

1 WORKERS' COMPENSATION APPEALS BOARD  
2 STATE OF CALIFORNIA

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3 Case No. LAO 668908

4 JOSE CALDERON,

5 *Applicant,*

6 vs.

7 GOODWILL INDUSTRIES OF  
8 SOUTHERN CALIFORNIA,

9 *Defendant(s).*

OPINION AND ORDER  
GRANTING PETITION  
FOR REMOVAL

10 Defendant, Goodwill Industries of Southern California, filed  
11 a petition requesting that the Appeals Board issue orders re-  
12 moving this case from the Los Angeles Office of the Workers'  
13 Compensation Appeals Board to itself, and rescinding the workers'  
14 compensation judge's (WCJ) order dismissing the application. The  
15 WCJ's dismissal states:

16 "Nothing has been done to comply with Labor  
17 Code section 4061. Defendant's AME/QME let-  
18 ter is insufficient and they refused to dis-  
19 cuss AME's subsequent to the last dismissal  
of the their application." (See Minutes of  
Hearing for March 7, 1994, served March 9,  
1994.)

20 Defendant requests that the Appeals Board issue an order  
21 returning this case to the trial level for all further proceedings  
22 and decision.

23 Defendant sets forth that (1) applicant sustained an admitted  
24 ankle injury on June 25, 1992 and an alleged psychiatric injury  
25 which was timely denied; (2) it objected to the determination of  
26 applicant's treating physician and sent a letter to applicant  
27 offering the name of an Agreed Medical Examiner (see letter dated

1 August 27, 1992); (3) this letter was sent pursuant to Labor Code  
2 section 4062, and did not extend the time period within which ap-  
3 plicant could respond beyond ten days; (4) applicant failed to  
4 respond to defendant's offer to use an AME, Dr. Jeffrey Berman,  
5 and thereafter both applicant and defendant obtained their sepa-  
6 rate medical reports from qualified medical examiners; (5) at the  
7 Mandatory Settlement Conference (MSC) on September 30, 1993, the  
8 WCJ dismissed the application; (6) thereafter, defendant filed a  
9 second application and a second MSC was scheduled for March 7,  
10 1994 and defendant's application was again dismissed; (7) the WCJ  
11 erred in dismissing the application and in reasoning that defen-  
12 dant's letter pursuant to Labor Code section 4062 was invalid  
13 insofar as it offered the applicant a choice of only one physician  
14 as an AME and because defendant refused to extend the time period  
15 in which applicant could respond.

16 Based on our review of the record and for the reasons stated  
17 herein, we will grant the Petition for Removal, order this case  
18 removed to the Appeals Board, rescind the order of March 9, 1994,  
19 dismissing the second application and issue an order returning the  
20 case to the trial level to be set for hearing on all issues.

21 Labor Code 4062 section provides in part:

22 "Parties shall seek agreement with the other  
23 party on a physician, who need not be a  
24 qualified medical evaluator, to prepare a  
25 report resolving the disputed issue. If no  
26 agreement is reached within ten days, or any  
27 additional time not to exceed 20 days agreed  
upon by the parties, the parties may not  
later select an agreed medical examiner."  
(Emphasis added.)

Here, defendant offered one physician as the AME and this was

1 not accepted by applicant. Applicant did not suggest any other  
2 physician to defendant or otherwise attempt to arrive at an agreed  
3 medical examiner. Therefore, we are persuaded that there has been  
4 no agreement on an AME and that the parties were free to go to  
5 their respective QMEs. We are not persuaded by the WCJ's  
6 recommendation that defendant should offer three physicians rather  
7 than one, particularly in light of the parties continued failure  
8 to make an agreement on a physician. On remand this case should  
9 be set for trial allowing the medical reports of the respective  
10 QMEs for each side into evidence.

11 Therefore, we find that good cause has been presented to  
12 warrant use of the extraordinary remedy of removal pursuant to  
13 Labor Code section 5310.

14 For the foregoing reasons,

15 IT IS ORDERED that defendant's Petition for Removal filed  
16 April 20, 1994, be, and the same hereby is, **GRANTED**.

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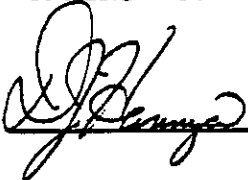
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IT IS FURTHER ORDERED that the dismissal of the applica-  
tion dated March 9, 1994, be, and the same hereby us, **RESCINDED**  
and the case **TRANSFERRED** to the trial level for further proceed-  
ings and decision, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD  
  
DEPUTY

I CONCUR,

  
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**PARTICIPATING, BUT NOT SIGNING**

Diana Marshall  
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DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

**DEC 29 1994** 

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

VP

