

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **NOE VEGA,**

5 *Applicant,*

6 *vs.*

7 **TACO BELL; CALIFORNIA INDEMNITY**
8 **INSURANCE COMPANY,**

9 *Defendants.*
10

Case No. VNO 458318

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12 **ORDER VACATING ORDER**
13 **GRANTING RECONSIDERATION,**
14 **OPINION AND ORDER GRANTING**
15 **REMOVAL AND DECISION**
16 **AFTER REMOVAL**

17 This case presents the issue of whether a defendant is entitled to an expedited hearing under
18 Labor Code § 5502(b)(1) on the issue of an applicant's entitlement to medical treatment when it is
19 asserted that the applicant has refused to accept treatment from an employer selected physician
20 under a Health Care Organization (HCO) agreement pursuant to Labor Code section 4600.3¹. We
21 hold that an expedited hearing shall be set on a defendant's Declaration of Readiness to Proceed to
22 Expedited Hearing under Section 5502(b) where the issue of a defendant's right to medical control
23 within the scope of Section 4600.3, and concomitantly, an applicant's entitlement to medical
24 treatment, is presented for decision.

25 On January 2, 2003, defendant, Taco Bell, by and through its insurer, California Indemnity
26 Insurance Company, filed a petition for removal, or alternatively, for reconsideration, for review of
27 the Appeals Board's December 13, 2002, order denying a prior petition for removal. In the latter
decision, the WCJ's denial of defendant's request for an expedited hearing was affirmed.
Defendant contends that it is entitled to an expedited hearing where applicant failed to adhere to
his obligation to cooperate with defendant's right to control his medical treatment for his industrial
injury under Section 4600.3. Defendant now seeks the consolidated review of two additional cases

¹ All further statutory references are the Labor Code.

1 to demonstrate the disparate treatment of this issue at different district offices.

2 On March 3, 2003, we granted reconsideration in this matter to provide an opportunity to
3 further study the legal and factual issues raised by the petition for reconsideration. Having
4 completed our review, and for the reasons set forth below, we shall vacate our Order Granting
5 Reconsideration, grant defendant's Petition for Removal, and as our Decision After Removal,
6 return this matter to the trial level for an expedited hearing on defendant's Petition for Order to
7 Restore Medical Control.

8 Statement of Facts

9 Applicant, Noe Vega, filed an Application for Adjudication of Claim on October 1, 2002,
10 alleging that he sustained an industrial injury to his back and right knee on July 15, 2002, while
11 employed as a store manager by Taco Bell/TacoBiz, Inc.

12 On October 15, 2002, defendant filed a Request for Expedited Hearing and Decision,
13 seeking a prompt hearing on applicant's entitlement to medical treatment. Concurrently, defendant
14 filed a Petition for Order to Restore Medical Control. By this petition, defendant asserted that
15 applicant was denying the employer's right of medical control by refusing to cooperate with the
16 physicians provided by the HCO selected by the employer by failing to attend medical treatment
17 appointments with HCO plan providers. Instead applicant identified treating physicians selected by
18 his attorney, who informed defendant on September 21, 2002 that applicant "has been instructed
19 not to attend any Defense Medical Appointment in violation of Labor Code section 4061 and
20 4062."

21 In response to defendant's request for an expedited hearing, the Van Nuys district office set
22 the matter for pre-trial hearing on December 2, 2002. This prompted defendant's initial petition for
23 removal on November 18, 2002, in which defendant first raised the issue of its entitlement to an
24 expedited hearing on the question of its right to medical control.

25 We denied defendant's November 18, 2002 petition, adopting the Presiding Workers'
26 Compensation Administrative Law Judge's (PW CJ) Report and Recommendation on Petition for
27 Removal, wherein she expressed the view that defendant is not entitled to an expedited hearing

1 since the issue of medical control is not an enumerated issue under Section 5502(b), and defendant
2 has an adequate remedy by way of seeking recovery of the lost days of medical control.

3 The defendant then filed the instant petition for removal, for the first time pointing out the
4 lack of consistency between district offices on this issue. Defendant cited two additional cases
5 venued in the Los Angeles and Santa Monica district offices, wherein it did obtain expedited
6 hearings on the issue of its right to medical control under Section 4600.3.

7 We shall now grant defendant's petition for removal and vacate our order granting
8 reconsideration issued March 3, 2003. As the issue raised by defendant's petition for removal
9 concerns the pre-trial procedure to be followed at the trial level, and no final decision has yet been
10 rendered, reconsideration is not a proper method for obtaining review. However, the Appeals
11 Board may exercise the power of removal, pursuant to Section 5310, to remove a case to itself
12 where a party demonstrates that it will suffer irreparable harm or significant prejudice without
13 review before a final order. Because we believe reconsideration will not provide defendant with an
14 adequate remedy under the circumstances of this case, we shall exercise our authority under
15 Section 5310 to grant removal and hold, as our decision after removal, that a defendant may obtain
16 an expedited hearing to require an applicant subject to an HCO plan, to accept the HCO plan's
17 choice of medical provider for the period of its medical control.

18 Discussion

19 An employer or insurer may contract with an HCO to provide for medical services for
20 injured employees. (Labor Code § 4600.3.) Employees may elect to enroll in the HCO, and be
21 bound by the terms of the HCO plan, or they may choose to opt out of the HCO plan by
22 designating their personal physician as their treater in the event of a work injury.

23 Section 4600.3 provides, in part,

24 (a)(1) Notwithstanding Section 4600, when a self-insured employer,
25 group of self-insured employers, or the insurer of an employer
26 contracts with a health care organization certified pursuant to Section
27 4600.5 for health care services required by this article to be provided
to injured employees, *those employees who are subject to the
contract shall receive medical services in the manner prescribed in*

1 *the contract*, providing that the employee may choose to be treated
2 by a personal physician, personal chiropractor, or personal
3 acupuncturist that he or she has designated prior to the injury, in
4 which case the employee shall not be treated by the health care
5 organization. (Emphasis added.)

6 When applicant allegedly refused to cooperate with defendant's right to control medical
7 treatment, thus implicating applicant's concurrent entitlement to medical treatment, defendant
8 sought to resolve the dispute using the most efficacious procedural means available, an expedited
9 hearing.

10 Under Section 5502(b), expedited hearings may be set to determine the rights of the parties
11 on specified issues, including entitlement to medical treatment and temporary disability indemnity.
12 This section provides, in part:

13 (b) The court administrator shall establish a priority calendar for
14 issues requiring an expedited hearing and decision. A hearing shall
15 be held and a determination as to the rights of the parties shall be
16 made and filed within 30 days after the declaration of readiness to
17 proceed is filed if the issues in dispute are any of the following:

18 (1) The employee's entitlement to medical treatment pursuant
19 to Section 4600.

20 (2) The employee's entitlement to, or the amount of,
21 temporary disability indemnity payments. . . .

22 The PW CJ held that defendant was not entitled to an expedited hearing, finding that the
23 defendant's right to medical control under Section 4600.3 is not implicated in the issue of an
24 applicant's entitlement to medical treatment. The PW CJ concluded that Section 5502 was not
25 intended to address the issue of right to medical control as a defendant has other remedies available
26 to it, which is not the case with an injured worker who has been denied medical treatment. On
27 further consideration, we believe the PW CJ has defined the scope of the enumerated issue of
28 entitlement to medical treatment too narrowly.

29 Here, defendant's Petition for Order to Restore Medical Control alleges that applicant
30 refused to comply with his obligation under the provisions of the HCO plan by refusing to accept
31 medical treatment from the HCO designated physician. If an injured worker who has not opted out

1 of an employer's HCO plan refuses to abide by the requirements of the plan, an employer has no
2 other readily available options to enforce compliance within the period of employer control. This
3 implicates the applicant's right to medical treatment as the defendant is not required to provide
4 medical treatment outside the scope of its control. This also implicates an applicant's right to
5 temporary disability indemnity, as such benefits are tied to a treating physician's medical reporting.
6 If no admissible medical evidence is presented to establish the fact and period of temporary
7 disability, the insurer is not mandated to provide benefits. Therefore, an expedited hearing is the
8 appropriate forum for obtaining a prompt resolution of a dispute over the defendant's right of
9 control of medical treatment, and concurrently, an applicant's entitlement to medical treatment as
10 well as temporary disability benefits.

11 Accordingly, we hold that a defendant may obtain an expedited hearing to resolve disputes
12 over an applicant's entitlement to medical treatment and a defendant's right to control that medical
13 treatment for injured workers enrolled in an HCO plan. We shall grant defendant's petition for
14 removal and, as our decision after removal, order that this matter be returned to the trial level for
15 an expedited hearing on the issues raised in defendant's Petition for Order to Restore Medical
16 Control.

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For the foregoing reasons,

IT IS ORDERED that the March 3, 2003 Order Granting Reconsideration is **VACATED**.

IT IS FURTHER ORDERED that Defendant's Petition for Removal, be and hereby is, **GRANTED**, and as our Decision After Removal, this matter be **RETURNED** to the trial level for an expedited hearing and decision on the issues raised in defendant's Petition for Order to Restore Medical Control.

WORKERS' COMPENSATION APPEALS BOARD

I CONCUR,

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

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

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