

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

MAGDALENA PORRAS, *Applicant*

vs.

**HORIZON PERSONNEL SERVICES;
BENCHMARK INSURANCE COMPANY, admin by
NEXT LEVEL ADMINISTRATORS, *Defendants***

Adjudication Number: ADJ10578909

Marina del Rey District Office

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

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 the WCJ's analysis of the petitioner's arguments in the report, we will grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

In his Report, the WCJ summarized defendant's contentions as follows:

The Petitioner, defendant Benchmark Insurance Company, administered by Next Level Administrators, filed a timely verified Petition for Removal on February 20, 2024. The petitioner is aggrieved by a Minute Order cancelling a February 13, 2024 trial in San Diego scheduled before Judge Utter (see Minutes of Hearing dated February 7, 2024), and by the February 7, 2024 order granting the applicant's Petition for Change of Venue to the WCAB in Marina Del Rey, California.

The Petitioner asserts that it has suffered significant prejudice and irreparable harm because the Order Changing Venue was made in excess of 30 days of the date of the filing of the Petition for Change of Venue, in violation of CCR section 10490. The petitioner contends that this is a violation of the petitioner's due process right. The petitioner asserts that the February 7, 2024, order taking the case off-calendar "improperly discussed collateral issue" concerning the case-in-chief (the petitioner is referring to comments suggesting that the case may not be ready for trial).

The petitioner asserts that the case was ready for trial in San Diego on February 13, 2024, and that the rights of the defendant have been prejudiced by the orders cancelling the trial and changing venue to Marina Del Rey. The petitioner contends that it was not served with the November 29, 2022, Notice of Intention to Order Change of Venue, and therefore, was deprived of the right to object and be heard prior to the February 7, 2024, Order for Change of Venue.

The petitioner contends that the case was ordered dismissed with prejudice by order dated March 2, 2018 (served on March 8, 2018), the Board was without power to make any order in the case other than to make a determination whether good cause exists to set aside the Order Dismissing Case.

The petitioner contends that changing venue to Marina Del Rey was improper because the applicant resides 8.1 miles from the Los Angeles district office of the WCAB, and 25.4 miles from the Board in Marina Del Rey. The petitioner asserts that the trial should be conducted in San Diego as the San Diego judge who ordered dismissal of the case may be called by the petitioner as a witness to explain why he issued said order.

In his Report, the WCJ acknowledges that defendant was not properly served with the notice of intention to change venue, and requests that the order be rescinded and the matter returned to the trial level for further proceedings. We agree with the WCJ that due process requires that defendant be provided with notice and an opportunity to be heard, and we will rescind the order. (See Cal. Code Regs., tit. 8, § 10832.)

However, we emphasize the following core principles.

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.) Moreover, the Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) WCAB Rule 10330 states that:

In any case that has been regularly assigned to a workers' compensation judge, the workers' compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued

by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted.

(Cal. Code Regs., tit. 8, § 10330.)

The broad grant of jurisdiction means that a WCJ is empowered to issue orders as appropriate to ensure an adequate and complete record and to fully adjudicate the case. Thus, we disagree with defendant's contention that the WCJ's jurisdiction is limited to the issue of the order dismissing.

Finally, we observe that WCAB Rule 10360(a)(1) (Cal. Code Regs., tit. 8, §10360(a)(1)) specifically precludes testimony by judicial officers regarding: "The reasons for or basis of any decision or ruling they have made." Consequently, defendant's assertion that a basis for the case to remain venued at the San Diego district office is to obtain testimony from the WCJ who issued the original order is meritless and borders on frivolous. (See Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we rescind the February 7, 2024 order changing venue, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the order changing venue of February 7, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of February 7, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 22, 2024

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

**MAGDALENA PORRAS
LAW OFFICES OF PAYMAN ZARGARI
ROSSI LAW GROUP**

AS/mc

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