

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

DINH TRAN, *Applicant*

vs.

**UL, LLC; FEDERAL INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12349952
Anaheim District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL AND
DECISION AFTER REMOVAL**

Applicant has filed a petition for removal from the Finding and Orders (F&O) issued on February 18, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that discovery of raw testing data from the qualified medical evaluator (QME) is not appropriate because the QME has already indicated a refusal to do so and that the disclosure violates applicant's right to privacy.

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 Report, which we adopt and incorporate, we will grant the Petition for Removal, but only to correct clerical errors and to amend the Order that issued to further ensure applicant's right to privacy is not infringed. We otherwise affirm the F&O.

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 in the 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.

The panel in *Calica v. Michaels Stores*, 2024 Cal.Wrk.Comp. P.D. LEXIS 156, addressed a similar issue to the one presented here, however in that case, the parties had stipulated to the manner of producing the raw data and applicant argued that defendant had breached the stipulation.¹ In addressing the issue of privacy, the *Calica* panel noted:

On the one hand, it is well-established in California case law that by asserting injury to the brain, applicant has partially waived his right to privacy as it relates to the claimed injury. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 863 [143 Cal.Rptr. 695, 574 P.2d 766] ["[there] is no privilege ... as to a communication relevant to an issue concerning the condition of the patient if such issue has been tendered by ... [the] patient"].) On the other hand, however, the partial waiver of privilege is not unlimited, and as is noted in *Davis, supra*, the defendant's ability to access and evaluate that information must be narrowly construed so as to minimally abridge applicant's fundamental right to privacy. (*Davis v. Superior Court, supra*, 7 Cal.App.4th 1008, 1014, 9 Cal. Rptr. 2d 331 ["[t]he scope of any disclosure must be narrowly circumscribed, drawn with narrow specificity, and must proceed by the least intrusive manner"].)

(*Id.* at *12-13.)

Here, the WCJ followed appropriate case law in crafting a discovery remedy that protected applicant's privacy rights, while permitting defendant discovery of necessary information.

However, upon review of the Orders, it appears there is one clerical error in that Order #3 refers to the consequence if defendant fails to comply with Order #1; however, Order #1 is not

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Calica, supra*, because it considered a similar issue. We recommend that practitioners proceed with caution when citing to a panel decision and verify its subsequent history.

directed toward defendant. It appears that this intended to refer to Order #2, and we will correct that clerical error.

We will further clarify that defendant is responsible to ensure that any expert it retains maintains confidentiality of the records and that defendant must promptly report any violation of confidentiality to applicant. We otherwise affirm the WCJ on the merits for the reasons stated in the Report.

Accordingly, we grant removal, but only to correct a clerical error and to amend the Order that issued to further ensure applicant's right to privacy is not infringed. We otherwise affirm the F&O on the merits.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the Finding and Orders issued on February 18, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Finding and Orders issued on February 18, 2025, by the WCJ is **AFFIRMED**, except that Orders #2 and 3 are **AMENDED** as follows:

2. Defense counsel is ordered to keep any records produced in response to this order strictly confidential. Raw testing materials and data are not to be reproduced or shown to any person, including any claims personnel, except for medical doctors who are asked to review the records as part of their reporting in this case or who may be asked to assist defense counsel in preparing for medical deposition(s). Defense counsel is responsible for ensuring that any expert it retains keep these records confidential. Upon request of applicant's attorney, defense counsel shall provide applicant's attorney with the name and address of any medical doctor who was shown or reviewed the raw testing materials and data. Defense counsel must monitor these records and promptly report any violation of confidentiality to applicant. Raw testing materials and data are not to be offered into evidence in any legal proceeding and will not be admitted into evidence in this case. Following the conclusion of litigation involving the records, they shall be destroyed within a reasonable time.

3. Failure or refusal to comply with order #2 above may result in Dr. Ponton's reports being stricken from evidence as to any remaining medical disputes, an order relieving defendant of any further liability for Dr. Ponton's charges, and/or such other relief as the court may determine to be reasonable and appropriate. Failure or refusal to comply with order #2 above may result in sanctions against defense counsel and/or defendant, and/or such other relief as the court may determine to be reasonable and appropriate.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

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

OCTOBER 13, 2025

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

**DINH TRAN
BRADFORD & BARTHEL
THE LAW OFFICE OF ARASH KHORSANDI**

EDL/mt

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