

1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

3
4 MARGARET McINNIS,

5 Applicant,

6 vs.

7 CITY OF NEWPORT BEACH;
8 HERTZ CLAIM MANAGEMENT,

9 Defendant(s).

Case No. AHM 22466
AHM 22468
AHM 22469

ORDER DENYING
REMOVAL

10 We have considered the allegations of the Petition for Removal and the
11 contents of the report of the workers' compensation judge with respect thereto. Based
12 on our review of the record, and for the reasons stated in said report which we adopt
13 and incorporate, we will deny removal.

14 For the foregoing reasons,

15 IT IS ORDERED that said Petition for Removal be, and it hereby is, DENIED.

16 WORKERS' COMPENSATION APPEALS BOARD

17
18 *Katrin*

19 I CONCUR,

20 *Aileen N. Heath*

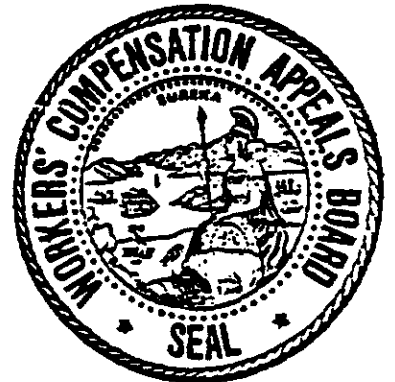
21
22 *[Signature]*

23 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

24 AUG 24 1995

25 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON
26 THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS
BUT INCLUDING THE PETITIONING LIEN CLAIMANT.

27 vp *[Signature]*



26 AUG 28 1995

STATE OF CALIFORNIA
Department of Industrial Relations
WORKERS' COMPENSATION APPEALS BOARD

REPORT OF RECOMMENDATION OF WORKERS' COMPENSATION JUDGE
ON PETITION FOR REMOVAL;
PETITION FOR COSTS AND SANCTIONS AGAINST DEFENDANTS

Case Numbers AHM 22466; AHM 22468; AHM 22469

MARGARET McINNIS

v. NEWPORT BEACH H POLICE DEPARTMENT;
HERTZ CLAIM MANAGEMENT

JUDGE JOEL W. GRAY

Counsel -Law Office of KEGAL, TOBIN & TRUCE, by Joe Truce,
Attorney for Defendants

-LEGAL SERVICE BUREAU, Representative for Lien Claimant,
Blue Cross of California

I. INTRODUCTION & II. DISCUSSION

The lien claimant, Blue Cross of California represented by Legal Service Bureau has filed a Petition for Removal; Petition for Costs and Sanctions against Defendants.

Specifically, the lien claimant is aggrieved because the defendants would not serve copies of deposition transcripts on the lien claimant and that this Judge would not order the defendants to do so.

There are numerous cases that stand for the proposition that the Appeals Board's power to remove a case to itself under Labor Code Section 5310 is discretionary and is generally employed only as an extraordinary remedy where the petitioner has established that substantial prejudice or irreparable injury will result if removal is not granted.

At a lien conference scheduled for 07/19/95, the representative for the lien claimant requested that the defendant serve copies of all depositions taken of the applicant, and when the defendant refused the lien claimant requested that this Judge serve an order whereby the defendant would be ordered to serve copies of all the deposition transcripts on the lien claimant.

The defendant explained that there were approximately 10 volumes of depositions and that they all pertained to the civil case and not to the worker's compensation case and that if the lien claimant so desired, he could come to the defendant's office and photocopy said depositions.

Furthermore, if the lien claimant did not wish to incur any expense, he could contact the applicant's attorney, who, after all, made the referral to the lien claimant, and borrow their copies of the depositions since the civil case has been settled.

There is no obligation on the defendant to serve copies of depositions on the lien claimant at defendant's expense.

When the Labor Code and Administrative Rules indicate documentary evidence to be served, this pertains to medical reports and records and not to deposition transcripts which are not even being used in the proceedings by the defendant and were only for its discovery, and especially the civil case

depositions that are not even involved in the worker's compensation case, and which are easily obtainable by the lien claimant.

III. RECOMMENDATION

Since it has not been shown that substantial prejudice or irreparable injury will result if removal is not granted, it is recommended that the Petition for Removal be denied



JUDGE JOEL W. GRAY
WORKERS' COMPENSATION APPEALS BOARD

DATED: 8/2/95

Served on all parties shown on
the Official Address Record
by Y. Drake Y. Drake.

IN THE EVENT A PETITION FOR RECONSIDERATION IS FILED FROM THIS DECISION, IT IS REQUIRED, PURSUANT TO RULE 10840, THAT SAID PETITION BE FILED AT THE ANAHEIM WCAB.