in person at the next lien trial.

Defendant contends that no good cause exists for the WCJ to order both appearances in person, and such order constitutes an undue burden.

We have not received an Answer from the lien claimant. We received a Report and Recommendation on Petition for Removal (Report) from the WCJ, recommending that removal be denied.

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 below, we will grant the Petition for Removal, rescind the Order of the WCJ to appear in person, and substitute a new order stating that the claims adjuster and the adjuster's supervisor must be available by virtual or telephonic appearance at the upcoming trial of this matter.

BACKGROUND

Applicant, while employed by defendant, claimed industrial injuries as a result of a cumulative trauma during the period January 1, 2020 through September 1, 2020 to multiple parts of body. His claim was resolved by Compromise and Release (C&R) and WCJ Joy issued an Order approving the C&R on May 12, 2022.

On December 15, 2022, lien claimant ABC International (ABC) filed a lien for interpreting services rendered to applicant as a result of his claimed injuries.

After several lien conferences, the case was set for lien trial on April 24, 2024 before WCJ Joy.

At the lien trial of April 24, 2024, the WCJ continued the matter to another trial date, and issued the following comments and Order on the Minutes:

“[P]arties appear unable to resolve lien and as of this dispo, LC’s exhibits are pending population in EAMS.

WCJ has concerns re: Defendant and CCR 10880(a)(3)¹. Defendant’s claim adjuster and adjuster’s supervisor are to appear in person at next trial to discuss. IT IS SO ORDERED.”

(MOH, 4/24/24.)

Defendant thereafter filed its Petition for Removal.

DISCUSSION

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers’ Comp. Appeals Bd. (Kleemann)* (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.,

¹ Cal Code Regs., tit. 8 § 10880(a)(3) states:

(a) All defendants and lien claimant shall appear at all lien trials either in person or by attorney or non-attorney representative. Each defendant, lien claimant, attorney and non-attorney representative appearing at any lien trial:

...

(3) Shall either have full settlement authority or have full settlement authority immediately available by telephone.

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).

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].)

Here, petitioner asserts that an order to appear in person constitutes an undue burden on the adjuster, as it causes a practical hardship, and prevents them from handling other cases that would be impacted by a physical appearance. Petitioner further contends that no monies are due lien claimant as there are unresolved legal issues that prevent settlement, but that the claims adjuster is available either telephonically or by other electronic means, and defendant has complied with WCAB Rule 10880(a). (Petition, p. 2-4.)

The WCJ has broad authority to issue orders to ensure proper adjudication of each claim, including "any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case." (Cal. Code Regs., tit. 8, § 10330.) This may include Orders that a party appear at a given hearing, should same be warranted.

While the WCJ retains the authority to order the adjuster to appear in person for a hearing for good cause if the circumstances warrant it, consideration should be given as to the subject or the nature of the hearing, as well as the dispute, the relief sought, the utility of the adjuster appearing in person versus appearing by phone, and the practical hardship and burden of having to appear in person, factoring in the distance and nature of the travel required. (*Derrick Burford v. Cook Concrete Prods.*, (board panel decision) 2016 Cal. Wrk. Comp. P.D. LEXIS 1, 8.)

Here, while the WCJ may wish to bring the parties together and discuss settlement options or inquire further as to issues in dispute prior to commencing trial, we find an Order for both the adjuster and supervisor to appear in person for that purpose excessive. That same goal may be accomplished by an Order for the adjuster and supervisor to appear at trial by either virtual or telephonic means.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the Minute Order of April 24, 2024 by the WCJ for the claim adjuster and supervisor to appear in person is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minute Order of April 24, 2024 is **AMENDED** as follows:

“WCJ has concerns re: Defendant and CCR 10880(a)(3). Defendant’s claim adjuster and adjuster’s supervisor are to appear either electronically or by telephone at the next trial to discuss. IT IS SO ORDERED.”

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 4, 2025

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

**ABC INTERNATIONAL COMPANY
ELITE LIEN SERVICES
PRUSSAK WELCH
STATE COMPENSATION INSURANCE FUND**

LAS/abs

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