

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EDITH GOMEZ, *Applicant*

vs.

**GARFIELD BEACH CVS, LLC;
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ17808664
Marina del Rey District Office**

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

Defendant has filed a Petition for Removal (Petition) of the Order Rescinding Decision, Vacating Submission and Resetting for Trial (Order) of a workers' compensation judge (WCJ).

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 based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's report, we will grant removal to rescind the portion of the order resetting this matter for trial, and order this matter be set for a conference pursuant to WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961).

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).)

We agree with the WCJ's analysis of the merits of petitioner's arguments that the rescission of the original Findings and Order is not final, and thus, petitioner cannot show substantial

prejudice or irreparable harm in the absence of a final order, decision or award. However, we believe it prudent to set this matter for a status conference before returning same to the trial calendar, in order to address any issues relative to resubmission of the decision on the existing record.

WCAB Rule 10961 states:

Within 15 days of the timely filing of a petition for reconsideration, a workers' compensation judge shall perform one of the following actions:

(a) Prepare a Report and Recommendation on Petition for Reconsideration in accordance with rule 10962;

(b) Rescind the entire order, decision or award, and initiate further proceedings within 30 days; or

(c) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award.

(Cal. Code Regs., §8, 10961.)

Further proceedings may include setting a matter for either a conference or trial.

The WCJ is empowered to set a matter for any type of hearing deemed necessary in order to accomplish substantial justice. (Cal. Code Regs., § 8, 10745.)

To the extent that petitioner is arguing the merits of the case in their Petition, those arguments are premature. As stated by the WCJ in her Report, an order rescinding a decision is a non-final order. When a new decision, findings and/or order issues, either party shall have an opportunity to file the appropriate petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the trial date in this matter is **RESCINDED** and this matter is **RETURNED** to the trial judge for a status conference as well as further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2024

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

**EDITH GOMEZ
HINDEN & BRESLAVSKY
MICHAEL SULLIVAN & ASSOCIATES**

LAS/abs

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