

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **RAMON BECERRA,**

4 *Applicant,*

5 **vs.**

6 **EASTSIDE RESERVOIR PROJECT/
7 ADVANCO CONSTRUCTORS;
8 HARTFORD ACCIDENT & INDEMNITY
9 COMPANY,**

10 *Defendants.*

Case No. AHM 51304

**ORDER VACATING ORDER
GRANTING RECONSIDERATION,
ORDER DISMISSING PETITION
FOR RECONSIDERATION,
ORDER GRANTING REMOVAL,
AND DECISION AFTER REMOVAL**

11 On May 2, 1996, Applicant filed an Application for
12 Adjudication which alleged that he suffered an injury to multiple
13 parts of his body including his head, spine, and extremities on
14 January 26, 1996, when a beam fell on his head in the course of
15 his employment as a laborer. On October 24, 1996, defendants
16 filed a petition for dismissal of the Application, asserting that
17 applicant's injury is covered by the alternative dispute
18 resolution process in Labor Code section 3201.5. When their
19 petition for dismissal was not granted, defendants filed a
20 Petition for Reconsideration. On March 21, 1997, due to the
21 requirement that the Appeals Board act within sixty days (Labor
22 Code section 5909), we granted reconsideration in order to allow
23 sufficient opportunity to study the issues in this case. We have
24 completed our study and, as explained below, we will vacate the
25 order granting reconsideration, grant removal, and dismiss the
26 Application.

1 Defendants filed a petition for reconsideration arguing that
2 the workers' compensation referee (WCR) erred in refusing to grant
3 their petition for dismissal of the Application. Pursuant to
4 Labor Code section 5900, "Any person aggrieved directly or
5 indirectly by any final order, decision, or award made and filed
6 by the appeals board or a workers' compensation judge . . . may
7 petition the board for reconsideration . . ." [Emphasis added.]
8 But a refusal to dismiss an Application is not a final order or
9 decision because it does not determine a substantive right or
10 liability of anyone involved in the case. See *Kaiser Foundation*
11 *Hospital v. Workers' Compensation Appeals Board* (1978) 82
12 Cal.App.3d 39, 43 Cal.Comp.Cases 661. Therefore, we will vacate
13 our order granting reconsideration and dismiss the petition for
14 reconsideration. For the reasons discussed below, however, we
15 will grant removal and dismiss the Application.

16 Labor Code section 3201.5 provides that certain employers and
17 unions may provide for and participate in an alternative dispute
18 resolution system. Under this system, disputes may be resolved by
19 mediation and arbitration as established in the collective
20 bargaining agreement. The decision of the arbitrator is subject
21 to review by the Appeals Board through reconsideration proceedings
22 in the same manner as a decision of a WCR.

23 In this case, defendants filed their petition for dismissal
24 of the Application because applicant's injury is covered by the
25 alternative dispute resolution process in Labor Code section
26 3201.5. Applicant concedes that section 3201.5 is applicable to
his injury. We have concluded that it is now appropriate to grant

1 removal in this case due to the recent enactment of section 3201.5
2 and in order that cases such as this one arising under section
3 3201.5 are handled consistently.

4 In arguing for dismissal of the Application, defendants
5 assert that the Appeals Board lacks jurisdiction over cases
6 covered by section 3201.5. That assertion is incorrect: section
7 3201.5(a)(1) provides for Appeals Board review of decisions of
8 arbitrators. This would not be possible unless the Appeals Board
9 had jurisdiction.¹ The issue in this case involves the proper
10 procedure to follow in cases arising under section 3201.5.

11 Under the conventional system, an Application is generally
12 needed to initiate a case before the Workers' Compensation Appeals
13 Board. After the Application is filed, a Declaration of Readiness
14 initiates proceedings before a WCR, and a party dissatisfied with
15 the WCR's decision may seek review by filing a petition for
16 reconsideration with the Appeals Board. Under the alternative
17 system, the Appeals Board does not ordinarily become involved
18 until a petition for reconsideration from the arbitrator's
19 decision is filed in accordance with section 10865 of the Rules of
20 Practice and Procedure (Cal. Code Regs., tit. 8, section 10865.)
21 It is premature to file either an Application or a petition for
22 reconsideration since no arbitrator's decision has been issued in
23 this case. An Application is neither necessary nor required.

24 Applicant objected to the motion to dismiss the Application
25 on the ground that an Application is necessary to confer
26 jurisdiction on the Appeals Board in the event that he wanted to

¹See also Labor Code Section 5300 regarding the scope of the Board's jurisdiction.

1 file a petition for reconsideration of the arbitrator's decision
2 or in the event that there was a violation of section 3201.5(b).
3 However, jurisdiction is conferred on the Appeals Board by section
4 3201.5 and all parties preserve their rights by following the
5 alternative system's procedures, not by the filing of an
6 Application. An allegation of a violation of section 3201.5(b)
7 and other issues raised by the parties may be resolved by the
8 Appeals Board in San Francisco upon review after a petition for
9 reconsideration has been filed. Thus, in this case the filing of
10 an Application is not necessary or required so defendants' motion
11 to dismiss the Application should be granted.

12 For the foregoing reasons,

13 IT IS ORDERED that the Order Granting Reconsideration be
14 VACATED and that the defendants' petition for reconsideration be
15 DISMISSED.

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3 IT IS FURTHER ORDERED that Removal be GRANTED and, as the
4 Decision After Removal of the Workers' Compensation Appeals Board,
5 that the Application for Adjudication filed May 2, 1996 be
6 DISMISSED.

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8 WORKERS' COMPENSATION APPEALS BOARD

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11 /s/ ROBERT N. RUGGLES

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14 I CONCUR,

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16 /s/ J. WIEGAND

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18 /s/ ARLENE N. HEATH

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20 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

21 JULY 17, 1997

22 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED

23 ON THE OFFICIAL ADDRESS RECORD
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