

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

WALTER RAMOS, *Applicant*

vs.

**99 CENTS ONLY STORES, in liquidation;
SELF-INSURER'S SECURITY FUND, administered by
TRISTAR RISK MANAGEMENT, *Defendants***

Adjudication Numbers: ADJ19245370

Van Nuys District Office

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

Self-Insurers' Security Fund (SISF), seeks removal of the "Order Denying Petition for Joinder of Party Defendant California Self-Insurers' Security Fund" (Order) issued on December 6, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that SISF is not required to file a petition for joinder, but need only file a notice of change in administrator.

SISF argues that a formal order of joinder is required for it to participate in these proceedings.

The WCJ filed a Report recommending that we deny the Petition for Removal.

We have considered the allegations in the Petition for Removal, the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will grant removal and as our Decision After Removal, we will rescind the December 6, 2024 Order and return this matter to the trial level for further proceedings.

FACTS

Although this matter has not proceeded to a formal hearing, the following facts do not appear to be in dispute. Applicant has claimed injury while working for 99 Cents Only Stores, which was self-insured, but has subsequently declared bankruptcy. On December 5, 2024, SISF filed a petition to join itself in these proceedings along with a petition for change of third-party

administrator and a notice of representation. On December 6, 2024, the WCJ issued an order denying joinder as follows:

On December 5, 2024, the Defendant, California Self-Insurers' Security Fund, administered by Tristar Risk Management, Inc., by and through its attorney of record, Thomas Kinsey, LLP, has filed a petition to join itself as a party defendant dated December 5, 2024. Having considered the petition, it is denied without prejudice for the following reason(s):

According to the Application for Adjudication of Claim dated May 9, 2024, the Applicant filed her claim of injury against 99 Cents Only Stores, LLC. Given that the permissibly self-insured entity has entered liquidation, California Self-Insurers' Security Fund, assumed financial liability for the shuttered company, thereby taking over all the rights and responsibilities of the insolvent self-insured employer.

While a WCJ is empowered to join additional parties necessary for the full adjudication of the case at any time, [Labor Code § 5307.5(b); Cal. Code Regs., tit. 8, § 10380] the California Self-Insurers' Security Fund, much like the California Insurance Guarantee Association, rather than functioning as a party defendant separate and distinct from the exiting insolvent self-insured employer, steps in the shoes of that employer and assumes its liability, thereby negating the judicial requirement of a formal joinder as a party defendant. In addition, to require its joinder in every case involving a liquidated self-insured employer places an exceptional burden on already overwhelmed limited judicial resources and frustrates its essentially constitutional purpose of providing expeditious delivery and resolution of litigated workers' compensation cases.

Accordingly, the more appropriate pathway would be by way of notice of change of administrator to ensure that the Official Address Record properly reflects all interested parties. Alternatively, to avoid overtaxing limited judicial resources, a petition for consolidation and joinder could also better serve the requested relief sought.

While the undersigned WCJ will update the official address record to reflect TRISTAR CONCORD as a party participant, the Defendant's requested relief for a formal joinder will be denied.

(Order Denying Petition for Joinder, December 6, 2024.)

SISF seeks removal from the order denying joinder.

DISCUSSION

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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, § 10843(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, § 10843(a).)

Pursuant to section 3743:

- (a) Upon order of the director pursuant to Section 3701.5, the fund shall assume the workers' compensation obligations of an insolvent self-insurer.
- (b) Notwithstanding subdivision (a), the fund shall not be liable for the payment of any penalties assessed for any act or omission on the part of any person other than the fund, including, but not limited to, the penalties provided in Section 132a, 3706, 4553, 4554, 4556, 4557, 4558, 4601.5, 5814, or 5814.1.
- (c) The fund shall be a party in interest in all proceedings involving compensation claims against an insolvent self-insurer whose compensation obligations have been paid or assumed by the fund. The fund shall have the same rights and defenses as the insolvent self-insurer, including, but not limited to, all of the following:
 - (1) To appear, defend, and appeal claims.
 - (2) To receive notice of, investigate, adjust, compromise, settle, and pay claims.
 - (3) To investigate, handle, and deny claims.

(§ 3743 (emphasis added).)

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.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

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 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.4 703, 710 [57 Cal.Comp.Cases 230].)

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en=-098 banc).)

Section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” 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 v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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.)

Here, the WCJ summarily issued an order denying the petition for joinder without issuing a notice of intent and without conducting a hearing on the petition. (Cal. Code Regs., tit. 8, § 10832.) No record supports the order denying joinder; accordingly, due process requires that we grant removal, rescind the order denying joinder, and return this matter to the trial level for further proceedings.

Although the merits of this issue is not presently before us, we would note the following observations, which may assist the parties in this, and similar matters. In essence, the WCJ is noting that petitions for joinder are a procedurally burdensome manner for someone to add *themselves* to the Official Address Record. This is because WCAB Rule 10382 states, in pertinent

part, that: “A party shall not be joined until 10 days after service of either a petition for joinder by a party or a notice of intention to order joinder issued by a workers' compensation judge, **unless the party to be joined waives its right to this notice period.**” (Cal. Code Regs., tit. 8, § 10382, (emphasis added).)

What appears to be causing the procedural burden in this case is that SISF has not taken the extra step and indicated in its petition that notice is waived. As SISF has provided a courtesy copy of an order of joinder for the WCJ to sign, and if SISF were to take the additional courtesy and waive notice, it would not appear unduly burdensome for the WCJ to simply sign an order of joinder in such instances.

However, in this case notice was not waived, and due process was not provided, which requires us to rescind the order denying joinder and returning this to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that SISF's Petition for Removal of the Order issued on December 6, 2024, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Appeals Board that the Order issued on December 6, 2024, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 11, 2025

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

**WALTER RAMOS
LAW OFFICES OF RAY WANG
THOMAS KINSEY, LLP**

EDL/mc

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