

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

NORA CORADO, *Applicant*

vs.

**SHERRI GHODSIAN; FEDERAL INSURANCE COMPANY,
administered by CHUBB GROUP LOS ANGELES, *Defendants***

**Adjudication Number: ADJ13608876
Van Nuys District Office**

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

Applicant seeks removal of the Minute Order (Order) issued by the workers' compensation administrative law judge (WCJ) on July 22, 2021. By the Order, the WCJ took the matter off calendar on the basis that expedited hearings are limited to claims with one or more accepted body parts.

Applicant contends that Labor Code¹ section 5502 permits an expedited hearing regarding entitlement to a medical-legal examination and she is precluded from obtaining an examination under section 4060 without an expedited hearing. (Lab. Code, §§ 5502, 4060.)

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we grant removal and issue a decision finding that WCAB Rule 10782 and the WCAB Policy and Procedural Manual are invalid to the extent they prohibit an expedited hearing in conflict with section 5502. (Cal. Code Regs., tit. 8, former § 10552, now § 10782 (eff. Jan. 1, 2020).)

We have considered the allegations of applicant's Petition for Removal, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

¹ All further statutory references are to the Labor Code unless otherwise stated.

FACTUAL BACKGROUND

Applicant claims injury to the head, headaches, cervical spine, thoracic spine, lumbar spine, bilateral arms, bilateral wrists, bilateral hands, bilateral legs, bilateral feet, psyche, internal system, sleep and dental on September 8, 2020 while employed as a housekeeper by Sherri Ghodsian. Defendant has denied this claim in its entirety.

On June 15, 2021, applicant filed a declaration of readiness to proceed (DOR) citing entitlement to medical treatment and reported the disputed issue as:

ENTITLEMENT TO MEDICAL LEGAL EXAMINATION PURSUANT TO
LC SECTION 5502(B)(3) AND LC SECTIONS 4060 AND 4062.2.

(Applicant's DOR, June 15, 2021, p. 2.)

Defendant filed an objection to applicant's DOR.

At the July 22, 2021 expedited hearing, the matter was taken off calendar at defendant's request over applicant's objection. The Order from the hearing states:

Today's expedited hearing is ordered OTOC, over applicant's objection, based on California Code of Regulations, title 8, section 10782(a) and (b), and WCAB Policy and Procedure Manual Index No. 1.20, which limit expedited hearings to claims with one or more admitted body parts, notwithstanding the lack of such an express requirement under Labor Code section 5502(b).

(Order, July 22, 2021.)

No evidence or testimony was taken at the hearing.

DISCUSSION

Preliminarily, defendant in its answer states that applicant has already undergone a medical-legal examination with a chiropractic qualified medical evaluator (QME) in March 2021 per section 4060. It is therefore unclear if there remains a viable dispute regarding entitlement to a medical-legal examination when applicant has already been evaluated by a QME.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board 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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at p. 475.)

The Order in this matter was issued without creation of an evidentiary record. We are unable to address whether the WCJ's decision is supported by substantial evidence in the absence of a record.

Additionally, WCAB Rule 10782(c) permits the WCJ assigned to a case to re-designate an expedited hearing to a mandatory settlement conference. (Cal. Code Regs., tit. 8, former § 10552(c), now § 10782(c) (eff. Jan. 1, 2020).) If the matter is set for an expedited hearing, the WCJ may re-designate the matter to a mandatory settlement conference as warranted in order to permit the parties to adjudicate the dispute.

Upon return of this matter to the trial level, we recommend the trier of fact create a complete evidentiary record regarding this dispute (if the dispute has not been rendered moot as discussed above) and issue a new decision. Either party may then challenge that decision.

Therefore, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Minute Order issued by the WCJ on July 22, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minute Order of July 22, 2021 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 4, 2021

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

**BARKHORDARIAN LAW FIRM
LAW OFFICES OF WEITZMAN & ESTES
NORA CORADO**

AI/pc

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

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ13608876

NORA CORADO

-vs.-

**SHERRI GHODSIAN;
FEDERAL INSURANCE
COMPANY, administered by
CHUBB GROUP LOS
ANGELES**

REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL

I

INTRODUCTION

Applicant, Nora Corado, has through her counsel of record filed a timely, verified petition for removal based on the July 22, 2021 order of the undersigned, taking an expedited hearing off calendar based on the requirements of California Code of Regulations, title 8, section 10782(a) and Workers' Compensation Appeals Board Policy and Procedure Manual Index No. 1.20 that a claim be accepted as compensable by the employer in order to be heard at an expedited hearing. The Minutes of Hearing noted that Labor Code section 5502(b) does not expressly require that a claim be accepted in order to hear it at an expedited hearing. Petitioner contends that because the dispute in this case, regarding entitlement to a medical-legal examination, is expressly included in the list of issues to be set for expedited hearing under section 5502(b)(3), it should have been heard notwithstanding the requirements of the regulations and the policy and procedure manual that bar expedited hearings for denied claims.

Defendants have not yet filed an answer to the petition for removal, and there is currently no hearing scheduled in this case.

II

FACTS

The September 17, 2020 application for adjudication of claim alleges a specific injury of September 8, 2020 to the head, cervical, thoracic, and lumbar spine, bilateral arms, wrists, hands, legs, and feet, psyche, internal, stomach, sleep, and dental body parts while applicant was employed

as a housekeeper in Van Nuys, California. A December 16, 2020 answer, filed on behalf of defendant Chubb Group, the claims administrator for Federal Insurance Company, which is the insurer for employer Sherri Ghodsian, denies injury arising out of and in the course of employment as to all body parts.

A June 15, 2021 Declaration of Readiness to Proceed to Expedited Hearing (DOR) requested an expedited hearing pursuant to Labor Code section 5502(b)(3) on the sole issue of entitlement to medical-legal examination and Labor Code sections 4060 and 4062.2. Defendants objected to the DOR based on its lack of a statement of genuine, good faith efforts to resolve the issue as required by California Code of Regulations, title 8, section 10742(c).

On July 22, 2021, counsel for applicant and defendants appeared by telephone for an expedited hearing, which was ordered off calendar because the claim is denied. The following opinion was written on the Minutes of Hearing:

Today's expedited hearing is ordered OTOC, over applicant's objection, based on California Code of Regulations, title 8, section 10782(a) and (b), and WCAB Policy and Procedure Manual Index No. 1.20, which limit expedited hearings to claims with one or more admitted body parts, notwithstanding the lack of such an express requirement under Labor Code section 5502(b).

On August 10, 2021, counsel for applicant filed a timely, verified petition for removal, contending that the order taking the expedited hearing off calendar deprived applicant of her statutory right to have a dispute regarding her entitlement to a medical-legal examination determined at an expedited hearing. Defendants have not yet filed their answer to the petition at the time that this report was prepared.

III

DISCUSSION

California Labor Code section 5502(b) requires that “[t]he administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed...” The issues identified for expedited hearing in section 5502(b) include “medical-legal examination.” (Labor Code section 5502(b)(3).) A medical-legal examination can be obtained under Labor Code section 4060(c) and 4062.2 to determine

compensability in a case where the injured worker is represented, so a dispute over a medical-legal examination may arise regarding a denied claim.

Reading Labor Code sections 4060(c), 4062.2, and 5502(b)(3) together, it appears that an expedited hearing should be available in any case where there is a dispute over any medical-legal examination, including a medical-legal examination regarding compensability of the entire claim.

However, these statutory rights are curtailed by court rules. California Code of Regulations, title 8, section 10782(a) provides that “[w]here injury to any part or parts of the body is accepted as compensable by the employer, a party is entitled to an expedited hearing and decision upon the filing of an Application for Adjudication of Claim and a Declaration of Readiness to Proceed pursuant to rule 10625 establishing a bona fide, good faith dispute pursuant to Labor Code section 5502(b).” This requirement that “injury to any part or parts of the body is accepted as compensable” is repeated in the Workers’ Compensation Appeals Board (WCAB) Policy and Procedure Manual, Index Number 1.20, which states that “[a]n expedited hearing may be set upon request where an injury has been accepted as compensable by the employer and the issues include medical treatment, treatment within an MPN, temporary disability indemnity or treatment for a disputed body part or parts.” Index 1.20 further curtails the scope of Labor Code section 5502(b)(3) by omitting “medical legal examination” from the issues upon which an expedited hearing may be set.

Petitioner is correct that WCAB Rule 10782(a) contradicts Labor Code section 5502(b)(3) by depriving her of the right to an expedited hearing on a dispute regarding entitlement to a medical-legal examination where compensability of the claim is disputed. However, because the undersigned is obligated to follow the WCAB Rules and Policy and Procedure Manual, the July 22, 2021 expedited hearing regarding entitlement to a medical-legal compensability examination could not proceed and had to be taken off calendar.

The Appeals Board is the appropriate authority to address this disparity between Labor Code section 5502(b)(3) and Rule 10782(a). As pointed out in the en banc opinion in *Anthony Dennis v. State of California* (2020) 85 Cal.Comp.Cases 389, 397, a regulation that is inconsistent with its enabling statute, or exceeds the scope of the enabling statute, is invalid, and it is within the powers of the Appeals Board to make such a finding (citing *Mendoza v. Workers’ Comp. Appeals Bd. (Huntington Hosp.)* (2010) 75 Cal.Comp.Cases 1204). Accordingly, the recommendation of this report is that removal be granted for the purpose of having the Appeals Board address whether California Code of Regulations, title 8, section 10782(a) and Workers’ Compensation Appeals Board

Policy and Procedure Manual Index No. 1.20 are invalid to the limited extent that they prohibit expedited hearings regarding a dispute over a medical-legal examination regarding compensability, which are required to be heard at expedited hearing under the literal provisions of Labor Code section 5502(b)(3). The undersigned believes the current rules do exceed the clear provisions of section 5502(b), which are not in any way negated by the less expeditious provisions for priority conferences under section 5502(c), and that permitting expedited hearings on the issue of whether to proceed to a medical-legal evaluation regarding compensability serves the mandate of California State Constitution, Article XIV, section 4 that the WCAB function expeditiously and without encumbrance.

The petition shows significant prejudice, irreparable harm, and the inadequacy of reconsideration as required by Rule 10955(a) by pointing out that depriving applicant of an expedited hearing on her issue will likely impose an additional six months (or more) of delay in the process of adjudicating a threshold issue of whether she will receive a medical-legal evaluation to determine eligibility for benefits to replace income currently needed for food and shelter, with potentially disastrous consequences (Petition for Removal, p. 5, lines 15-23).

IV

DISCUSSION

It is recommended that the petition for removal be granted, and that the Appeals Board issue a findings and order that California Code of Regulations, title 8, section 10782(a) and Workers' Compensation Appeals Board Policy and Procedure Manual Index No. 1.20 are invalid to the limited extent that they prohibit expedited hearings regarding a dispute over a medical-legal examination regarding compensability, and directing the undersigned to conduct an expedited hearing on petitioner's June 15, 2021 Declaration of Readiness to Proceed.

DATE: 8/19/2021



Clint Feddersen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE