

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

JOSE LUNA, *Applicant*

vs.

**NORTHERN PIPELINE;
AMERICAN ZURICH INS. COMPANY, *Defendants***

Adjudication Number: ADJ18723086

Santa Ana District Office

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

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 defendant'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, 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 agree with the WCJ's comments in the Report with respect to Labor Code section 4061(i). Moreover, the costs associated with potential additional discovery do not amount to irreparable harm or substantial prejudice because Labor Code section 4061(i) requires that an agreed or qualified medical evaluation take place before proceeding to trial on the issue of permanent disability, and Labor Code section 4064(a) mandates that defendant is liable for costs for medical-legal discovery. In other words, because defendant is aware before a case ever commences that a medical-legal evaluation is required if it intends to dispute the level of permanent disability and that therefore it must plan for medical-legal costs, it is unlikely that it can demonstrate irreparable harm or substantial prejudice. When a WCJ appropriately exercises discretion to order a matter off calendar, continue a matter, or set a matter for trial, it is rare that a party can demonstrate that this exercise of discretion caused irreparable harm or substantial prejudice, especially when parties nearly always have the remedy of reconsideration.

Despite defendant's near frivolous argument that the statute of limitations is a threshold issue under the circumstances of this case, we note that defendant attached multiple documents to its petition for removal that potentially are evidence of permanent disability, or lack thereof. Further, although WCAB Rule 10955(e) (Cal.Code Regs., tit. 8, § 10955(e) allows a WCJ to proceed, many WCJs are reluctant to do so while a matter is pending before the Appeals Board. Defendant is reminded that by filing the petition, defendant has in effect caused further delay.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 22, 2024

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

**JOSE LUNA
EMILY MEHR, ESQ.
LAW OFFICE OF ALAN PAIK**

AS/mc

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