

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

JEFFREY KOENIG, *Applicant*

vs.

**HERTZ CORPORATION; Insured by AIU INSURANCE COMPANY;
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ17262639
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a Petition for Removal from the order of continuance issued on February 20, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that the WCJ's order of continuance violated Labor Code section 5502(d)(3).

We have not received an Answer from applicant. 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 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.

Here, defendant argues that the WCJ violated Labor Code section 5502(d)(3), which states:

If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

What defendant fails to recognize is that the above Labor Code provision only applies where a WCJ determines that a matter is ready to proceed to trial. Nowhere within the Labor Code can we find authority that a party has the unilateral right to proceed to trial upon the filing of a declaration of readiness (DOR). To the contrary, the Labor Code is quite clear that the WCJ and the Appeals Board have *discretion* when setting a matter for trial: "The hearing on the application may be adjourned from time to time and from place to place **in the discretion of the appeals board or the workers' compensation judge holding the hearing.**" (Lab. Code, § 5700.)

Next, defendant argues that WCAB Rule 10744 requires a WCJ to set a matter for trial when a party fails to object to a DOR. (Cal. Code Regs., tit. 8, § 10744(d).) The rule states: "If a party has received a copy of the Declaration of Readiness to Proceed and has not filed an objection under this rule, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances." (*Ibid.*) WCAB Rule 10744 can only be construed as the parties waiving objection to *the WCJ* setting the matter for trial. Per Labor Code section 5700, both the WCJ and the Appeals Board retain the discretion to determine whether a matter should be set for trial or whether a continuance is warranted.

We would further note that petitions for removal may only be filed where there is a good faith and/or non-frivolous basis to allege irreparable harm or substantial prejudice. Furthermore, misstating the court's rulings or otherwise misleading the court in a petition is both grounds for denying the petition and may constitute bad faith and/or frivolous conduct. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10945.)

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the order of continuance issued on February 20, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 29, 2025

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

**JEFFREY KOENIG
FLETCHER BROWN LAW FIRM
MICHAEL SULLIVAN & ASSOCIATES**

EDL/mt

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