

2022 WL 7921377 (Cal.W.C.A.B.)

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WCAB PANEL DECISION

NOTICE: California Workers' Compensation Appeals Board panel decisions are not binding precedent  
Workers' Compensation Appeals Board, State of California.

Gisela MURGUIA

v.

LYFT INC.; Blue Star Claims Mgmt Phoenix;

CASE NUMBER: ADJ15999271

July 20, 2022

**REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL**

Dean Stringfellow, WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

\*1 This case involves a 35 year old driver who claims injuries arising out of and in the course of her employment on or about 2/15/2022 to her neck, back, and other parts while allegedly employed by Lyft, Inc.

The Defendant claims the defense of independent contractor.

Applicant issued a subpoena duces tecum asking for records from Lyft, Inc. The subpoena was served on the claims administrator, Blue Star Claims Management.

Petitioner filed an objection.

The Petitioner is the Defendant who has filed a timely and verified Petition for Removal claiming that the undersigned erred in issuing a "meet and confer" order in response to the objection to the subpoena duces tecum.

The undersigned will recommend that the Petition be denied.

**I. STATEMENT OF FACTS**

This matter involves a very recent filing by Applicant. No claim form exists. An Application for Adjudication was filed on or about 5/9/2022. The original attorney for Applicant was subbed out, and new counsel appointed on 6/29/2022. Two days later defense counsel filed its appearance on behalf of the administrator Gallagher Bassett for Lyft, Inc. Also on 6/29/2022 defense counsel filed an objection to a subpoena duces tecum issued for records from Lyft, Inc. The subpoena was served on counsel on 6/29/2022. The objection indicates that the administrator for Lyft, Inc. is Blue Star Claims Management, and the SDT was served apparently on Blue Star. Since defense counsel appears for Gallagher Bassett and now objects to an SDT served on Blue Star, there is confusion as to who is administering the claim. But this confusion does not affect this Petition.

Among the various reasons given for the objection, Petitioner claims that the Board does not have personal or subject matter jurisdiction to issue the meet and confer order herein. They claim that the lack of jurisdiction stems from the fact that the Applicant is an independent contractor and not an employee of the Petitioner.

The undersigned received the Defendant's objection by way of a "task" wherein the WCJ reviews incoming correspondence to determine if a response is necessary and to take appropriate action if it is called for. There is no evidence but what can be gleaned from EAMS. There was no court appearance.

The undersigned reviewed the objection filed by Defendant. In essence the objection states that an SDT was served on the administrator claiming production of various records from Lyft, Inc. pertinent to the normal WC issues herein. The actual subpoena has never been produced. There were numerous issues raised in the objection. But the major thrust of the objection was that the Board does not have jurisdiction to act since the Defendant claims a lack of an employment relationship with the Applicant. While this issue would normally come under [Cal. Lab. Code sec. 2775](#), the Petitioner also asserts that this Applicant is automatically deemed an independent contractor under Proposition 22 (Bus. & Prof. Code sec. 4751).

Put bluntly, Petitioner claims that Proposition 22 is a conclusive presumption of independent contractor status, and hence there is no need for any litigation relevant to that issue. Hence there is no discovery allowable.

\*2 The undersigned determined that the Applicant was seeking records which may reasonably lead to relevant facts in this case. However the objection also stated that the SDT was overbroad asking for numerous items that inevitably are not germane to the litigation. Hence the undersigned issued a meet and confer order that states:

“... IT IS ORDERED THAT the Parties meet and confer to determine with more specificity what records are being sought. Either party may then file a Declaration of Readiness on the issue only after compliance with the above.”

This is the interim discovery order from which Petitioner appeals.

The Petitioner maintains they have no records since the Applicant is allegedly an independent contractor. But rather than responding to the SDT with a “Declaration of No Records,” Petitioner now files this Petition for Removal claiming that the WCJ did not have jurisdiction to issue the Meet and Confer Order. Petitioner maintains that the WCJ lacks both personal and subject matter jurisdiction to issue said order.

## **II. DISCUSSION**

The Appeals Board has personal jurisdiction over any employer who is doing business in the State of California unless said employer might be subject to specific exemptions. There is nothing on file in this case to show that the alleged employer herein is not doing business in this state. The Application indicates that the employer is located in San Francisco. Hence it appears that the employer is doing business in this state.

The Appeals Board has subject matter jurisdiction over injuries that occur within the State of California. The Application claims that this injury occurred in Culver city, California.

Hence at first glance there is no evidence to suggest that the Appeals Board lacks either personal or subject matter jurisdiction in this case.

That being said, the Appeals Board does have jurisdiction to determine jurisdiction. [Yavitch v. WCAB \(1983\) 142 Cal. App. 3d 64, 48 CCC 281](#). Hence even if Defendant seriously raises jurisdiction as an issue in this case, the Appeals Board still has jurisdiction over the discovery process if such an issue is raised.

The Petitioner clearly is raising the issue of employment in this case that would normally come under [Cal. Lab. Code sec. 2775](#). But Petitioner asserts that Proposition 22 specifically precludes jurisdiction since that Proposition would relegate Applicant to the status of an independent contractor by statute.

First of all, it must be noted that Proposition 22 was enacted as Bus. & Prof. Code sec. 4751. The statute was declared unconstitutional in [Castellanos v. State of California \(2021\) 86 CCC 826](#). At the time of this writing this holding in [Castellanos](#) appears to be the present status of Bus. & Prof. Code sec. 4751 upon which Petitioner seems to rely.

However, neither the supposed implications of Proposition 22 nor the burden of proof imposed on the alleged employer under [Cal. Lab code sec. 2775](#) in any way affects the jurisdiction of the Appeals Board to issue interim orders affecting discovery in an ongoing case.

Secondly, [Cal. Lab. Code sec. 3357](#) states:

“A person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is *presumed* to be an employee.” (emphasis added).

Hence any claim that Applicant is an independent contractor is a contested issue subject to the Board's jurisdiction. This would be true regardless of the constitutional status of Proposition 22.

\*3 This matter came to light only as a task performed by the undersigned. There is little documentary evidence. Everything to be considered must be gleaned from what is in EAMS.

But it appears that the Applicant was performing services for Lyft, Inc., and hence it is presumed she is an employee. It is the Defendant's burden to prove independent contractor status, and this burden is even more extant in light of the findings in *Castellanos*. Hence the WCJ has the jurisdiction to issue interim orders in litigation involving jurisdictional claims.

Thirdly, In regards to the order itself, again, the actual SDT was never produced. However, it is the undersigned's experience to note that normally an SDT is issued by a copy service. Hence the request for records usually sets forth numerous documents that have little if anything to do with the WC litigation. It is also the undersigned's experience that a mere phone call between parties significantly pares down the actual list of documents that the issuing party is seeking. By doing so, inevitably the objection is satisfied and the parties continue with discovery expeditiously.

In an independent contractor case, the alleged employer's documents that either support or contradict the issue are obviously relevant to the litigation. Hence it was considered by the undersigned that the Defendant should be required to comply with the SDT after the parties have “met and conferred” to determine just what documents are being sought.

It is even more disconcerting that the Defendant did not simply issue a “Declaration of No Records” since their objection and their petition both state that there are no records.

Needless to say, the issuance of a simple “meet and confer” order does not cause any irreparable harm or significant prejudice to the Petitioner since a simple response to the SDT is all that is required. By its own admission Petitioner has no records that were sought. Hence there is no possible prejudice herein.

### **III. RECOMMENDATION ON PETITION FOR REMOVAL**

Based on the arguments set forth above, it is respectfully recommended that the Petition for Removal be DENIED.