

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

GRIGORE SAPTESATE, *Applicant*

vs.

**ROMANA INC.; CALIFORNIA INSURANCE COMPANY, administered by APPLIED
RISK SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ11982169, ADJ13003058, ADJ11299872
Sacramento District Office**

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

Applicant, in pro per, seeks removal in response to the “Order Relieving Ratto Law as Counsel” for applicant (Order) issued by a workers’ compensation administrative law judge (WCJ) on February 22, 2024.

Applicant objects to the Order and questions why his attorney was relieved as counsel by the court when applicant re-hired his attorney after being promised that the attorney would (re)solve his cases.

We did not receive an answer from applicant’s counsel nor defendant.

We received a Report and Recommendation (Report) from the WCJ recommending we deny the Petition.

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 WCJ’s Order relieving Ratto law firm as counsel, and return this matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

The relevant facts, as set forth by the WCJ in her Report are as follows:

Ratto Law filed a Petition to withdraw as attorney of record for applicant on February 1, 2024.

The Petition states in pertinent part:

Applicant retained the Ratto Law Firm to represent him in two workers' compensation cases. Ratto Law Firm began representing Applicant on 02/28/2019. Applicant dismissed Ratto Law Firm on 8/16/2023. Ratto Law Firm began representation again on 10/03/2023.

Unfortunately, the relationship and communication has broken down such that counsel cannot effectively represent Applicant's interests. Applicant Attorney has requested from the Applicant to be dismissed but the Applicant has not returned the dismissal form. (February 1, 2024, Petition to Withdraw as Attorney of Record, p.1 lines 15-21).

A Notice of Intent (NIT) to Dismiss Ratto Law as the attorney for applicant was issued by the WCJ on February 6, 2024. The notice indicated that Ratto Law would be dismissed as the attorney of record for applicant unless objection for good cause is filed and served on all parties within 10 days. The WCJ designated Ratto Law to serve the NIT forthwith on all parties shown on the Official Address Record per WCAB Rule 10629 (Cal. Code Regs., § 10629).¹

On February 16, 2024, Ratto Law filed a proof of service indicating service of the NIT on February 16, 2024.²

On February 22, 2024, the WCJ issued an Order to relieve Ratto Law as applicant's attorney of record.

¹ WCAB Rule 10629 permits designated service as stated in pertinent part:

(a) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with rule 10628.

(b) When a party or their attorney or agent of record is designated to serve an order, the workers' compensation judge shall indicate which parties to serve.

...

(d) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service.

² The top of page two of the Proof of Service also states that the document was "served on February 1, 2024", but given that the NIT issued on February 6, 2024, this appears to be in error. Further, as one of the parties was located out of state, the additional days for service would be ten (10) not five (5), making the period upon which to object twenty days from February 16, 2024, or through March 7.

DISCUSSION

WCAB Rule 10402 (Cal. Code Regs., tit. 8, § 10402) states in pertinent part:

(a) Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure sections 284, 285, and 286.

Further, Code of Civil Procedure section 284 states:

The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.
(Code Civ. Proc. § 284).

In this case, there was no consent of both client and attorney. Thus, an order of the court, after application and notice was necessary.

As the WCJ stated in her Report:

Ratto Law filed a Petition to be relieved as the attorney of record on February 1, 2024, arguing that “the relationship and communication has broken down such that counsel cannot effectively represent Applicant’s interests”. (February 1, 2024 Petition to Withdraw As Attorney of Record p.1 lines 18-20). A Notice of Intent to Dismiss Ratto Law as the attorney for applicant issued on February 6, 2024; there was no timely written objection to the Notice of Intent. However, applicant did object to having Ratto Law dismissed as his attorney of record at the February 15, 2024, hearing. The WCJ discussed the matter with the parties; Mr. Gowen expressed his difficulty in effectively representing applicant, as noted in the Petition. Applicant expressed that although he was unhappy with the representation by Ratto Law, accusing them of conspiring with the defense attorney, [h e] still wanted to have Ratto Law as his attorney. After listening to both arguments it was determined that Ratto Law could not effectively represent applicant. Thus, an Order issued to relieve Ratto Law as applicant attorney of record.

The WCJ is correct that the applicant did not file a written objection to the notice of intent to relieve applicant’s attorney of record served by mail upon him on February 16, 2024 before the WCJ issued the Order. However, he did in fact, voice an objection to the withdrawal of his

attorneys as his representative at the Mandatory Settlement Conference (MSC) on February 15, 2024. Thus, his attorney and the WCJ were aware of his objection.

WCAB Rule 10832, which governs notice of intention and orders after notice of intention states, in pertinent part:

...(c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

- (1) Sustain the objection;
- (2) Issue an order consistent with the notice of intention together with an opinion on decision; or
- (3) Set the matter for hearing.

While applicant's verbal objection to the notice of intent to relieve applicant's attorney lacked the formality of a filed objection as stated under the rules, it is important to note that the Board's rules "serve the convenience of the tribunal and the [litigants] and facilitate the proceedings. They do not deprive the tribunal of the power to dispense with compliance when the purposes of justice require it, particularly when the violation is formal and does not substantially prejudice the other party." (*Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal.App.2d 210 [35 Cal.Comp.Cases 245]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 595 [40 Cal.Comp.Cases 784].) Further, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal.Comp.Cases 513].)

The courts have also long indicated that claims should be adjudicated based on substance rather than form. (*Bland, supra*, at pp. 328–334; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502]; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 1456 [52 Cal.Comp.Cases 141]; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274].)

Moreover, section 5709 states that "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division ..." (Lab. Code, § 5709.) "Necessarily, failure to comply with the rules as to details

is not jurisdictional.” (*Rubio, supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, former § 10492, now § 10517.)

Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers’ Comp. Appeals Bd.*, (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902], “when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court’s order setting aside a default.”) This is particularly true in workers’ compensation cases, where there is a constitutional mandate “to accomplish substantial justice in all cases.” (Cal. Const., art. XIV, § 4.)

Here, we need not reach the issue of whether the February 22, 2024 Order relieving applicant’s counsel as attorney of record was based upon good cause, as the Order granting Ratto Law’s petition was issued prematurely in violation of WCAB Rule 10605(a) (Cal. Code Regs., tit. 8, § 10605(a).) Such violation renders the Order *void ab initio*.³

The notice of intent to relieve applicant’s counsel was served on the parties by subservice on February 16, 2024. The notice provided ten days upon which to lodge an objection, yet the Order granting the petition to relieve counsel of record issued six days later, or on February 22, 2024, which is prior to expiration of either the 15-day period or 20-day period after service of the Order.⁴

Nevertheless, even if the Order properly and timely issued, the lack of a hearing after applicant voiced his objection raises significant issues of due process. Without a hearing, at which a record could be made, issues recorded, and evidence taken, we are unable to determine whether good cause exists for the issuance of the Order.

³ WCAB Rule 10605(a) states in pertinent part:

“When any document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by

(1) Five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California ;

(2) Ten calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is outside of California but within the United States...”

⁴ It is noted that the mailing address of one of the parties to the case was located out of state, and thus the additional days for service would be ten (10) not five (5) per the rule, however, the Order issued prematurely under either section.

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., 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].)

Further, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787; *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) Section 5313 requires that together with findings of fact, orders, and/or awards, a WCJ "shall" serve "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22.) 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, supra*, 66

Cal.Comp.Cases at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) More significantly, 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, while there appears to have been a verbal discussion at the February 15, 2024 MSC, there was no hearing set after the applicant voiced his objection to issuance of an order relieving Ratto Law as his attorneys of record. At that time, a hearing should have been set on the issue in order to create a record of the proceedings.

Without a record, there is no meaningful opportunity to review the WCJ's decision to determine whether good cause exists for issuance of the Order.

Accordingly, we grant applicant's Petition for Removal, rescind the February 22, 2024 Order relieving Ratto Law as counsel of record and return this matter to the trial level for further proceedings consistent with this decision and for the WCJ to prepare a proper record of the proceedings relating to Ratto Law's petition and applicant's objection in accordance with section 5313 and *Hamilton*.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal in response to the February 22, 2024 Order relieving Ratto Law Firm as counsel by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that Order of February 22, 2024 relieving Ratto Law Firm as applicant's attorney of record is **RESCINDED** and this matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2024

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

**GRIGORE SAPTESATE
MICHAEL SULLIVAN
RATTO LAW**

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