

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

LAWRENCE COLEY, *Applicant*

vs.

**BONITA HOUSE, INC.; CYPRESS INSURANCE COMPANY,
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES;
THE REFUGE; STATE COMPENSATION INSURANCE FUND *Defendants***

**Adjudication Numbers: ADJ12975927, ADJ13267739
Oakland District Office**

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

Defendant, Bonita House, Inc., insured by Cypress Insurance Company and administered by Berkshire Hathaway Homestate Companies, seeks removal in response to the Order issued by the workers' compensation administrative law judge (WCJ) on January 12, 2021.¹ By the Order, the WCJ consolidated applicant's two cases: ADJ12975927 and ADJ13267739.

Defendant contends that the Order consolidating these two cases will result in significant prejudice and irreparable harm.

We did not receive an answer from applicant or from the defendant in ADJ13267739. The WCJ issued a Report and Recommendation (Report) recommending that we deny removal.

We have considered the allegations of defendant's Petition for Removal and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Applicant filed two Applications for Adjudication alleging injury: to the shoulders and hips on February 5, 2020 while employed as a mental health worker by Bonita House, Inc.

¹ The Order is dated January 11, 2021, but was not served until January 12, 2021.

(ADJ12975927); and to the right shoulder, upper back, middle back and nervous system on April 24, 2020 while employed as a direct care coordinator by The Refuge, insured by State Compensation Insurance Fund (ADJ13267739).

Applicant filed a Petition to Consolidate these two cases on January 4, 2021. The defendant in ADJ12975927 filed an objection to applicant's Petition on January 12, 2021. On the same date, the WCJ issued the Order consolidating the cases.

DISCUSSION

All 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].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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]; *Rucker, supra*, at pp. 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].) A violation of a party's right to due process that prevents a party from having a fair hearing is reversible per se. (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (Pinkney) (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461].)

Additionally, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corp.* (Hamilton) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, "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." (*Id.* at p. 475; Lab. Code, § 5313.)

The Order consolidating applicant's cases was issued on the same date that defendant filed an objection to the consolidation. In order to ensure that defendant is provided with due process, we will rescind the Order and return this matter to the trial level to conduct further proceedings

regarding whether consolidation is warranted. (See Cal. Code Regs., tit. 8, former § 10589, now § 10396 (eff. Jan. 1, 2020).) It is recommended that the issue of consolidation be set for a hearing, at which defendant can be provided with an opportunity to be heard and, if appropriate, offer evidence in support of its contentions.

We make no comment on whether the cases should be consolidated and defer determination of the dispute to the trial level in the first instance.

Therefore, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Order issued by the WCJ on January 12, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order issued by the WCJ on January 12, 2021 is **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 23, 2021

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

**GILSON DAUB
HYNDMAN LAW FIRM
LAWRENCE COLEY
STATE COMPENSATION INSURANCE FUND**

AI/pc

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