

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. LAO 670255**

4 **RAFAEL ZARAGOZA,**

5 *Applicant,*

6 *vs.*

7 **GOODWILL INDUSTRIES OF
SOUTHERN CALIFORNIA,**

8 *Defendant(s).*

**OPINION AND ORDER
GRANTING PETITION FOR
REMOVAL**

9
10 Pursuant to Labor Code section 5310, defendant Goodwill Industries of
11 Southern California, has filed a petition requesting that the Appeals Board remove
12 this matter to itself and order the workers' compensation judge to comply with
13 procedures set forth in Labor Code sections 5501, and 5502. Defendant contends that
14 removal is the only adequate remedy because in conducting workers' compensation
15 proceedings at the trial level, the Los Angeles office of the Workers' Compensation
16 Appeals Board (WCAB) has failed to follow specific procedures as delineated by Labor
17 Code sections 5501, and 5502.

18 After reviewing the record, and for the reasons set forth below, we will grant
19 removal, and order that an expedited Mandatory Settlement Conference (MSC) be set
20 in the present matter. We will return this matter to the WCJ for further proceedings
21 and decision.

22 In its Petition for Removal, defendant alleges that the applicant filed an
23 Application for Adjudication of Claim (claim) dated November 24, 1992, and that on
24 December 23, 1992, defendant filed and served its answer and a mandatory settlement
25 conference statement. On December 30, 1992, a Notice of Hearing was sent to the
26 parties scheduling an "Assigned Conference" for April 15, 1993. At the "Assigned
27 Conference," the defendant moved for exclusion of applicant's evidence because

1 applicant failed to file a mandatory settlement conference statement. The WCJ
2 indicated that he would not hold the applicant to the provisions of Labor Code section
3 5502(d)(3) because the Notice of Hearing read "Assigned Conference," and a MSC was
4 scheduled for September 20, 1993. Defendant, accordingly seeks removal, asserting
5 that the WCJ failed to comply with Labor Code section 5502.

6 Removal is an extraordinary remedy, rarely exercised by the Appeals Board.
7 However, removal has been granted in certain instances, including instances relating
8 to the propriety of decisions at the trial level. (*Hardesty v. McCord & Holdren, Inc., et*
9 *al.*, (1976) 41 Cal.Comp.Cases 111 (Board En Banc); *Lubin v. Berkeley East Convalescent*
10 *Hospital* (1976) 41 Cal.Comp.Cases 283 (Board Panel). The Appeals Board will exercise
11 its power of removal where failure to do so will result in substantial prejudice or
12 irreparable injury to the parties. (*Swedlow, Inc. Workers' Comp. Appeals Bd. (Smith)*
13 (1985) 48 Cal.Comp.Cases 476 (writ denied). Furthermore, Labor Code section 5502
14 stated at the time applicant's claim was filed, in relevant part, as follows:

15 "d) (1) In all cases, [1] a mandatory settlement conference
16 shall be conducted [2] not less than 10 days, and not more
17 than 30 days, after the filing of an application for
18 adjudication of claim. If the dispute is not resolved, the
regular hearing shall be held within 75 days after the
declaration of readiness to proceed is filed.

19 "(2) The settlement conference shall be conducted by a
20 workers' compensation judge or a referee who is eligible to
21 be a workers' compensation judge or eligible to be an
22 arbitrator under Section 5270.5. At the mandatory
23 settlement conference, the referee or workers'
24 compensation judge shall have the authority to resolve the
25 dispute, including the authority to approve a compromise
26 and release or issue a stipulated finding and award, and if
the dispute cannot be resolved, to frame the issues and
stipulations for trial. The appeals board shall adopt any
regulations needed to implement this subdivision. The
presiding workers' compensation judge shall supervise
settlement conference referees in their performance of their
judicial functions under this subdivision.

27 "(3) Ten days before the mandatory settlement conference,

1 the parties shall file a conference statement noting the
2 specific issues in dispute, listing the exhibits, and disclosing
3 witnesses. Discovery shall close on the date of the
4 mandatory settlement conference. Evidence not disclosed
5 or obtained thereafter shall not be admissible unless the
6 proponent of the evidence can demonstrate that it was not
7 available or could not have been discovered by the exercise
8 of due diligence prior to the settlement conference."

9 In the present matter, we are persuaded that defendant is correct in that the
10 WCJ is required to comply with Labor Code sections 5501, and 5502. Pursuant to Labor
11 Code section 5502, cases must be scheduled for mandatory settlement conferences not
12 less than 10 days, and not more than 30 days, after the filing of the application.¹
13 Furthermore, in a claim such as the one presented herein, the parties are required to
14 file a mandatory settlement conference statement 10 days before the MSC noting the
15 specific issues in dispute, listing the exhibits, and disclosing witnesses. (See *Zenith*
16 *Insurance Co. v. Ramirez* (1992) 57 Cal. Comp. Cases 719 (Board En Banc Decision).)
17 Therefore, the procedure for an "Assigned Conference," does not comply with the
18 requirements set forth by Labor Code section 5502. Accordingly, this matter shall be
19 removed to the Appeals Board, and the case is ordered returned to the WCJ to
20 expedite the MSC in compliance with Labor Code section 5502. In view of our
21 disposition herein, we need not address defendant's general claim regarding Labor
22 Code section 5501. The WCJ may, of course, take defendant's Labor Code section 5501
23 claim into consideration when issuing a new decision.

24 For the foregoing reasons,

25 **IT IS ORDERED** that defendant's Petition for Removal filed May 10, 1993, be,
26 and it hereby is, **GRANTED**.

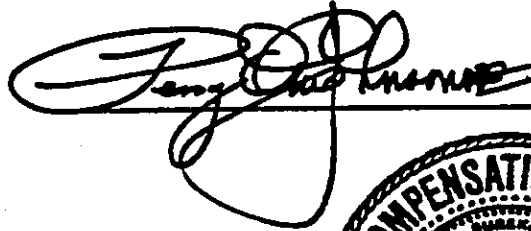
27 ///

///

¹ Note that Labor Code section 5502 has been further amended in 1993 to state that a mandatory settlement conference shall be conducted upon the filing of a declaration of readiness to proceed.

1 IT IS FURTHER ORDERED that this matter, be, and it hereby is REMOVED to
2 the Appeals Board (Lab. Code, § 5310), and this case is ordered REMANDED to the
3 workers' compensation judge for an expedited Mandatory Settlement Conference
4 pursuant to Labor Code section 5502, and further proceedings and decision.

5 WORKERS' COMPENSATION APPEALS BOARD

6
7 

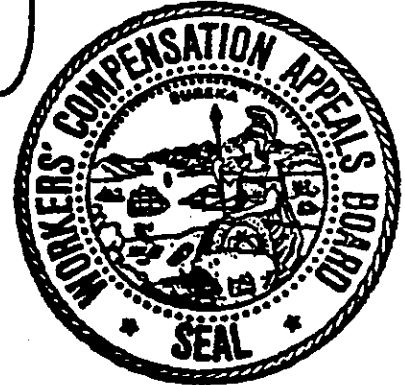
8 I CONCUR,

9
10 

11 NOT PARTICIPATING

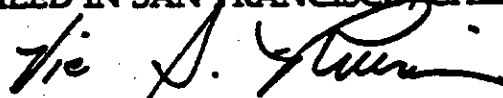
12 Rick Dietrich

Deputy



13
14 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

15 DEC 13 1993



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

19
20
21
22
23
24
25
26
27 vp