

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

EHAB GUIRGUIS, *Applicant*

vs.

**CIRCLE K/76 GAS STATION;
SECURITY NATIONAL INSURANCE COMPANY, AMTRUST NORTH AMERICA,
*Defendants***

**Adjudication Number: ADJ14242832
Marina Del Rey District Office**

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

Defendant seeks removal of the Order issued on October 15, 2024 by a workers' compensation administrative law judge (WCJ) setting this matter for trial over their objection.

We received an Answer from applicant's counsel.

We received a Report and Recommendation (Report) from the WCJ recommending we grant the Petition.

We have considered the allegations of the Petition for Removal, the Answer, 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 consistent with this opinion.

BACKGROUND

A review of the existing record indicates that applicant, while employed on January 3, 2021 by defendant, sustained multiple injuries arising out of and in the course of his employment.

On July 31, 2024, applicant filed and serve upon defendant by first class mail, a Declaration of Readiness to Proceed (DOR), requesting a Mandatory Settlement Conference (MSC) for

October 15, 2024 at 8:30 a.m. All boxes were checked with respect the principle issues upon which to proceed, including the box “Other” listing settlement as an issue. Declarant listed reliance on the report of David Kim dated February 15, 2024. The declaration portion of the DOR requesting declarant list their specific, genuine, good faith efforts, and that discovery was completed on the issues listed was left blank.

On August 13, 2024, defendant filed a verified objection to the DOR, on the basis that applicant’s DOR was defective as it failed to list any good faith efforts to resolve the matter within the body of the DOR, in compliance with Cal. Code of Regulations, tit. 8 § 10742(c).¹

On October 15, 2024, the parties appeared for the MSC, at which time the WCJ set the matter for trial, ordering that the parties sign and file a pre-trial conference statement (PTCS) by October 16, 2024 at 5:00 p.m. A PTCS was thereafter signed and filed, and on November 8, 2024, defendant filed their petition for removal.

The Petition reiterates defendant’s initial objection to applicant’s DOR based upon WCAB Rule 10742(c), and further asserts that they have been deprived of the ability to further develop the record, as they had insufficient time to evaluate the vocational rehabilitation report of Paul Broadus, dated June 20, 2024, received by them on July 9, 2024, as well as conduct other discovery.

The Report of the WCJ addresses these contentions and recommends that the Petition be granted, due to a failure of the WCJ to review the DOR and objection thereto. Also acknowledged by the WCJ is that full development of the record is necessary per *Hamilton*. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).)

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.” (*Hamilton, supra*, at p. 475.) 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.” (*Hamilton*,

¹ WCAB Rule 10742(c) states:

All declarations of readiness to proceed shall state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing the Declaration of Readiness to Proceed, and shall state with specificity on the Declaration of Readiness to Proceed the efforts made to resolve those issues. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the Declaration of Readiness to Proceed. (Cal. Code Regs., tit. 8 § 10742(c).)

supra, at p. 476 citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Further, 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].) A fair hearing is “... one of ‘the rudiments of fair play’ assured to every litigant ...” (*Id.* at 158.) 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*, 82 Cal.App.4th at 157-158; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Due process requires “a ‘hearing appropriate to the nature of the case.’” (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, 96 Cal. Rptr. 2d 595 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865).) Although due process is “a flexible concept which depends upon the circumstances and a balancing of various factors,” it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817, 80 Cal. Rptr. 2d 534.)

Without a record, we are unable to determine whether good cause exists for the Order issued by the WCJ setting this matter for trial over the objection of the defendant.

As such, we must rescind the Order of the WCJ setting this matter for trial, and return this matter back to the trial level for a hearing by the WCJ for further proceedings wherein a record can be made, addressing the objections raised by defendant as to applicant’s DOR to proceed to trial, as well as any unresolved discovery issues.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the Order of October 15, 2024 setting the matter for trial is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order of October 15, 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 7, 2025

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

**EHAB GUIRGUIS
LAW OFFICES OF JOHN MIKHAIL
LLARENA MURDOCK LOPEZ & AZIZAD**

LAS/kl

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