

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

OSIEL CALDERON, *Applicant*

vs.

AGADRIANO GOLDSCHMIED, INC.;
SAFETY NATIONAL CASUALTY CORPORATION, *Defendants*

**Adjudication Number: ADJ13736760
Long Beach District Office**

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

Defendant has filed a petition for removal from the “Order Denying Petition for Order Compelling Production” (Order) issued on October 18, 2023, by the workers’ compensation administrative law judge (WCJ).

Defendant contends that it is entitled to obtain records from applicant via a notice to produce and is not required to obtain such records only through a deposition subpoena.

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 we will grant removal and as our Decision After Removal, we will rescind the October 18, 2023 Order and return this matter to the trial level to create a record.

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 basis for the Order 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.)

We make no judgment at this time on the merits of the issues raised since without a formal record available to review, we have no ability to make this determination.

Accordingly, we grant removal and as our Decision After Removal, we rescind the October 18, 2023 Order and return this matter to the trial level to create a record.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Order Denying Petition for Order Compelling Production issued on October 18, 2023, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Denying Petition for Order Compelling Production issued on October 18, 2023, by the WCJ is **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/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, 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.

**OSIEL CALDERON
JOHN JANSEN LAW SANTA ANA
NIGEL SCOTT BAKER LAW TOLUCA LAKE
ASSOCIATED LIEN SHERMAN OAKS**

EDL/mt

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