

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

MA LUISA OLIVARES, *Applicant*

vs.

**WINDSOR PALMS CARE CENTER;
STARSTONE NATIONAL INSURANCE COMPANY, administered by
CANNON COCHRAN MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ15400555
Van Nuys District Office**

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

Defendant has filed a petition for removal from the order taking the matter off calendar issued on May 9, 2024, by the workers' compensation administrative law judge (WCJ). The May 9, 2024 minutes also contained an order that appears to consolidate this case with another proceeding. We refer to these orders jointly as the May 9, 2024 Minute Orders.

Defendant contends that this matter is ripe for adjudication and that additional discovery is not warranted.

We have not 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 we will grant removal and as our Decision After Removal, we will rescind the May 9, 2024 Minute Orders and return this matter to the trial level.

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, the WCJ ordered the trial off calendar for further development of the record. The trial judge issued this order without creating a record or explaining the need for further development of the record and thus, the order violates the parties' right to due process, which constitutes irreparable harm. Thus, removal is proper in this case.

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, the matter was set for trial on all disputed issues. On the day of trial, the WCJ noted on the minutes of hearing issues regarding the evidence, which may have ultimately resulted in a trial order to develop the record. However, no record was created, and without a record, we cannot determine whether the judge's order to develop the record was appropriate. Upon return, a record must be created to support any orders that issue. We make no judgment at this time whether additional discovery is warranted.

Next, and at the request of the parties in this case, the WCJ further ordered that this case would be 'linked' with another. We presume this to indicate that the proceedings were consolidated with the other case. However, it appears that the second case involves a different employer who was not present at the hearing. All parties who may be affected by an order of consolidation must receive notice and an opportunity to be heard prior to the order of consolidation issuing. (See Cal. Code Regs., tit. 8, § 10832.) For this reason, we again rescind the Minute Orders.

Accordingly, we grant removal and as our Decision After Removal, we rescind the May 9, 2024 Minute Orders and return this matter to the trial level.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Minute Orders issued on May 9, 2024, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minute Orders issued on May 9, 2024, by the WCJ are **RESCINDED**.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 10, 2025

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

**LUISA MA OLIVARES
BRADFORD BARTHEL LAW VENTURA
EQUITABLE LAW TARZANA**

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*