

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

JESSICA ORDENANA, *Applicant*

vs.

**ROYAL AIRLINE LINEN;
UTICA MUTUAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ12414651, ADJ12414992, ADJ12414993
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION
AND GRANTING REMOVAL
ON MOTION OF THE
APPEALS BOARD**

On February 6, 2024, former applicant's attorney and lien claimant, Susan Garrett, through hearing representative Lance Garrett, filed a Petition for Reconsideration contending, in essence, that the October 19, 2023 Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) should be set aside because the award of attorney's fees contained in the OACR issued in violation of law.

On April 2, 2024, Garrett Law Group filed a supplemental Petition for Reconsideration, which sought to amend the initial petition to seeking removal as an alternative remedy.

Applicant's attorney has filed an Answer.

We have considered the allegations of the Petitions, the Answer, 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 for the reasons stated below and for the reasons stated by the WCJ in the Report, we will deny the petition to the extent that it seeks reconsideration and we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

Every issue raised in lien claimant's Petition for Reconsideration was an issue that was set to be decided at trial, which was to occur on February 7, 2024. On the eve of trial, rather than

allow the trial judge to create a record and decide the issues raised, lien claimant instead filed a Petition for Reconsideration. In essence, lien claimant requests summary judgment issue in its favor without any record having been created. This is not proper. (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc); see also, Cal. Code Regs., tit. 8, § 10515 [“Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted.”].) It is unclear upon what good-faith basis the Petition for Reconsideration was filed. It appears that the Petition for Reconsideration may have been filed solely to delay the trial proceedings. Accordingly, we will issue an order denying reconsideration and grant removal on our own motion to investigate whether sanctions and/or an award of reasonable expenses, including costs and/or attorney’s fees should issue.

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers’ compensation matter, “the proceedings in any claim.” This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers’ Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

This is not a final decision on the merits of removal, and we will order that issuance of the final decision after removal is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that **REMOVAL** of this case to the Appeals Board is **GRANTED** on the motion of the Appeals Board.

IT IS FURTHER ORDERED that a decision after removal is **DEFERRED** pending further review of the merits of the Petition for Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2024

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

**JESSICA ORDENANA
GARRETT LAW GROUP
HINDEN BRESLAVSKY**

EDL/oo

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