

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

HOWARD JIMENEZ, *Applicant*

vs.

**UNITED STAFFING ASSOCIATES; WESTERN MILLING; ZURICH AMERICAN
INSURANCE COMPANY administered by GALLAGHER BASSETT; BERKSHIRE
HATHAWAY HOMESTATE SERVICES, *Defendants***

**Adjudication Number: ADJ13604873
Fresno District Office**

**OPINION AND ORDER
DENYING PETITION FOR
REMOVAL**

Defendant United Staffing Associates, by and through their attorneys of record, filed a Petition for Removal of an Order by a Bakersfield district office workers compensation administrative law judge (WCJ) continuing a status conference set on the board's motion on August 17, 2023 to another status conference on October 5, 2023.

Petitioner contends that the Bakersfield WCJ does not have jurisdiction to set this matter on the board's own motion, nor hear the petition for joinder of Gallagher Bassett as a third-party administrator for Zurich American in the herein case as this case is venued in Fresno and not Bakersfield.

Applicant and co-defendant did not file Answers to the Petition. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending removal be denied.

We have reviewed the record of proceedings in this matter, the allegations in the Petition for Removal as well as the contents of the Report. Based on WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, we will deny the petition for removal.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, for the reasons stated in the WCJ's report, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

We observe that while applicant's petition for joinder has yet to be heard, the issue giving rise to petitioner's removal appears to be moot. The petition was in response to the August 17, 2023 order at the conference continuing this case to another status conference in Bakersfield on October 5, 2023.

The October 5, 2023 Minutes of Hearing (MOH) indicate that on that date all appearing parties jointly requested the WCJ take the matter off the calendar in Bakersfield, with the WCJ granting same and further noting in the comments that the attorneys for both party defendants as well as the applicant agree to jointly petition the Fresno district office to transfer venue of this case to Bakersfield.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal of the Order continuing this matter to another status conference in Bakersfield is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 17, 2024

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

**HOWARD JIMENEZ
SILBERMAN AND LAM
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
WIDOM, SAVEY & GARFINKLE**

LAS/abs

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