

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

MIGUEL MEJINEZ, *Applicant*

vs.

**SUBSTANCE ABUSE TREATMENT FACILITY, legally uninsured,
STATE COMPENSATION INSURANCE FUND, adjusting agency, *Defendants***

**Adjudication Number: ADJ18376723
Fresno District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a Petition for Removal from the “Order Rescinding Order to Disclose Medical History” (“Order”) issued on January 29, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ rescinded a prior order for applicant to disclose his medical history pursuant to Labor Code¹ section 4663(d) and ordered the parties to meet and confer on the issue and file for a hearing should they not resolve their dispute.

Defendant contends that section 4663(d) compels an employee to disclose all previous permanent disabilities or physical impairments upon request and that defendant has been significantly harmed or unduly prejudiced from applicant’s refusal to disclose.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

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 and based upon the WCJ’s analysis of the merits of petitioner’s arguments in the WCJ’s Report, we will deny removal.

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

¹ All future references are to the Labor Code unless noted.

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, based upon the WCJ's analysis of the merits of petitioner's arguments and for the reasons discussed below, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Section 4663 was amended in 2004 and in pertinent part reads: "(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments." (§ 4663(d).) Here, defendant requests an order compelling applicant to disclose such disabilities or impairments.² The question presented is whether discovery via written interrogatories may be compelled pursuant to section 4663(d).

It has long been held that discovery via written interrogatories is not permitted in workers' compensation. (*Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal. Comp. Cases 111 ["We are enjoined by . . . the Constitution of this state to afford the parties appearing before us a forum which shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character. The adoption by us of a set of rules relating to discovery which would permit a paper war of interrogatories and would require frequent pre-trial appearances by counsel to argue discovery motions would be inconsistent with that constitutional mandate."]); see also *Lubin v. Berkley East Convalescent Hospital* (1976) 41 Cal. Comp. Cases 283.)³

² Defendant's petition does not actually specify the method for production; however, it appears that defendant is presenting this as a demand for written interrogatory via letter to applicant.

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Workers' Compensation Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) The panel decisions discussed herein are referred to because they considered a similar issue. Practitioners should proceed with caution when citing to a panel decision and verify its subsequent history.

Following the amendment to section 4663 in 2004, it was unclear whether a party could conduct discovery of prior permanent disability and impairment via written interrogatory. Panel decisions have reached different conclusions.

In *Smith v. County of Monterey (Smith)*, the panel concluded that the proper method for defendant to compel disclosure pursuant to section 4663 was to take applicant's deposition, stating that "[the] enactment of Labor Code Section 4663(d) does not create a new discovery tool; it provides only that certain information is to be provided. Defendant has ways to obtain that, other than using interrogatories." (2013 Cal.Wrk.Comp. P.D. LEXIS 399.)

Reaching a contrary conclusion, a different Appeals Board panel in *Nadey v. Pleasant Valley State Prison* (2017 Cal.Work.Comp. P.D. LEXIS 446) found no support in the contention that the disclosure of "all previous permanent disabilities or physical impairments" shall only be discoverable at a deposition, and returned the matter to the trial level for the parties to meet and confer, or seek a hearing before a WCJ to determine the details of how applicant shall make the required section 4663(d) disclosures. Thus, the determination of whether discovery via written interrogatory may be ordered was not addressed.

Although section 4663 does not specifically prohibit compelled discovery via written interrogatory, it cannot be read alone. Specifically, it appears that section 5708 limits the *methods* of investigation of Appeals Board proceedings as follows:

All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, **through oral testimony and records**, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

(§ 5708 (emphasis added).)

Section 5708 covers all hearings under Division 4, and thus, it also applies to a petition to compel pursuant to section 4663. Pursuant to 5708, the Appeals Board is limited in the methods that may be used to make inquiry. Such discovery must be via oral testimony or records.

The above discussion addresses only compelled discovery via order of the Appeals Board. A defendant may submit a written request for disclosure pursuant to section 4663. However, this is considered informal / voluntary discovery. Workers' compensation is accustomed to a certain

amount of informality and investigations of workers' compensation claims are expected to proceed in good faith and without delay. (§ 5402.) Thus, it would appear that a defendant may submit a request for disclosure of past permanent disabilities and impairments via writing and applicant may choose to either respond to such a request in good faith, or ignore the request until compelled otherwise (for example, via a deposition or a hearing). In cases where an applicant declines to participate with a good-faith investigation of the claim, depending upon the facts, it may constitute a good-faith basis for defendant to deny the claim or withhold certain benefits, such as permanent disability advances while defendant investigates the issue of apportionment. Thus, it may be in applicant's best interest to participate and answer any questions informally, even if such questions are submitted in writing. Parties are encouraged to engage civilly and in good faith and to cooperate informally to the greatest extent possible so as to avoid straining the limited resources of the court.

The only point made here is that compelled disclosure via order of the Appeals Board is generally limited to oral testimony and records.⁴ Compelled disclosure may not ordinarily proceed via written testimony. Furthermore, all decision of the Appeals Board must be based upon a record. (See *Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473 (Appeals Board en banc).) Oral testimony at deposition or hearing would best provide the necessary record to review the information. (*Hamilton*.)

We find the discussion in *Smith, infra*, persuasive. It appears that the amendment to section 4663 expanded the scope of discovery available to defendants, which was previously limited via case law. (See *Britt v. Superior Court*, (1978), 20 Cal. 3d 844.) Whereas previously, a defendant may have been prohibited from discovering permanent disability and impairment to body parts not associated with the instant claim due to concerns of privacy, section 4663 was amended to expressly permit defendants to obtain discovery of “. . . **all** previous permanent disabilities or physical impairments[.]” (Emphasis added.) While the *scope* of discovery as to apportionment was broadened⁵, the Legislature did not broaden the *methods* of compelled discovery as contained

⁴ The unique facts of a particular case may warrant written testimony based upon other principles of law. For example, if applicant suffered from a disability that precluded oral communication, oral testimony is not an option, and the law of reasonable accommodations must be considered. (See also Civ. Code, § 3531, [“The law never requires impossibilities.”].)

⁵ While the scope of discovery was broadened, it is not unlimited. (See e.g. *Reveles v. State of California Sierra Conservation Center*, 2024 Cal. Wrk. Comp. P.D. LEXIS 124, *4 [“[T]he section contemplates disclosure of specified *disability* or *impairment*, it does not require the employee to disclose all prior *medical treatment*.”].)

within sections 5700, et. seq. and more specifically section 5708. Pursuant to that section, it does not appear that a WCJ has general authority to order written testimony. For these reasons, defendant has not established substantial prejudice or irreparable harm.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Order Rescinding Order to Disclose Medical History issued on January 29, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 9, 2025

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

**MIGUEL MEJINEZ
LAW OFFICES EDWARD J. SINGER
STATE COMPENSATION INSURANCE FUND**

EDL/mt

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