

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

JANISHA HARRIS, *Applicant*

vs.

**STRIVE WELL BEING INC;
AMTRUST NORTH AMERICA, *Defendants***

Adjudication Number: ADJ18948204

Los Angeles District Office

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Applicant seeks removal in response to the Order setting the matter for trial on July 23, 2024, issued by a workers' compensation administrative law judge (WCJ) on July 2, 2024. Applicant contends that:

Applicant has not been afforded the right to properly litigate her claim of injury. Her efforts have been cut short, through no fault of her own. Applicant's counsel just received the personnel file – which includes witness statements that support the Applicant's position. The defendant has had ample time to review the provided file; Applicant's counsel has had insufficient time to review the relevant portions of the file, as Trial was set for 21 days after the MSC. A perfect example of SUBSTANTIAL PREJUDICE can be seen through service of the personnel file - witnesses that support the Applicant's position have been identified in the personnel file, and they were previously unknown. The Pre-Trial Conference Statement is inaccurate due to the lack of evidence available to the Applicant at the time of the MSC, as a result witnesses are missing from the Applicant's witness list. Finally, a QME evaluation is necessary to address the compensability of the injury. The QME evaluation was cancelled by the Defendant, but lack of medical evidence was one of the reasons for the Defendant's denial of workers' compensation liability. If this trial were to proceed, the Applicant would be subject to judgment based on late service of relevant evidence, as well as insufficient evidence, and placed at a disadvantage as relevant discovery was served after the MSC. Being forced to trial without the benefit of completing discovery places too great a hurdle for the Applicant to jump. It is a complete violation of the due process rights afforded to the Applicant and policies set forth by the legislature.

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's report, we will deny 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, based upon the WCJ's analysis of the merits of petitioner's arguments, 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.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) **A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal.** (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35

Cal.Comp.Cases 16].) The Appeals Board and the WCJ have the discretionary authority to develop the record when the record is not substantial evidence. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an **adequate and completely developed record.**" (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]] (Emphasis added.)

Once the parties proceed to trial, they will have an opportunity to raise all relevant issues, and to submit relevant evidence and otherwise create a record. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

As particularly relevant here, applicant will have an opportunity to raise the preliminary issue of further discovery due to the newly discovered evidence, and the trial WCJ may exercise their discretion to allow it in order to ensure an adequate and complete record and a decision that is based on substantial evidence. As appropriate, the WCJ also has discretion to order that the parties proceed with the qualified medial evaluator (QME) evaluation.

The parties are reminded that there is an expectation that all parties appearing before the WCAB will work collaboratively, conduct themselves with appropriate courtesy, and comply with all relevant statutory and decisional law. (See Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we deny the Petition for Removal.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 20, 2024

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

**JANISHA HARRIS
LEE LEGAL
SHEFFIELD & RICHARDS LLP**

AS/mc

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