

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **RUBEN SANCHEZ,**

5 *Applicant,*

6 **vs.**

7 **KENNEY CONSTRUCTION; SEABRIGHT**
8 **INSURANCE COMPANY,**

9 *Defendants.*

Case No. **ADJ7409044**
(Goleta District Office)

ORDER DENYING
PETITION FOR REMOVAL

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12 We have considered the allegations of the Petition for Removal and the contents of the Report of
13 the workers' compensation administrative law judge with respect thereto. Based on our review of the
14 record, and for the reasons stated in said Report, which we adopt and incorporate, we will deny removal.

15 Applicant is reminded that Court Call is an option for this conference, as noted by the WCJ.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Removal be, and the same hereby is, **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **RONNIE G. CAPLANE**

8 **I CONCUR,**

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12 **FRANK M. BRASS**

13 **CONCURRING, BUT NOT SIGNING**
14 **CRISTINE E. GONDAK DEPUTY**



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

18
19 **MAR 14 2014**

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

22 **BRADFORD BARTHEL**
23 **GHITTERMAN GHITTERMAN**
24 **RUBEN SANCHEZ**

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26 **sye**

27 **SANCHEZ, Ruben**

CASE NUMBER: ADJ7409044

**KENNEY CONSTRUCTION;
SEABRIGHT INC., CO.**

ROBERT T. HJELLE

REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

I INTRODUCTION

1. Applicant's Occupation : Construction Driver
Applicant's DOB :
Date of Injury : 3/27/2009
Parts of Body Injured : head, back, neck, lower extremity
Manner in Which Injury Occurred : auto accident
2. Identity of petitioner : Applicant
Timeliness : The petition is timely
Verification : The petition is verified
3. Date of Issuance of Notice of Hearing: 2/12/2014
4. Petitioners Contention : The applicant claims he is aggrieved by the setting of his status conference on March 10, 2014 in Oxnard while his case is venue Santa Barbara. He alleges it will limit his access to the court.

II FACTS

The facts in this case are essentially undisputed. The district office in Goleta closed in December 2013. The entire calendar was moved down to the Oxnard district office until a new Santa Barbara office was opened January 13, 2014 on East Canon Perdido. Unfortunately, the new facility is unable to accommodate the high volume of foot traffic and parking. Therefore, it has become necessary to ameliorate this problem.

The California Division of Workers' Compensation is transferring conferences from its satellite office in Santa Barbara to the Oxnard District Office because of a lack of space. The division opened the satellite office on East Canon Perdido in Santa Barbara after closing the nearby Goleta District Office in December, 2013.¹

Judicial notice is taken of a DWC Newline that issued on February 14, 2014, explaining the reason for this moveⁱ. The following is noted from this newline: "While the Santa Barbara satellite was welcomed for making DWC service locally accessible, the division has been made aware that the current space cannot accommodate the volume of users," the division said in a statement. "The size of the lobby, hearing room and available parking is particularly insufficient for all parties on conference days, and the crowding is negatively impacting other tenants in the facility."

Citing an increase in tenant complaints in recent weeks, the DWC said it must take immediate steps to reduce its impact on the office building it shares with other tenants including a

¹This Newline can be found on the DWC website: <http://www.dir.ca.gov/DIRNews/2014/2014-10.pdf>

bookstore, several chiropractors, and a legal photocopy service.

Beginning March 3, all conferences that would have been held in Santa Barbara will be moved to Oxnard. "Recognizing that some applicants may have difficulty travelling to Oxnard, the division encourages the use of Court Call in lieu of personal appearances for attorneys who represent applicants in the Santa Barbara area," the division said. "DWC will explore alternatives for unrepresented injured workers, which may include a telephone appearance option to be facilitated by DWC's Information and Assistance staff."

The satellite office in Santa Barbara will be used for a limited number of trials and expedited hearings on Tuesdays, Wednesdays, and Thursdays. No hearings will be held on Fridays, which are set aside for judges to work on their decisions.

The DWC is pursuing a more spacious satellite location in the Santa Barbara area.

"The Division remains committed to serving the County of Santa Barbara," Christine Baker, director of the Department of Industrial Relations, said in a statement. "In the meantime, we appreciate the community's patience while we continue to seek a sustainable presence in the area."

All conferences will continue to be heard by WCJ Scott Seiden who will travel to the Oxnard district office on Mondays to hear those matters.

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III DISCUSSION

Removal is an extraordinary remedy, which is granted only where there is an action that will result in significant prejudice or irreparable harm. Here, a change in the place of a status conference to Oxnard results in the applicant having to travel additional miles to and from his status conference. This is a mere inconvenience, not amounting to significant prejudice nor any substantial harm.

Labor Code section 5700 allows for a change in the place of a hearing. It reads as follows,

“The hearing on the application may be adjourned from time to time and place to place in the discretion of the appeals board or the workers’ compensation judge holding the hearing.”

Venue on all Santa Barbara satellite cases remain in Oxnard. Conferences that were set in the satellite in Santa Barbara County are being heard in Oxnard as a matter of necessity because they cannot be heard in Santa Barbara. Judge Seiden, the judge in Santa Barbara who normally hears all Santa Barbara satellite cases, will also hear all Santa Barbara conferences now set in Oxnard.

The notice setting the conference in Oxnard is not a change of venue. Additionally, there is no statutory nor regulatory provision that precludes the WCAB from changing venue on its own motion and from doing so through a notice of hearing.

The WCAB talks about their power to change the place of a hearing in the unpublished panel decision of *Albina Flores v United California Bank* (2012) ADJ4169757. Here, the Appeals Board sets forth the basis for its broad powers especially at pages 6 and 7, which read as follows:

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"The WCAB is vested with "judicial powers" (Lab. Code, § 111(a) (emphasis added)) and, in legal effect, is a court. (E.g., *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34 Cal.App.4th 1204, 1214 [60 Cal.Comp.Cases 289]; *Fremont Indemnity Co. v. Workers Comp. Appeals Bd. (Zepeda)* (1984) 153 Cal.App.3d 965, 970-971 [49 Cal.Comp.Cases 288]; see also, e.g., *Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 376 [57 Cal.Comp.Cases 391] ("[t]he WCAB. . . is a constitutional court").)

Like other courts, the WCAB has certain inherent powers. (See *Crawford v. Workers' Comp. Appeals Bd.* (1989) 213 Cal.App.3d 156, 164 [54 Cal.Comp.Cases 198] ("the WCAB is authorized to exercise judicial power in all disputes arising under the Workers' Compensation Act as a constitutional court subject to general legal principles which circumscribe and regulate the judgments of all judicial tribunals and in general has inherent power to control its practice and procedure"); see also Lab. Code, § 133 (the WCAB "shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it").)

Among the inherent powers of a court is the power to control its proceedings and do whatever is necessary and appropriate to ensure the prompt and orderly administration of justice. (E.g., *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 276; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267.) This includes the inherent power "to control [its] own calendars and dockets." (*Walker, supra*, 53 Cal.3d at p. 267; see also, e.g., *People v. Engram* (2010) 50 Cal.4th 1131, 1146 ("It is ancient and undisputed law that courts have an inherent power over the control of their calendars ...").) More particularly, it includes the inherent power to transfer the location of a hearing. As stated in *Gray v Municipal Court* (1983) 149 Cal.App.3d 373, 377: "[Courts] possess inherent judicial powers ancillary to their express statutory powers. The transfer of a ... hearing falls within the [Court's] inherent power to manage the calendar." (See also *Walker, supra*, 53 Cal.3d at p. 267 ("transfer authority is one of the inherent powers of a court").)

Furthermore, venue is not jurisdictional. (*Newman v. County of Sonoma* (1961) 56 Cal.2d 625, 627 ("[e]xcept in a few cases in which the Constitution ... or a statute makes [the] place of trial part of the grant of subject matter jurisdiction, venue is not jurisdictional"); see also *People v. Simon* (2001) 25 Cal.4th 1082, 1096 ("[T]he issue of venue in criminal as well as in civil cases does not involve a question of 'fundamental' or 'subject matter' jurisdiction over a proceeding. ... Thus, *venue is not jurisdictional in the fundamental sense.*" (Italics in original))).) Of course, the WCAB has statewide subject matter

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jurisdiction over workers' compensation matters. (Lab. Code, § 5300, 5301.) Therefore, there is no jurisdictional bar to having a particular hearing take place at any district office in California, even if the case is not venued there.

Here, venue has been and continues to be with the Los Angeles district office of the WCAB. Although the lien conference in question was set at the Oxnard district office, the transfer of a particular hearing in a case to another district office, especially when the transferred hearing is not a trial and is ancillary to the case-in-chief, does not constitute a change of venue. Furthermore, the parties and lien claimants were properly notified of the new place of hearing through the issuance of a Notice of Hearing. (Cal. Code Regs., tit. 8, § 10544.) Even if we were to assume, however, that the transfer of a particular hearing in a case *might* constitute a change of venue, venue may be changed for "good cause." (Lab. Code, § 5501.6.)

Ordinarily, this is accomplished through the filing of a petition by one of the parties. (Lab. Code, § 5501.6(a); Cal. Code Regs., tit. 8, § 10411.) Nevertheless, there is nothing that precludes the WCAB from changing venue on its own motion, e.g., as an exercise of its inherent power to control its calendar and/or as an exercise of its power to do all things reasonably necessary, as discussed above. When venue is changed, WCAB Rule 10412 (Cal. Code Regs., tit. 8, § 10412) contemplates the issuance of an order changing venue. However, when the WCAB changes venue on its own motion, there is no statutory or regulatory requirement that a formal order signed by a WCJ must be issued. (See *Badella v. Miller* (1955) 44 Cal.2d 81, 84 ("an order ... for change of venue need not have findings and ... a signed and filed order by the judge need not be entered to be effective").) A Notice of Hearing that specifies a different district office for the place of hearing is sufficient. (Cal. Code Regs., tit. 8, § 10544.)"

The reasoning in *Flores* is sound and applies equally to this matter before the Court. Only conferences are to be heard in Oxnard. All trials will continue to be heard in Santa Barbara before WCJ Seiden. The Appeals Board has the power to direct this.

The present facility in Santa Barbara is unworkable for the volume of business being done there. Due to this issue, we are searching for a new site that can meet our needs. Holding

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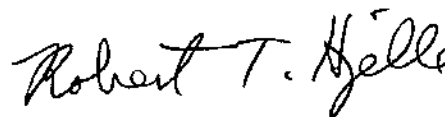
conferences in Oxnard until the new site is found is the only viable alternative at the present time. In the meantime, it is conceded that requiring the parties to travel from the Santa Barbara area to Oxnard and back has a cost of both time and money. Because it puts more vehicles on the road, it also has a cost to the environment and to the safety of the parties who must travel. California is dedicated to a "green" policy. Therefore, best efforts are being made to find a workable answer to this unfortunate circumstance as soon as practicable. We wish to avoid putting even more traffic on our already crowded highways and avoid the risk to those required to travel.

IV

RECOMMENDATION

It is respectfully recommended that applicant's petition for Removal be denied for the reasons stated above.

DATE: March 5, 2014



ROBERT T. HJELLE
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:
BRADFORD BARTHEL VENTURA, E-Mail
GHITTERMAN GHITTERMAN SANTA BARBARA, US Mail
RUBEN SANCHEZ, US Mail

Served on above parties by preferred method of service shown
above at addresses shown on attached Proof of Service:

ON: March 5, 2014
BY: *Cynthia Weber*
Cynthia Weber

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