

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

RAFAEL HERNANDEZ, *Applicant*

vs.

SMART AND FINAL; SEDGWICK, *Defendants*

**Adjudication Number: ADJ20201239
Pomona District Office**

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

We have considered the allegations of the Petition for Removal 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant the Petition for Removal, rescind the Minutes of Hearing dated June 12, 2025, and return this matter to the WCJ for further proceedings.

WCAB Rule 10955 states in pertinent part that:

(d) A workers' compensation judge may, ***within 15 days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition.*** If the workers' compensation judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(e) The filing of a petition for removal ***does not terminate the workers' compensation judge's authority to proceed in a case*** or require the workers' compensation judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

(Cal. Code Regs., tit. 8, § 10955(d)(e), emphasis added.)

Here, defendant filed the Petition for Removal on June 17, 2025, and the WCJ issued his Report on June 18, 2025, requesting that we rescind the incorrect Minutes of Hearing.

WCAB 10955(d) protects the limited resources of the Appeals Board when a ready solution to a dispute is easily available at the district office level. Given that only 1 day had passed out of the WCJ's allotted 15 days, it is unclear why the WCJ transmitted the matter to the Appeals Board for a decision rather than simply correcting the error. Upon return, the WCJ must still remove the incorrect Minutes of Hearing and replace them with corrected Minutes of Hearing.

Moreover, we note that even while this matter was pending at the Appeals Board, the WCJ had the power under WCAB 10955(e) to remove the incorrect Minutes of Hearing and replace them with corrected Minutes of Hearing. This action would have obviated the need for this decision, as we could have then dismissed the Petition as moot.

Accordingly, we grant the Petition for Removal and rescind the Minutes of Hearing dated June 12, 2025, and return the matter to the WCJ.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the Minutes of Hearing dated June 12, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minutes of Hearing dated June 12, 2025 are **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 12, 2025

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

**RAFAEL HERNANDEZ
EL MONTE LAW GROUP
DIETZ, GILMOR & CHAZEN, APC**

AS/mc

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

REPORT AND RECOMMENDATION ON REMOVAL

I. INTRODUCTION

Defense counsel's petition dated 6/17/25, filed on 6/18/25, complains that the matter was erroneously set on different cases involving different injured workers and that they are being asked to serve the minutes of hearing issued on 6/12/25 on cases that do not involve them.

Pursuant to CCR 10955(a), the time limit to file a petition for removal is any time within 20 days after service of the order/decision or occurrence of the disputed action. The 6/12/25 Minutes of Hearing was served on defense counsel, tasking them to serve the document within 10 days, by the court on 6/16/25. The petition is timely.

As of 6/18/25, it appears there are no pending hearings.

II. FACTS

Per the 6/12/25 Minutes of Hearing, with regards to ADJ20201239 the parties had reached an agreement and were seeking an OTOC. With regards to ADJ8699756 only, this matter was to be continued and set for status conference.

III. DISCUSSION

Upon further review of this case, it appears defense counsel is correct. This WCJ had previously thought this involved the same injured worker, simply with different cases with different employers and representatives. However, it appears this case involves separate cases with separate injured workers who simply bear the same exact name. The matter appears to be have been set under one name, combining the various ADJs for the conference calendar on 6/12/25. It is worth pointing out that defendant's petition makes it appear that this point was clarified at the hearing when it was only truly clarified in their petition for removal. Representations during the hearing were only that they did not represent a particular defendant, a common enough occurrence when a single injured worker has multiple cases, not that these were entirely two separate injured workers. Contrary to defendant's disrespectful tone of "despite this" the WCJ directed the parties for second call, the reason for the second call was for the parties to investigate and clarify why there was such confusion, rather than just declaring they did not represent a particular defendant and wanted out. Additionally, defendant is correct that were informed to not email this WCJ directly without permission. The reason for this instruction is to prevent ex parte communications especially in cases with several cases.

IV. RECOMMENDATION

This WCJ recommends that the petition for removal be granted, the minutes of hearing issued on 6/12/25 be vacated entirely and all cases returned to the WCJ for further proceedings. This WCJ recommends that each respective case be set for hearing on different dates to prevent any risk of confusion and proper notice be given to all parties.

Date: June 18, 2025

FRANK HSU YEN
WORKERS' COMPENSATION
LAW JUDGE