

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

EDGAR XAMINEZ, *Applicant*

vs.

**CLAUDIA RAMIREZ, an individual doing business as FIRST CLASS MOVERS RF;
HOLLYWOOD FIVE, INC. dba IHOP; ACE AMERICAN INSURANCE COMPANY;
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ15627821
Van Nuys District Office**

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

The Uninsured Employers Benefits Trust Fund (UEBTF) has filed a petition for removal from the order setting the matter for trial issued on January 23, 2025, by the workers' compensation administrative law judge (WCJ). UEBTF filed a supplemental pleading along with a request for its consideration, which we grant.

UEBTF contends that trial is not appropriate at this time because all necessary parties to the proceeding have not been joined and that not all parties received notice of the mandatory settlement conference (MSC). UEBTF further contends that applicant amended the application for adjudication at the MSC to allege a specific injury, rather than a cumulative injury, and thus UEBTF is entitled to seek additional discovery on that issue prior to trial.

We have not received an Answer from applicant or any other party. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we dismiss removal as untimely or deny removal on the merits. The January 23, 2025 minutes does not contain a properly completed service declaration. Accordingly, we have treated the petition as timely filed.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's Report. Based on our review of the record we will grant removal and as our Decision After

Removal, we will rescind the January 23, 2025 order setting the matter for trial and return this matter to the trial level for further proceedings.

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).) Here, the WCJ ordered the matter to trial, however from our review of the record it is not clear whether all necessary parties are presently joined and received notice of the hearing. This appears to constitute a violation of the due process rights of the parties to be heard, which constitutes irreparable harm, warranting removal.

Here, it appears that applicant initially pled this matter as a cumulative injury all the way through to the date of the MSC. It further appears that applicant amended the application multiple times, which may have resulted in applicant excluding necessary parties to the cumulative trauma claim. Applicant's amendment of the claim to a specific injury on the date of the MSC does not cure the right of those parties to have received notice of the proceedings and their right to appear and be heard on the issue. Moreover, we observe that ultimately whether there is both a specific and/or a cumulative injury will be decided by the trial WCJ, based on the evidence admitted at trial.

Furthermore, we would note that to the extent that UEBTF argues applicant's injury is cumulative and applicant argues that it is specific, the parties may wish to obtain a separate case number for the cumulative injury:

There is but one cause of action for each injury coming within the provisions of this division. All claims brought for medical expense, disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the appeals board, be joined in the same proceeding at any time; provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.

(Cal. Lab. Code, § 5303.)

While it was permissible for applicant to amend the application to change it to a specific injury, even on the day of the MSC, UEBTF should have been provided an opportunity to file an original application alleging cumulative injury, so that a case number could be assigned to that injury and all necessary parties could be joined. Thereafter, the WCJ could consolidate the two cases, and the parties could ultimately proceed to trial on their competing claims.

There may be cases where it is clear that there is only one injury and the sole question is whether that injury was specific or cumulative in nature. In such cases, it is proper to proceed to trial on a single case number and amend the findings to conform with the facts. However, if the parties wish to proceed in that manner, **all necessary parties must be joined**. (Cal. Lab. Code, § 5500.5(b).) The court cannot proceed on a specific injury claim and amend the pleadings to a cumulative trauma while excluding necessary parties from the proceeding.¹

Accordingly, we grant removal and as our Decision After Removal, we rescind the order setting the matter for trial issued on January 23, 2025, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that UEBTF's Petition for Removal from the order taking the order setting the matter for trial issued on January 23, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the order setting the matter for trial issued on January 23, 2025, by the WCJ is **RESCINDED**.

¹ This form of pleading practice may best be limited to those cases where the employer for the specific injury would also be the sole employer liable for the cumulative injury. This form of pleading practice could cause significant confusion in cases like this where it is alleged that there are multiple different employers, some potentially uninsured, while others are potentially insured. The better practice on cases such as this may be to file a separate application for the cumulative injury claim.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 10, 2025

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

**EDGAR XAMINEZ
COOPER BROWN LAW
EQUITABLE LAW
OFFICE OF THE DIRECTOR – LEGAL UNIT (LOS ANGELES)**

EDL/mt

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