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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARGARET NADEY,

Applicant,

vs.

**PLEASANT VALLEY STATE PRISON,
permissibly self-insured and administered by
STATE COMPENSATION INSURANCE
FUND,**

Defendants.

Case No. **ADJ9950392**
(Fresno District Office)

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

Defendant seeks removal of the Order issued by the workers' compensation administrative law judge (WCJ) on April 26, 2017, wherein the WCJ denied Defendant's Motion to Compel disclosure of prior permanent disabilities pursuant to Labor Code section 4663 on the basis that defendant had other means of seeking the information. Defendant contends the WCJ erred because applicant is required to provide the information "upon request."

We did not receive an answer from applicant. We received a Report and Recommendation on Petitioner for Removal (Report) from the WCJ, recommending that removal be denied. Based on our review of the record, we will grant removal, rescind the Order, and return this matter to the trial level for further proceedings.

FACTUAL BACKGROUND

On March 18, 2015, applicant submitted a Workers' Compensation Form DWC-1 to her employer claiming injury to her right shoulder. She later filed an application for adjudication, claiming she suffered a specific injury to her shoulders and lower extremities while employed by defendant as a nurse on November 11, 2014.

1 On March 30, 2015, defendant sent applicant a letter stating: "Pursuant to Labor Code section
2 4663(d), we hereby request disclosure of ALL permanent disabilities or physical impairments that
3 existed prior to the injury." (See Motion to Compel, Ex. A.) A second letter, sent on the same day,
4 requested that applicant "list below the medical treatment(s) you have received during the last 10 years,
5 sign the enclosed medical release permit(s) and return this form and the medical release permit(s) to this
6 office WITHIN 10 DAYS." (*Ibid.*) Applicant was unrepresented at the time these letters were mailed,
7 and, so far as the record discloses, did not respond; applicant became represented on or shortly before
8 May 7, 2015 when she filed the application for adjudication.

9 On February 3, 2017, defendant sent applicant's attorney an essentially identical version of the
10 second letter sent on March 30, 2015 – the letter requesting the list of prior medical treatments and
11 medical release permits. (See Motion to Compel, Ex. B.) On March 16, 2017, defendant re-sent this
12 same letter, with only the date changed. (See Motion to Compel, Ex. C.)

13 On April 18, 2017, defendant filed a Motion to Compel, seeking to compel applicant to respond
14 to the letters it had sent – both the initial 2015 request for disclosure of permanent disabilities, and the
15 request for information on medical treatments received during the last 10 years sent in 2015, and twice in
16 2017.

17 On April 26, 2017, the WCJ issued a ruling denying the Motion to Compel, signed April 21,
18 2017. The WCJ wrote on the cover page of the Motion to Compel: "DENIED. Defendants have other
19 avenues of discovery available short of an order compelling." (See Order Denying Petition to Compel.)

20 This Petition for Removal followed. Defendant argues that disclosure should be ordered pursuant
21 to Labor Code section 4663(d).

22 DISCUSSION

23 Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers'*
24 *Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5];
25 *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases
26 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial
27 prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(a);

1 see also *Cortez, supra; Kleemann, supra.*) Also, the petitioner must demonstrate that reconsideration
2 will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code
3 Regs., tit. 8, § 10843(a).)

4 Labor Code section 4663(d) states: "An employee who claims an industrial injury shall, upon
5 request, disclose all previous permanent disabilities or physical impairments." (Lab. Code, § 4663(d).)

6 Here, defendant's initial letter to applicant in 2015 requested disclosure of previous permanent
7 disabilities, pursuant to Labor Code section 4463(d). The other 2015 letter, re-sent twice in 2017, sought
8 disclosure of past medical treatment received during the past 10 years. We observe that these requests
9 for disclosure of past medical treatment were not pursuant to Labor Code section 4663(d).

10 However, to the extent that the Motion to Compel seeks disclosure of previous permanent
11 disabilities or physical impairments pursuant to Labor Code section 4663(d), we believe the WCJ erred
12 in denying the motion. The Report appears to suggest that defendant should be required to depose
13 applicant if defendant wishes to obtain information about applicant's prior disabilities. We find no
14 support for this contention in the language of the statute, which states clearly and unequivocally that
15 applicant "shall" disclose such information "upon request." (Lab. Code, § 4663(d).) If the Legislature
16 intended such information to be only discoverable at a deposition, it would not have worded the statute in
17 the manner it did. Moreover, we see little sense in mandating that such a basic disclosure be
18 accomplished via the costly and time-consuming method of taking a deposition.

19 We note that the Petition to Compel Disclosure does not include a timeframe for response, or
20 mandate any particular method of response. We will therefore return the matter to the trial level for
21 further proceedings. We suggest the parties confer among themselves and resolve the details amicably in
22 a mutually satisfactory manner; if the parties cannot do so, they make seek a hearing before the WCJ,
23 who can then determine the details of how applicant shall make the required Labor Code section 4663(d)
24 disclosures.

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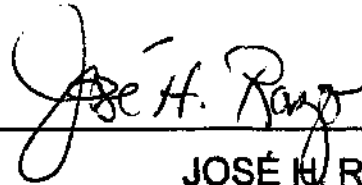
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1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Removal of the Order issued by the WCJ on April
3 26, 2017 is **GRANTED**.

4 **IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation
5 Appeals Board that the Order issued by the WCJ on April 26, 2017 is **RESCINDED** and that the matter
6 is **RETURNED** to the trial level for further proceedings.

7
8 **WORKERS' COMPENSATION APPEALS BOARD**

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11 **JOSÉ H. RAZO**

12 **I CONCUR,**

13
14  **CHAIR**
15 **KATHERINE ZALEWSKI**

16
17 
18 **DEIDRA E. LOWE**



19
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **SEP 29 2017**

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

24 **MARGARET NADEY**
25 **FARBER**
26 **STATE COMPENSATION INSURANCE FUND**

27 **AW/bea**

NADEY, Margaret