

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

**KIM SCUDDER, *Applicant***

**vs.**

**ST. MARY'S MEDICAL CENTER, Permissibly Self-Insured, adjusted by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ17737796  
Salinas District Office**

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

Defendant St. Mary's Medical Center, permissibly self-insured and adjusted by Sedgwick CMS, seeks removal of the Order issued on November 29, 2023 by the presiding workers' compensation administrative law judge in San Francisco (PWCJ) granting applicant's petition for change of venue from San Francisco to Salinas and ordering the mandatory settlement conference set for December 12, 2023 off calendar. Defendant contends that the Order changing venue to Salinas and taking the December 12, 2023 hearing off calendar will result in substantial prejudice and irreparable harm by a denying them due process and an opportunity to be heard.

We did not receive an answer from applicant. We received a Report and Recommendation (Report) from the PWCJ, which recommends that the Petition for Removal be denied.

We have considered the allegations of the Petition for Removal and the contents of the Report. Based on our review of the record, and as discussed below, we will grant the Petition for Removal, rescind the Order changing venue from San Francisco to Salinas, and return this matter to the PWCJ for further proceedings consistent with this opinion.

## **BACKGROUND**

Applicant, in pro per, while employed by defendant on May 21, 2022, sustained an admitted industrial injury to various parts of her body arising out of and in the course of employment.

On May 24, 2023, defendant filed an Application for Adjudication, choosing San Francisco as the venue choice pursuant to Labor code section 5501.5(a)(2).

On October 17, 2023, applicant filed a verified petition to transfer venue to the Salinas District Office on the following basis:

Currently the venue is in San Francisco which is approximately a three hour drive from my home in Monterey. It is very painful to sit in the car for this trip, especially when I have to return in the same day to keep costs down. It is tiring as I continue to feel tired from the head injuries. It imposes additional hardship on me to get a driver and withstand the travel to San Francisco. I am not driving on highways at this time myself and cannot safely travel alone.

Thereafter, on October 24, 2023, the PWCJ in San Francisco issued a Notice of Intention (NIT) to Change Venue per Labor code section 5501.6.

Defendant filed an objection to this NIT on October 26, 2023, alleging that no good cause was given by applicant for a change in venue. Defendant requested that the applicant's petition be denied, or that the matter be set for a hearing. No further action was taken by the PWCJ at that time.

On November 20, 2023, applicant filed a Declaration of Readiness to Proceed (DOR) requesting that the matter be set for a Mandatory Settlement Conference (MSC) on the issue of a change in venue. The reasons set forth on the DOR state as follows:

I REQUESTED TRANSFER OF VENUE PURSUANT TO LC 5501.5 AND 5501.6 TO THE SALINAS OFFICE OF THE WCAB BECAUSE I NEED A HEARING CONCERNING DEFENDANT'S OBJECTION TO MY REQUEST FOR A REQUEST FOR A SECOND QME IN PSYCHOLOGY TO EVALUATE BRAIN/MENTAL ISSUES RELATED TO AN ASSAULT AT WORK. GOOD CAUSE IS THAT SALINAS IS THE CLOSEST WCAB TO MY HOME. DEFENDANT HAS OBJECTED TO BOTH TRANSFER OF VENUE AND ISSUANCE OF A SECOND QME PANEL.

Thereafter, the matter was set for an MSC scheduled for December 12, 2023 in San Francisco.

On November 29, 2023, the PWCJ issued an Order Changing Venue from San Francisco to the Salinas District Office per Labor Code section 5501.6, and further ordered the December 12, 203 MSC vacated and the case taken off calendar.

On December 27, 2023, defendant filed a Petition for Removal stating that while it is entirely possible the WCAB may ultimately rule that a change of venue is proper, it is premature to do so without first developing the record. Defendant alleges that the inability to present evidence at a hearing on this issue deprives them of due process, the right to be heard, and causes them to suffer significant prejudice and irreparable harm.

### 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., 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).)

In his Report, when addressing one of the arguments made by defendant in the Petition, the PWCJ states in pertinent part as follows:

It was not necessary to hold a hearing before the change of venue was granted because the “evidence” referred to by petitioner would be immaterial.

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].)

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; see also Cal. Code Regs., tit. 8, § 10787.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

While there may be merit in the PWCJ’s ultimate finding that the case should be transferred to Salinas pursuant to section 5501.6, such a finding requires a record and the opportunity to be heard, in order for there to be a meaningful right of appeal and to comport with due process. It is premature to find that the petitioner’s evidence would be immaterial to the issue at hand, and thus a hearing is proper.

Here, it appears that the PWCJ based his decision solely on a review of the defendant’s written objection to the NIT to change of venue and did not provide an opportunity for the parties to present evidence and create a record. Thus, the Order to change venue to Salinas from San Francisco without creating a record resulted in substantial prejudice and irreparable harm to defendant.

Accordingly, we grant defendant’s Petition for Removal, rescind the November 29, 2023 Order changing venue, and return this matter to the presiding workers’ compensation administrative law judge for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal in response to the Order issued on November 29, 2023 by the PWCJ is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order of November 29, 2023 is **RESCINDED** and the matter is **RETURNED** to the presiding workers' compensation administrative law judge for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 15, 2024**

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

**KIM SCUDDER  
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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*