

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

JENNIFER DICORATO, *Applicant*

vs.

**BLOOMFIELD BAKERY (THE ORIGINAL FISH COMPANY);
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, by its servicing facility,
SEDGWICK CMS, for FREMONT INDEMNITY COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ1504028 (AHM 0081465); ADJ603748 (AHM 0081464)
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR REMOVAL**

Lien claimant, Stuart Silverman, M.D., has filed a petition for removal in response to the order continuing the lien trial issued on March 8, 2023, by the workers' compensation administrative law judge (WCJ). In the comments of the minutes, the WCJ indicated an intention to permit defendant to substitute a bill review expert witness and to allow remote testimony.

Lien claimant contends that a substitution of an expert should not be permitted because the prior expert had not completed her testimony and the substituted witness was not listed on the pre-trial conference statement.

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 we will dismiss the Petition for Removal as there is presently no order or decision of the WCJ as to the issue raised by lien claimant, and thus, the issue is not ripe for adjudication. Upon return the parties may raise any objections to any rulings made at trial regarding witness testimony and may thereafter seek appropriate relief if they are aggrieved.

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. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

The only order issued on the March 8, 2023 Minutes is to set the matter for trial. It is not clear if the comments by the WCJ that defendant may substitute its expert witness and that remote testimony is permitted constitute an order or decision from which removal may be sought. Accordingly, the Petition for Removal will be dismissed.

We do not address the merits at this time as no order or decision has issued. We would further note that by filing a petition for removal, and delaying the proceedings, the issue of the original witness' availability may now be moot.

Finally, in the verified Petition for Removal, lien claimant states that defendant's substitute witness was not listed on the pre-trial conference statement. However, this is not true. We admonish lien representative Dan Escamilla and the Legal Service Bureau that verified petitions for removal "shall fairly state all of the material evidence relative to the point or points at issue" (Cal. Code Regs., tit. 8, § 10945(a)) and that engaging in tactics that are frivolous or solely intended to cause delay can subject the offending person to sanctions (Lab. Code § 5813; Cal. Code Regs., tit. 8, § 10421).

Accordingly, we dismiss the Petition for Removal as the issue raised by lien claimant is not ripe for adjudication.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the order continuing the lien trial issued on March 8, 2023, by the WCJ is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 9, 2025

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

**STUART SILVERMAN, M.D.
LEGAL SERVICE BUREAU
BENTHALE, McKIBBIN & McKNIGHT**

EDL/mt

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