

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

ROBERT GONZALES, *Applicant*

vs.

NORTHROP GRUMMAN SERVICES CORPORATION; AIG, *Defendants*

**Adjudication Number: ADJ9689895
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a petition for removal from the order setting the matter for trial issued on January 8, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that there are no triable issues and that the WCJ erred in failing to have the parties complete a pre-trial conference statement (PTCS) on the day of the mandatory settlement conference (MSC) and instead ordering the parties to file a PTCS within 10 days.

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.¹ 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

¹ Defendant attached various documents to the Petition for Removal in violation of WCAB Rule 10945(c)(3) (Cal. Code Regs., tit. 8, § 10945(c)(3)). We have not reviewed the attached documents.

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.

Defendant argues that there are no triable issues in this case. This does not appear to be true as applicant appears to be seeking unpaid costs and interest pursuant to Labor Code section 5811. Furthermore, and pursuant to WCAB Rule 10515, in workers' compensation: "Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." (Cal. Code Regs., tit. 8, § 10515.)

Next, defendant argues that the WCJ erred by setting the matter for trial without informing the parties of the issues to be set. In this regard, it appears that a PTCS was not completed on the day of the MSC pursuant to Labor Code section 5502(d)(3). However, this appears to be either waived or invited error. In its petition, defendant alleges that "[The WCJ] ordered Defense attorney to prepare pre-trial conference statement. Defense attorney asked WCJ which issues would be set. WCJ did not give notice of the issues for Trial." (Petition for Removal, p. 3, lines 13-15.)

It is the duty of **the parties** to complete the PTCS and list the issues they wish to set for trial. Pursuant to WCAB Rule 10759:

The parties shall meet and confer **prior to** the mandatory settlement conference and, absent resolution of the dispute(s), **the parties shall complete a joint Pre-Trial Conference Statement setting forth the issues** and stipulations for trial, witnesses, and a list of exhibits by the close of the mandatory settlement conference.

(Cal. Code Regs., tit. 8, § 10759(b).)

While the WCJ could continue a MSC where the parties failed to meet and confer prior to the hearing and where one of the parties openly challenges the WCJ's directive to complete a PTCS and list the issues for trial, the policy of workers' compensation is to accomplish substantial justice expeditiously. Thus, we understand why the WCJ crafted a remedy of setting the matter for trial while permitting the parties to file a PTCS within 10 days of the MSC. In this case, it appears that the parties' failure to complete a PTCS on the day of the hearing was invited error and/or waived by defendant.

Furthermore, the parties filed a PTCS on January 8, 2025, listing the issues to be tried. Thus, it would also appear that defendant's argument is now moot.

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 issued on January 8, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2025

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

**ROBERT GONZALES
PENNINGTON TRODDEN LAW
BLACK ROSE
ROLAND LAW**

EDL/mt

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