

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

MULJI PATEL, *Applicant*

vs.

**BOEING NORTH AMERICAN fka ROCKWELL INTERNATIONAL;
AIG CLAIMS SERVICES, *Defendants***

**Adjudication Number: ADJ2233663 (LAO 0511232)
Los Angeles District Office**

**OPINION AND ORDER DISMISSING
PETITION FOR REMOVAL**

Applicant seeks removal of the Minutes of Hearing and Order Taking Off Calendar (OTOC) issued on April 13, 2023 by a workers' compensation administration law judge (WCJ). The WCJ ordered this matter off calendar over applicant's objection at the request of defendant based on the grounds that no issues were currently pending in the claim, defendant was no longer represented by counsel and needed to obtain new counsel, and that applicant's declaration of readiness to proceed (DOR) was improper.

Applicant contends that errors were made during the pendency of his claim that resulted in an unjust outcome and filed the DOR to rectify the situation and ensure a just resolution; that applicant is entitled to permanent disability (PD) payments of \$196.00 but it was fraudulent to base the award on a medical report from Dr. Snodgrass dated April 4, 1985 stating he was permanent and stationary because he never saw a psychiatric, kidney or pancreatic physician on April 4, 1985; defendant refuses to reimburse applicant for medical co-payments; that he has a lien for \$25,000.00 for PD payments suspended pursuant to an August 21, 1987 Order Suspending Proceeds and Barring Benefits Nunc Pro Tunc (Labor Code sections 4053, 4054) that his attorney wanted to set for hearing with other liens; his prior attorney Erwin Nepomuceno lied to a jury resulting in a criminal conviction and applicant's 12-year imprisonment for (what appears to be) assault and battery of Mr. Nepomuceno; and, that applicant sent defense attorney a supplemental report from qualified medical evaluator David S. David, M.D., F.A.C.P., who opined that applicant was permanent and stationary on September 25, 2002 as to industrial injuries in the form of chronic

pancreatitis, diabetes and related conditions, hypertension and borderline hypertensive cardiovascular disease, which all would require medical ongoing medical follow-up and therapy, but defense counsel had closed his office.

Defendant did not file an answer to the petition for removal. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that the petition be dismissed as untimely filed, but regardless, it should otherwise be denied because at the time of the OTOC, there were no issues pending within the jurisdiction of the Workers' Compensation Appeals Board at the time of the April 13, 2023 hearing.

We have reviewed the record in this matter, the allegations of the Petition for Removal, and the contents of the Report. For the reasons in the Report as set forth below, and for the additional reasons set forth below, we dismiss removal as untimely.

I.

There are 25 days allowed within which to file a petition for removal from a “non-final” decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, §§ 10955(a), 10605(a)(1).) To be timely, however, a petition for removal must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10845(a), 10392(a).)

The Petition for Removal was received by the Appeals Board on September 3, 2024. (Petition for Removal, “Received” stamp, p. 1.) This was more than 25 days after the service of the April 13, 2023 OTOC on April 13, 2023.

Therefore, we dismiss the petition for removal because it was not timely filed after the service of the April 13, 2023 OTOC.

II.

Moreover, we would have denied the petition for removal had we reached the merits. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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)(1)-(2); 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).)

As stated by the WCJ in the Report:

The Applicant contends that the case was set for hearing on April 13, 2023, and should not have been taken off calendar, thus leading to an unjust outcome. The undersigned has some recollection of discussing the matter with Applicant and the defense attorney at the hearing and that **future medical care would be provided pursuant to ... the Award** and that defense attorney was unaware of any triable issues at that time. According to the Minutes of Hearing dated April 13, 2023 (EAMS DOCUMENT ID NUMBER 76634753), **the handling defense attorney counsel had moved law firms and did not transfer this case with him, so a new attorney would be assigned to Applicant's case.** There were no issues pending within the WCAB jurisdiction at the time. **There was nothing specific pointed to that was being denied or delayed,** and it appeared that Applicant understood and had no objection to the case going off calendar at that time. In fact, the Applicant agreed to a joint off-calendar. ... **Neither of the issues raised by Applicant's Declaration of Readiness to Proceed dated April 5, 2023 were triable issues at this point in time,** and so there was no argument made at the time of hearing for the case to be set for trial or even to be continued. There was no discussion of fraud or misrepresentation.

(Report, pp. 1-2, bold added.)

In the Declaration of Readiness to Proceed (DOR) filed by applicant on April 10, 2023, applicant stated that he was ready to proceed to hearing on issues involving self-procured medical treatment (namely, a \$25,180.00 expense which appears to be from a 1989 self-procured back surgery), based on “new evidence” in the form of a letter from attorney Barry Appell dated January 21, 1988 (1988 attorney Appell letter). (DOR, April 10, 2023, p. 2.)¹ Applicant also stated that it was fraudulent to force him to go to an agreed medical evaluator in order to assess whether the self-procured medical treatment bills should be paid by defendant. (*Ibid.*)

None of the issues raised by applicant in the petition for removal were raised by applicant in the DOR or discussed at the April 13, 2023 hearing. In fact, at the April 13, 2023 hearing, applicant was reassured that future medical care would be provided pursuant to prior award, and that a new defense counsel would be assigned to his case. The WCJ indicates that applicant pointed to nothing specific that was being denied or delayed to him, and that all parties concurred that the

¹ There is no explanation in the DOR or in the petition for remand why the 1988 Appell letter, which was addressed to applicant and sent in response to a letter sent to attorney Appell by applicant, constitutes “new evidence.”

issues raised in the DOR, which were the issues relevant to the April 10, 2023 hearing, were not yet ripe for hearing.

Thus, there is no indication that applicant was prejudiced or harmed in any manner by the OTOC, or that reconsideration would not be an adequate remedy should there ever be any further and final decision in this matter.

We note that if applicant believes that any benefits have been delayed or denied, he should specifically identify any such delayed or denied benefits and the corresponding amounts in a petition, and file a new DOR in order to obtain a hearing on the petition.

Accordingly, the petition for removal is dismissed because it was not timely filed after service of the April 13, 2023 OTOC.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the Minutes of Hearing and Order Taking Off Calendar issued on April 13, 2023 by a workers' compensation administration law judge is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 28, 2025

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

**MULJI PATEL
STOCKWELL HARRIS
JEFFREY BANNER, COLEMAN CHAVEZ
BROADSPIRE
WORKING RX INC.
BOEING NORTH AMERICAN INC. fka ROCKWELL INTERNATIONAL**

AJF/ara

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

CS