**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**CAROLINA PUENTE, *Applicant***

**vs.**

**S&S COASTAL FOODS LLC, dba JACK IN THE BOX; UNITED WISCONSIN INSURANCE, administered by NEXT LEVEL, *Defendants***

**Adjudication Numbers: ADJ16835373, ADJ16835370**
**Los Angeles District Office**

# OPINION AND ORDER DENYING PETITION FOR REMOVAL

Applicant has filed a petition for removal from the discovery orders issued on July 23, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that discovery should include cross-examination of the evaluator, which was not included in the discovery order.

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 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. Applicant may resubmit the request to take the evaluator's deposition at that time. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

We make no judgment at this time whether additional discovery is warranted since without a formal record available to review, we have no ability to make this determination.

Accordingly, we deny removal.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal from the discovery orders issued on July 23, 2025, by the WCJ is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**

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

**October 30, 2025**

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

**CAROLINA PUENTE**
**LAW OFFICE OF GIL L. ARBEL**
**MACDONALD EBBING & LLOYD**

**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*