

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

**KENNY HENRY, *Applicant***

**vs.**

**ACCO ENGINEERED SYSTEMS; LIBERTY MUTUAL, *Defendants***

**Adjudication Numbers: ADJ17195356; ADJ17201936  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR REMOVAL**

Defendant has filed a petition for removal from the order setting the matter for trial and permitting the deposition of the qualified medical evaluator (QME) issued on October 10, 2024, by the workers' compensation administrative law judge (WCJ).

Defendant contends that trial should proceed without the deposition of the QME.

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 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.)

The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) Substantial justice is “[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant’s substantive rights; a fair trial **on the merits.**” (Black’s Law Dictionary (7th ed. 1999).)

It is difficult to imagine a scenario where either party would be significantly prejudiced or irreparably harmed by having a doctor provide testimony as to the **merits** of a workers’ compensation claim. To that extent, defendant’s petition borders upon frivolous.

Defendant’s objection that the matter was set for trial with discovery open and that the more proper order would have been to continue the hearing was waived and/or invited by defendant at the hearing, wherein the minutes state: “Defendant vehemently objects to a continuance.” (Minutes of Hearing, October 10, 2024.) Again, defendant appears to be proceeding upon frivolous arguments.

Accordingly, we deny removal.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal from the order setting the matter for trial and permitting the deposition of the qualified medical evaluator issued on October 10, 2024, by the WCJ is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**September 26, 2025**

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

**KENNY HENRY  
CABRAL LAW GROUP  
MICHAEL SULLIVAN & ASSOCIATES LLP**

**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*