

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

IN RE: COVID-19 STATE OF EMERGENCY

EN BANC – NO. 7

Case No. MISC. NO. 266

Upon a unanimous vote of its members,¹ the Appeals Board issues this decision as a whole as an en banc decision.² (Lab. Code, § 115.)

On March 4, 2020, the State of California's Governor, Gavin Newsom, declared a state of emergency in response to the spread of the novel coronavirus (COVID-19).³ Governor Newsom subsequently issued Executive Order N-33-20 on March 19, 2020, which required all Californians to stay home with certain limited exceptions.⁴ The Division of Workers' Compensation (DWC) temporarily closed the district offices for filing as of March 17, 2020 to protect the health and safety of staff and the community.⁵ The district offices reopened for filing effective April 13, 2020, but limited filings to e-filing via the Electronic Adjudication Management System (EAMS), JET filing or by mail.⁶ The DWC has continued to conduct hearings via teleconference or video, but does not currently permit filing of walk-through documents.⁷ On December 3, 2020, the California Department of Public Health (DPH) issued a Regional Stay At Home Order applicable

¹ Commissioner Gaffney was unavailable and did not participate in this decision.

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, former § 10341, now § 10325 (eff. Jan. 1, 2020); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code section 11425.60(b).

³ Governor Newsom's proclamation may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>. (See Evid. Code, § 452(c).)

⁴ Governor Newsom's Executive Order N-33-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

⁵ The DWC Newslines may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

⁶ The DWC Newslines may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

⁷ The DWC has issued several Newslines regarding hearing options and filing procedures, which may be accessed here: https://www.dir.ca.gov/dirnews/link_page.html.

based on a region's intensive care unit (ICU) capacity.⁸ In light of the continued state of emergency and to facilitate resolution of claims while observing public health measures, we will order suspension of WCAB Rule 10789(c) regarding the required timeframes for assignment of walk-through cases. (Cal. Code Regs., tit. 8, § 10370.) This suspension is applicable to all district offices in the State.

WCAB Rule 10789(a) states that certain documents “may be submitted on a walk-through basis” including the following: (1) Compromise and Releases; (2) Stipulations with Request for Award; (3) Petitions for attorney's fees for representation of the applicant at a deposition; (4) Petitions to compel attendance at a medical examination or deposition; and (5) Petitions for Costs pursuant to rule 10545. (Cal. Code Regs., tit. 8, former § 10417(c), now § 10789(a) (eff. Jan. 1, 2020).) WCAB Rule 10789(c) provides as follows: “Each district office shall have a designee of the presiding workers' compensation judge available to assign walk-through cases from 8:00 a.m. to 11:00 a.m. and 1:00 p.m. to 4:00 p.m. on court days.” (Cal. Code Regs., tit. 8, former § 10417(b), now § 10789(c) (eff. Jan. 1, 2020).)

We will order suspension of WCAB Rule 10789(c) to provide the district offices with the ability to schedule timeframes for walk-through of documents as appropriate for their capacity under these circumstances.

WCAB Rule 10789(a) is permissive and the documents that may be submitted on a walk-through basis may therefore be further restricted by the district offices at the discretion of the presiding workers' compensation judges. The presiding workers' compensation judge has full responsibility for assignment of cases to the workers' compensation judges in each district office. (Cal. Code Regs., tit. 8, § 10346(a).)⁹ This includes the authority to decline to assign a document submitted on a walk-through basis. (See also Lab. Code, §§ 133, 5310 [workers' compensation administrative law judges have broad authority to do all things necessary to exercise their power and jurisdiction]; Cal. Const., art. XIV, § 4.) The presiding workers' compensation judges are empowered to prioritize which documents may be assigned on a walk-through basis to expedite resolution of claims and to account for limited capacity in their respective offices in determining

⁸ The DPH's Regional Stay At Home Order may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>. Some counties in California have also implemented local stay at home orders.

⁹ This Rule number remained the same following revision of the Rules effective January 1, 2020.

whether to permit a document to be assigned as a walk-through.

This order will remain in effect until further notice.

For the foregoing reasons,

IT IS ORDERED that WCAB Rule 10789(c) is suspended.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2020

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT
THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**



I certify that I affixed the official seal
of the Workers' Compensation
Appeals Board to this original decision
on this date. *abs*