

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PORFIRIO CONTRERAS,

Applicant,

vs.

GIBSON FARMS and ZENITH INSURANCE,

Defendants.

Case No. ADJ7707093
(San Jose District Office)

**ORDER DENYING
PETITION FOR
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 said report which we adopt and incorporate, we will deny removal.

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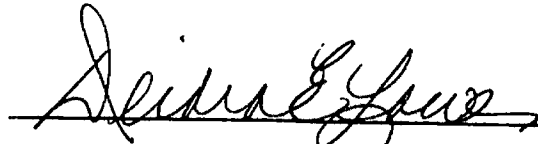
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1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Removal is **DENIED**.

3 **WORKERS' COMPENSATION APPEALS BOARD**

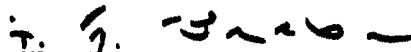
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6 DEIDRA E. LOWE

7 I CONCUR,

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9  **DEPUTY**
10 **CRISTINE E. GONDAK**



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13 **FRANK M. BRASS**

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15 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

16 **OCT 22 2013**

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

19 **PORFIRIO CONTRERAS**
20 **CHERNOW & LIEB**
21 **LAW OFFICE OF MANUEL REYNOSO**



22 ebc

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Worker's Compensation Appeals Board
State of California

CASE NUMBER ADJ7707093

Porfirio Contreras VS.

Gibson Farms and Zenith Insurance

JUDGE: David L. Lauerman

DATE: 9/9/2013

**REPORT AND RECOMMENDATION ON
PETITION FOR REMOVAL**

I

INTRODUCTION

1. Applicant, Porfirio Contreras, born May 2, 1982, while employed at San Jose, California, by Gibson Farms, insured for worker's compensation liability by Zenith Insurance Co., on 6/19/2007, sustained injury arising out of and in the course of this employment to his left shoulder and chest wall, and claims to have sustained injury to his neck, back, and psyche.

2. Petitioner is Applicant, Porfirio Contreras. The Petition was timely filed and verified as required by law. An Answer to the Petition has not yet been filed.

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3. Petitioner seeks Removal from an Order issued on 8/21/2013 which found that Defendant was the 'producing party' privileged to select and hire a Spanish language interpreter to assist at Applicant's deposition.

4. Petitioner contends that it was error to identify Defendant as the 'producing party' within the meaning of Labor Code section 5811 (b)(1).

II

FACTS

The facts of this case are unusually simple and may be briefly stated. Applicant has suffered an admitted injury. Certain body parts remain in dispute. As part of normal discovery, Defendant sought to schedule the deposition of the Applicant. Applicant's attorney declined to allow a date for this deposition to be set unless and until Defendant agreed that Applicant had the right to select and hire a Spanish language interpreter of his

choosing. Defendant declined to concede this privilege to Applicant, and the matter was set for trial before the undersigned for resolution of the dispute. The matter was tried on 7/23/2013 and submitted (submission was delayed until 8/9/2013 for submission of post-trial briefs) on the basis of an Agreed Statement of Facts. On 8/21/2013 a Findings and Order issued permitting Defendant to choose the interpreter. From this Order, Applicant has sought Removal.

III

DISCUSSION

This case presents only one issue. When Defendant sets the deposition of the Applicant, in a case where Applicant does not speak sufficient English for the purpose of participation in a deposition, which party is allotted the privilege of choosing and hiring an interpreter in Applicant's primary language (in this case, Spanish)? The Labor Code answers this question in Section 5811(b)(1) by directing the party "producing the witness" to provide for an appropriate interpreter. The parties are at loggerheads over which party in this situation can be said to have "produced" the witness.

Applicant's first contention is that the plain meaning of the words employed in Section 5811(b)(1) indicate that in this case the Applicant is indicated by the term "producing party" and is thus entitled to select the interpreter. According to Webster's Unabridged Dictionary, 1983 edition (this portion of Section 5811 was last amended in 1993), the first definition of the verb *produce* is; "1. To bring forward; to bring or offer to view or notice; to exhibit, as to *produce* a witness".

In this situation, who is it that seeks to 'bring (the Applicant's testimony) to view or notice? Clearly, that must be the Defendant. Defendant is the active party here, as the party causing the deposition to be taken; Applicant's role in bringing the deposition about is almost entirely passive. Applicant has no reason to depose himself. At trial, of course, the roles are likely to be reversed, and Applicants frequently may then be said to *produce* their own testimony. The person producing the testimony is the person who brings it forward or offers it to notice and view. Here, that person is Defendant.

Therefore, since the plain, dictionary meaning of 'producing party' indicates the Defendant, per labor Code Section 5811(b) (1), Defendant has the duty to select and provide a certified Spanish interpreter for Applicant's deposition.

Applicant's second contention is that other statutes employ similar language to cover different situations. For example, Applicant points to other statutes which assign various duties to "the party setting the deposition", and plausibly points out that this language could have been used in Section 5811 had the Legislature decided to do so. While interesting from an academic point of view, this sort of argument only comes into play where the "plain meaning of the words employed" is ambiguous or produces

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anomalous results. I find no such situation here. First, I do not find the section of 5811 in question to be even slightly ambiguous, although I do not doubt Applicant's good faith. Second, the conclusion required by this reading produced by the common dictionary meaning of the word "produce" is wholly consistent with my own personal experience in the Worker's Compensation field. As a practitioner of WCJ since 1984, it has been, in my experience, the universal practice for the party setting a deposition to arrange for both a court reporter and an interpreter where an interpreter was needed, except in rare cases where the deposing attorney was from out of town and asked for help with these assignments as an accommodation. When personal experience matches plain meaning in this way, the congruence gives added weight to both.

Finally, Applicant alleges that a need to protect attorney-client privilege, as well as practical considerations, makes it preferable from a policy perspective to allow Applicant to select the interpreter. Had I ever encountered (or even heard of) a problem with an interpreter revealing privileged communications during the past 29 years, or had I been involved with problems of accent or dialect that were not easily resolved by a routine telephone call between counsel, I might be more alarmed by these contentions. In any event, it is not within the province of a WCJ to make

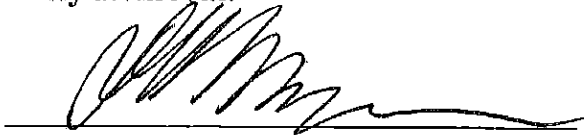
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public policy, but rather to apply each statute as written. I have attempted to
do so.

IV

RECOMMENDATION

Deny Removal.



David L. Lauerman,
Workers' Compensation Judge

Filed and served by Mail on 09/11/2013
All parties on the Official Address Record

By: 

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

09-11-2013

OFFICIAL ADDRESS RECORD

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ZENITH FRESNO	Insurance Company, PO BOX 9055 VAN NUYS CA 91409