

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

BRITNEY OWENS, *Applicant*

vs.

**CVS PHARMACY; ACE AMERICAN INSURANCE COMPANY,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ20331276, ADJ20331280
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Applicant has filed a petition for removal from the order setting the matter for trial issued on April 10, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ set the matter for a bifurcated trial on defendant's claim that applicant's injury is barred by the post-termination defense.

Applicant contends that discovery is not complete.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the WCJ's Report. 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.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of 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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

Here, once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. Specifically, as part of that process, the parties will have an opportunity to raise the issue of whether further development of the record is appropriate. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

Applicant argues that the record is not complete; however, no record exists for the Appeals Board to review. We make no judgment at this time whether applicant is entitled to additional discovery since without a formal record available to review, we have no ability to make this determination.

We would make the following observations. Labor Code section 3208.3(e) provides that a psychiatric claim may be barred where a claim is filed post-termination and is for **a date of injury** occurring pre-termination. Accordingly, at trial defendant must establish the date of applicant's injury to prevail on a post-termination claim. As defendant is proceeding to trial on its affirmative defense alone, and assuming applicant's argument is correct that no evidence exists to establish a date of injury, it would not appear that applicant would be prejudiced by proceeding to trial. Instead, it appears that defendant is proceeding at its own peril.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the order setting the matter for trial issued on April 10, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2025

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

**BRITNEY OWENS
LEVIN NALBANDYAN LAW
PARK GUENTHART LAW**

EDL/mt

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