

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

VERNON JETTLUND, *Applicant*

vs.

**SAMSUNG DATA SOLUTIONS, AMERICA; SAMSUNG FIRE & MARINE INS.,
administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ17674058
San Jose District Office**

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

Applicant seeks removal in response to the order issued by a workers' compensation judge (WCJ) taking the case off calendar at the mandatory settlement conference held on April 25, 2024.

Applicant contends that the actions of the WCJ constitute substantial prejudice and irreparable harm and that the delay in proceeding to trial will further delay applicant's benefits without a reasonable basis for doing so.

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 order taking the case off calendar, and order this matter be set for a status conference pursuant to WCAB Rules 10745 and 10758. (Cal. Code Regs., tit. 8, §§ 10745, 10758.)

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 as set forth in his Report that there appear to be unresolved issues, such as officially adding the defendant's insurance carrier to the proceeding¹, and that the defendant appears to have raised the issue of possible additional parties. However, we also note that the defendant failed to object to the Declaration of Readiness to Proceed (DOR) filed by applicant, and that the WCJ issued an order taking the matter off calendar without making a record.

Petitioner alleges that there is a Qualified Medical Evaluator (QME) reporting by Dr. Talan dated October 28, 2023, that finds applicant sustained a continuous trauma injury at Samsung, however, this report was not listed on the applicant's February 23, 2024 DOR to proceed to an MSC, nor is it clear as to the process by which it was obtained, and upon whom the reporting was served. Further, the DOR places issues such as injury, temporary and permanent disability, as well as self-procured treatment and future medical treatment in issue, and such issues would necessitate reliance on a medical reporting. No physician is listed on the DOR in reliance therein. The good faith efforts listed by applicant on the DOR state:

NO RESPONSE TO LETTER DATED 11/7/23 EXCEPT A MESSAGE FROM EMPLOYER THAT THEY WOULD BE HIRING AN ATTORNEY. REPEATED CALLS TO EMPLOYER DID NOT PRODUCE A LIVE PERSON A RESPONSE, BOARD INTERVENTION NECESSARY TO GET THIS CASE MOVING.

(DOR, 2/23/24, p.7.)

While the WCJ acknowledged that he did not review reporting of a QME prior to issuing the Order to taking the case off calendar, nor are we aware as to the basis upon which the WCJ relied for such Order, taking into consideration the due process rights of the parties, we believe the prudent course is to set this matter for a status conference in order to address and determine what, if any, further discovery is necessary prior to proceeding to a formal hearing.

Both Cal. Code Regs., tit. 8 §10205(jj) under the Electronic Adjudication Management System Rules and WCAB Rule 10305(v) define a status conference as:

¹ As defendant's legal counsel has filed notice of representation and made a general appearance on behalf of their client, the addition to the address record and proceedings may just be a formality. However, we remind all parties of their responsibility to comply with WCAB Rules 10400 and 10401 (Cal. Code Regs., tit. 8, §§ 10400; 10401).

“Status conference” means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

(Cal. Code Regs., tit. 8 §§ 10205(jj), 10305(v).)

Based upon the applicant’s DOR and applicant’s request for “board intervention necessary to get this case moving”, we believe a status conference appears to be the best way to facilitate the preparation of this matter for trial, if necessary. The WCJ is empowered to set a matter for any type of hearing deemed necessary in order to accomplish substantial justice.

WCAB Rule 10745 states:

The Workers’ Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in its discretion, set the case for a type of proceeding other than that requested. The Workers’ Compensation Appeals Board may, on its own motion with or without notice, set any case for any type of hearing and may order that hearings be conducted electronically.

(Cal. Code Regs., tit. 8 §10745.)

WCAB Rule 10758 states:

At the discretion of the workers’ compensation judge, any hearing except a trial may be re-designated as a status conference.

(Cal. Code Regs., tit. 8 §10758.)

Here, the matter was set for an MSC based upon the DOR filed by applicant, and the initial conference of March 21, 2024 was continued by the WCJ to April 25, 2024 at the request of the defendant. Issues listed on Minutes of Hearing (MOH) by the WCJ were coverage, as well as insurance versus self-insured or uninsured status. (MOH, 3/21/24.)

At the MSC of April 25, 2024, the WCJ took the matter off calendar at the request of defendant, and over applicant’s objection. The reason noted under comments states:

“Joinder needed to C.T. claim for carrier with majority of C.T. exposure. CT 3/1/17-323/2023. Record needs to be clarified re: coverage and QME clarification.”

The WCJ also notes:

“Although no written objection filed by [defendant], good cause [unreadable], record not complete.”

(MOH, 4/25/24.)

The WCJ does not discuss the reasoning for his decision. Additionally, no evidence was offered, identified, or admitted at the hearing, and the WCJ did not provide a summary of the evidence he relied upon in making his decision.

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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 v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).)

Here, it appears that the WCJ based his decision solely on a determination that further discovery was necessary prior to proceeding to trial, but failed to provide a basis for such decision, nor the evidence upon which he relied.

As there may be merit to further discovery, the better course of action is to set this matter for a status conference, in order to determine what, if any further discovery is necessary, prior to proceeding to a formal hearing. At that time, should any party object to a finding or order of the WCJ, a record should be made as to the basis for same.

Absent same, we are unable to determine if good cause to take the case off calendar exists at this juncture due to a lack of an adequate record. Therefore, we must rescind the Order and return this matter to the calendar for a status conference for further proceedings consistent with this opinion.

Accordingly, we grant applicant's Petition for Removal, rescind the April 25, 2024 Order, and return this matter to the district office for further proceedings consistent with this decision.

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 Order of April 25, 2024 taking the case off calendar in this matter is **RESCINDED** and this matter is **RETURNED** to the district office for a status conference as well as further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 13, 2024

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

**VERNON JETTLUND
THE BLEDSOE LAW FIRM
LAW OFFICES OF DOUGLAS G. MACKAY
AMARO|BALDWIN**

LAS/abs

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