

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

**ROBERTO CHAVEZ (dec), *Applicant***

**vs.**

**COUNTY OF SAN BERNARDINO, permissibly self-insured, self-adjusted, *Defendant***

**Adjudication Numbers: ADJ16696159  
Riverside District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR REMOVAL**

Applicant has filed a petition for removal from the order setting the matter for trial issued on May 15, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that he has not completed discovery.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we dismiss removal as untimely or deny removal on the merits.

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, the petition was not timely filed and thus, it will be dismissed. However, even if we were to review the petition on the merits, it would be denied as applicant failed to demonstrate substantial prejudice or irreparable harm.

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, based upon the WCJ's analysis of the

merits of petitioner's arguments, if we were to review this on the merits, we would not be 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.

Here, once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. Specifically, as part of that process, the parties will have an opportunity to raise the issue of whether further development of the record is appropriate. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed. We make no judgment at this time whether applicant is entitled to additional discovery.

As to the timeliness of the petition, pursuant to WCAB Rule 10955, "At any time within 20 days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal[.]" Per the court's record a notice of hearing issued on May 16, 2025. The Petition for Removal was filed on June 20, 2025, which was 35 days later. It appears applicant may be basing the timing of the petition upon when the minutes of hearing were formally served, however, the occurrence of scheduling the trial occurred on May 16. Although the minutes repeat the fact that trial was scheduled, this does not extend the time for removal or create an independent cause of action.

Accordingly, the petition is not timely and must be dismissed. However, as noted above, even if we had reviewed the petition on the merits, removal would be denied.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Removal from the order setting the matter for trial issued on May 15, 2025, by the WCJ is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**SEPTEMBER 23, 2025**

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

**ALTHEA CHAVEZ  
THE RAMIREZ FIRM  
PARKER IRWIN LAW FIRM**

**EDL/mt**

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