

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

**JOSE ALFREDO VALENCIA MAGALLON, *Applicant***

**vs.**

**CW CONSTRUCTION; GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ13924691**

**Oxnard 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 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.

Our review of the record reveals the following:

On November 30, 2020, applicant filed an Application for Adjudication alleging injury to various body parts while employed by defendant employer CW Construction. Gallagher Bassett is listed as the insurance company and is also listed as the claims administrator. On January 19, 2021, defendant's attorneys filed a Notice of Representation on behalf of Gallagher Bassett. On page two of the August 26, 2024 pre-trial conference statement, "Zurich American Ins." is handwritten next to Gallagher Bassett in response to the question about the identity of the workers' compensation insurance carrier at the time of the claimed injury.

Yet, according to our review in the Electronic Adjudication Management System (EAMS), Zurich American Insurance is not on the Official Address Record and no appearance has been made on behalf of Zurich American Insurance.

In our en banc decision in *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289, we held that:

. . . where an employer's liability for workers' compensation benefits is adjusted by a third-party administrator, the administrator must disclose to the Workers' Compensation Appeals Board, to the other parties in any proceeding in which it is a party, and to its own counsel the identity of its client, whether a self-insured employer or insurance carrier. If the client is an insurance carrier, the administrator must disclose whether the policy includes a "high self-insured retention," a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation. Failure of the administrator to disclose the identity of its client may subject it to sanctions pursuant to Labor Code section 5813.

WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390) states that:

Any party that appears at a hearing or files a pleading, document or lien shall:

- (a) Set forth the party's full legal name on the record of proceedings, pleading, document or lien;
- (b) File a notice of representation if a party is represented and the attorney or non-attorney representative has not previously filed a notice of representation or an Application for Adjudication of Claim; and
- (c) Identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator shall be included on the official address record and case caption if identified as such.

In the instant case, the only mention of a workers' compensation insurance company is the handwritten notation on the pre-trial conference statement. Thus, defendant has failed to comply with its mandatory duty under *Coldiron* and WCAB Rule 10396 to clearly identify the employer's workers' compensation insurance carrier, and this conduct is subject to sanctions. Moreover, from the applicant's perspective, if the correct defendant is not identified, any award to applicant may potentially be unenforceable. (See Lab. Code, §§5806, 5807.) Upon return of this matter, the parties should make all efforts to correct the official address record forthwith.

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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**December 6, 2024**

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

**JOSE ALFREDO VALENCIA MAGALLON  
GORDON, EDELSTEIN, KREPACK, GRANT, FELTON & GOLDSTEIN  
GREENUP HARTSTON ROSENFELD 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*