

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RAYMOND BLACKWELL, *Applicant*

vs.

**CALIFORNIA HIGHWAY PATROL, legally uninsured,
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ17686848
Marina del Rey District Office**

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

Defendant has filed a petition for removal from the order granting continuance and order denying defendant's petition for a protective order issued on November 6, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that applicant should not be permitted to take a second deposition of the QME.

We have 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 November 6, 2025 orders granting continuance and denying defendant's petition for a protective 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 denied defendant's petition for a protective order without creating a 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, defendant has filed a petition for a protective order. Any order that issues with respect to that order must be supported by a record.

While we understand the *apparent* facts upon which the WCJ issued the decision in this matter, we can make no judgment at this time whether an additional deposition of the QME is warranted 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 November 6, 2025 orders granting continuance and denying defendant's petition for a protective 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 orders granting continuance and denying defendant's petition for a protective order issued on November 6, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the orders granting continuance and denying defendant's petition for a protective order issued on November 6, 2025, 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 19, 2025

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

**RAYMOND BLACKWELL
LAW OFFICES OF MALLERY & STERN
STATE COMPENSATION INSURANCE FUND**

EDL/mt

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