

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

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<p>GLORIA WINSTON,</p> <p><i>Applicant,</i></p> <p>vs.</p> <p>ALLIED SIGNAL AEROSPACE; TRAVELERS' INSURANCE COMPANY,</p> <p><i>Defendant(s).</i></p>

Case No. LAO 646694
LAO 656002

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

Pursuant to Labor Code section 5310, defendant Allied Signal Aerospace, has filed a petition requesting that the Appeals Board remove this matter to itself and order that we issue an Order Compelling the Applicant to Attend Defendant's Deposition with an employer representative present, and to issue an Order Denying Applicant's Motion for a Protective Order. Defendant contends that removal is the only adequate remedy because the workers' Compensation judge (WCJ) has failed to issue written rulings regarding defendant's Motion to Compel Volume II of Applicant's Deposition, and Applicant's Motion for Protective Order.

At the outset, we note that defendant seeks removal in case Nos. LAO 646694 and LAO 656002. However, case No. LAO 646694 is not assigned to the present WCJ and no action has been taken on that case by the present WCJ. Accordingly, the Petition for Removal will be dismissed as to that case. Furthermore, we note that an Order regarding the parties' motion did issue on November 13, 1992 denying defendant's Motion to Compel Volume II of Applicant's Deposition, and granting applicant's Motion for Protective Order. Nevertheless, after reviewing the record, and carefully considering the applicable facts and law, we will grant removal. We take this action for the following reasons.

Removal is an extraordinary remedy, rarely exercised by the Board. However,

1 removal has been granted in certain instances, including instances relating to the
2 propriety of decisions regarding discovery at the trial level. (*Hardesty v. McCord &*
3 *Holdren, Inc., et al.*, (1976) 41 Cal.Comp.Cases 111 (Board En Banc); *Lubin v. Berkeley*
4 *East Convalescent Hospital* (1976) 41 Cal.Comp.Cases 283 (Board Panel). Moreover,
5 the Board will exercise its power of removal where failure to do so will result in
6 substantial prejudice or irreparable injury. (*Swedlow, Inc. Workers' Comp. Appeals*
7 *Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ denied).

8 In the present matter, we are persuaded that the WCJ erred in excluding
9 defendant employer's representative from applicant's deposition as defendant
10 employer's representative is a party to this action, and therefore entitled to be present
11 at the deposition (Cf., *Willoughby v. Superior Court* (1985) 172 Cal. App. 3d 890, 218.)
12 Therefore, the parties are to agree to the terms of the deposition, which should not
13 exclude the presence of defendant employer's representative from the deposition. In
14 light of these circumstances, we are not persuaded that a Protective Order is
15 appropriate, and therefore applicant's request for a Protective Order will be denied.

16 Accordingly, we will grant removal, rescind the November 13, 1992 Order, and
17 issue our substituted Order granting defendant's Motion to Compel Volume II of
18 Applicant's Deposition, and denying applicant's Motion for Protective Order.

19 For the foregoing reasons,

20 **IT IS ORDERED** that defendant's Petition for Removal filed June 17, 1993, be,
21 and it hereby is, **GRANTED**.

22 **IT IS FURTHER ORDERED** that this matter, be, and it hereby is **REMOVED** to
23 the Appeals Board (Lab. Code, § 5310), and the November 13, 1992 Order, be, and it
24 hereby is, **RESCINDED**, the following Orders **SUBSTITUTED** therefor, and this matter
25 is **REMANDED** to the workers' compensation judge for further proceedings and
26 decision.

27 **///**

ORDERS

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IT IS ORDERED that applicant Gloria Winston submit to her deposition been taken at a time and place mutually convenient to the parties with an employer representative present.

IT IS FURTHER ORDERED that Applicant's Motion for a Protective Order is hereby DENIED.

WORKERS' COMPENSATION APPEALS BOARD

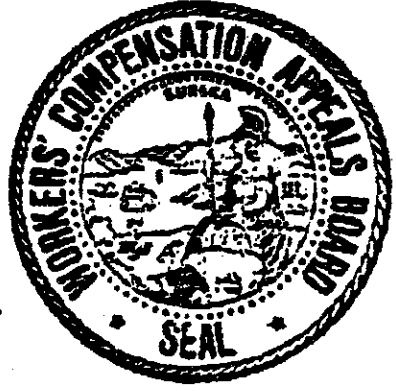
[Handwritten Signature]

I CONCUR,

[Handwritten Signature]

NOT PARTICIPATING

Dennis J. Hannigan Deputy



DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

JUN 28 1994

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS.

vp *[Handwritten Signature]*