

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOSE RODRIGUEZ, *Applicant*

vs.

**FEDEX CORP., Permissibly self-insured;
Administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ13359005
Van Nuys District Office**

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

Applicant seeks removal of the Order Denying Motion to Quash Notice of Taking Deposition and Notice for Production of Documents (Order Denying Motion to Quash Deposition) issued by the workers' compensation administrative law judge (WCJ) on December 10, 2020.¹ As relevant herein, the WCJ denied applicant's Motion to Quash Notice of Taking Deposition and Notice for Production of Documents (Motion to Quash Deposition). The WCJ denied the Motion to Quash Deposition because applicant failed to submit a declaration or any other evidence that he had made a reasonable and good faith attempt to resolve informally any deposition-related disputes prior to filing the Motion to Quash Deposition.

Applicant contends that he made efforts to resolve their disputes informally pursuant to the Code of Civil Procedure. Applicant argues that he attached documents to his second Motion to Quash Deposition as evidence of his good faith attempts to resolve informally their disputes. Applicant also argues that defendant's Notice of Deposition and Notice of Production of Documents (Notice of Deposition) failed to comply with the notice requirements found in Code of Civil Procedure section 2025.220(a)(1).

¹ We remind applicant's attorney that an attorney representing a party shall provide his or her state bar number on all pleadings filed with the WCAB pursuant to WCAB Rule 10520. (Cal. Code Regs., tit. 8, § 10520.)

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant removal, rescind the Order Denying Motion to Quash Deposition, and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

According to the Motion to Quash Deposition, defendant issued the Notice of Deposition on December 4, 2020.

On December 8, 2020, applicant filed the Motion to Quash Deposition.

On December 10, 2020, the WCJ issued the Order Denying Motion to Quash Deposition.

On December 15, 2020, applicant filed a Second Motion to Quash Deposition. Defendant attached various documents as exhibits in support of this motion. For an unknown reason, defendant failed to attach any exhibits to the initial Motion to Quash Deposition.

On December 29, 2020, applicant filed a Petition for Removal.

DISCUSSION

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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)(1)-(2); 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).)

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).) As required by Labor Code section 5313 and

explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc), “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” 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.” (Citation omitted.) (*Id.* at p. 476.)

The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*)

The issue that we face on removal is that there is an insufficient record to evaluate applicant’s Petition or the WCJ’s Order Denying Motion to Quash Deposition. There is no record of the issues presented to the WCJ, the arguments the parties made to the WCJ, any stipulations or admissions made by the parties, and/or any evidence that may have been considered. For example, a crucial piece of evidence that is missing is the December 4, 2020 Notice of Deposition. Without the Notice of Deposition, we are unable to consider whether the deposition notice complied with the applicable sections of the Code of Civil Procedure. Likewise, the exhibits that were attached to the Second Motion to Quash Deposition, while potentially relevant, were not offered as evidence with the first Motion to Quash Deposition. Thus, there is no evidence for us to consider. Upon return to the trial level, we recommend that the parties and the WCJ create a proper record.

Accordingly, we grant removal, rescind the Order Denying Motion to Quash Deposition, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the December 10, 2020 Order Denying Motion to Quash Notice of Taking Deposition and Notice for Production of Documents is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the December 10, 2020 Order Denying Motion to Quash Notice of Taking Deposition and Notice for Production of Documents 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 WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 26, 2021

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

**JOSE RODRIGUEZ
LAW OFFICES OF JIM T. RADEMACHER
SEDGWICK CMS
DIETZ, GILMOR & CHAZEN**

SS/abs

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