

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WJT
LBD

ANTONIA SANCHEZ,

Applicant,

vs.

BURNS INTERNATIONAL SECURITY
SERVICES/CONSTITUTION STATE
SERVICE COMPANY,

Defendants,

Case No. 92 VNO 256545
92 VNO 256546

OPINION AND ORDER
GRANTING PETITION FOR
REMOVAL PURSUANT TO
LABOR CODE 5310

Defendant, Burns International Security, petitions the Appeals Board for an order removing this case from the Van Nuys office of the Workers' Compensation Appeals Board (WCAB) and requests an order rescinding the November 20, 1992 order denying venue and an order transferring this case to the Long Beach office of the WCAB. Defendant contends that it was not provided a hearing on its change of venue motion; rather, the acting presiding workers' compensation judge (Presiding WCJ) denied the request for change of venue and denied defendant's request to hear oral arguments on the motion for change of venue. Further, defendant argues that the acting Presiding WCJ did not state reasons for her decision.

Based on our review of the record and for the reasons stated herein, we will grant the Petition for Removal, order the case transfer to the Appeals Board from the Van Nuys office of the WCAB, rescind the order denying change of venue, and order the case transferred to the Van Nuys office of the Workers' Compensation Appeals Board in order for the presiding workers'

1 compensation judge to conduct a hearing and issue a decision
2 stating the reasons therefor.

3 The record reflects that applicant selected the Van Nuys
4 office of the WCAB as the venue where the application would be
5 filed. Apparently, the law office of applicant's attorney, Mr.
6 Jack Goodchild, is the Van Nuys area. Defendant responded to
7 applicant's venue selection with an information response form,
8 dated July 1, 1992, objecting to the venue selected by applicant.
9 Next, an Application for Adjudication of Claim was filed on
10 September 21, 1992, for the admitted upper back and neck injuries
11 applicant sustained while employed as a security guard. Defendant
12 filed an answer raising issues which included venue and filed a
13 Petition for Change of Venue pursuant to Labor Code section
14 5501.6. The matter was set for a pre-trial conference on November
15 20, 1992, and the issue of change of venue was referred to the
16 acting presiding workers' compensation judge for decision.
17 Apparently, defendant requested a record of the acting presiding
18 judge's denial of the change of venue motion and requested oral
19 argument, which was also denied. A minute order issued denying
20 defendant's request for change of venue and denying defendant's
21 request to be heard on the issue.

22 In its Petition for Change of Venue defendant had set forth
23 that there was good cause to change the venue to the Long Beach
24 office because there was no rational connection between any issue
25 and/or fact in this case and the venue selected by applicant
26 and/or applicant's attorney. Defendant also set forth that the
27 change of venue request was made for the convenience of witnesses

1 and defendant provided the names, addresses and substance of
2 testimony of the witnesses.

3 In its Petition for Removal defendant sets forth that the
4 distance from applicant's home to the Van Nuys office is 39 miles
5 and to the Long Beach office is five miles; that the distance from
6 defense witnesses' residences to the Van Nuys office is 39 miles
7 and to the Long Beach office is five miles; and, that the distance
8 from applicant's physician's office to the Van Nuys office is 39
9 miles and to the Long Beach office, five miles. Further,
10 defendant set forth in its Petition for Removal that applicant's
11 injury occurred in Long Beach, the applicant resides in Long
12 Beach, and the employer is located in Long Beach.

13 We are persuaded that good cause exists to warrant use of the
14 extraordinary remedy of removal in this case, pursuant to Labor
15 Code section 5310. (See also, *Swedlow, Inc. v. Workers' Comp.*
16 *Appeals Bd. (Smith)* (1983) 48 Cal.Comp.Cases 476 (writ denied).)
17 We believe under the specific facts of this case the most
18 appropriate procedure is to grant removal, rescind the Order
19 Denying Change of Venue and transfer the case to trial level in
20 the Van Nuys office to be set for hearing on the venue issued.
21 The presiding workers' compensation judge may then issue a
22 decision and state whether or not good cause has been demonstrated
23 to change venue, along with reasons for the decision.

24 For the foregoing reasons,

25 IT IS ORDERED that defendant's Petition for Removal filed
26 January 25, 1993, be, and the same hereby is, GRANTED.

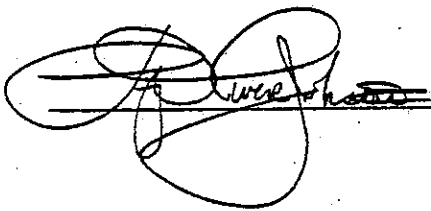
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SANCHEZ

1 IT IS FURTHER ORDERED that the case be TRANSFERRED from the
2 Van Nuys office of the Workers' Compensation Appeals Board to the
3 Appeals Board.

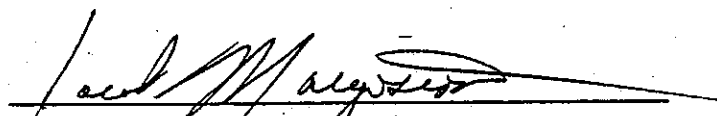
4 IT IS FURTHER ORDERED that the November 20, 1992 Orders
5 Denying Defendant's Request for Court Reporter to argue venue and
6 denying motion for change of venue be, and the same hereby is,
7 RESCINDED.

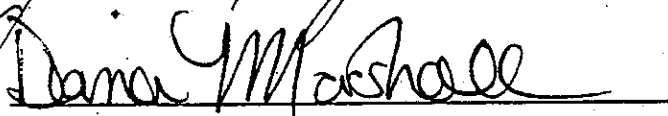
8 IT IS FURTHER ORDERED that this case be RETURNED to the trial
9 level at the Van Nuys office of the Workers' Compensation Appeals
10 Board to be set for hearing before the presiding workers'
11 compensation judge who may then issue a decision and state reasons
12 therefor.

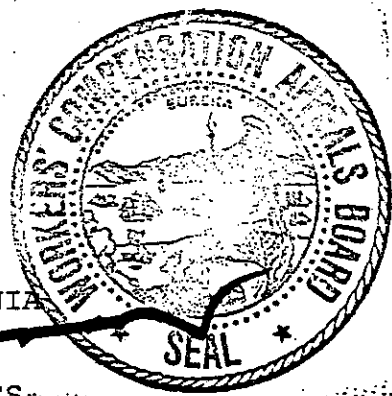
13 WORKERS' COMPENSATION APPEALS BOARD

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17 I CONCUR,

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23 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUN 22 1993

24 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
25 AS SHOWN ON THE OFFICIAL ADDRESS RECORD.

26 vp