

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

STEPHANIE TOVAR, *Applicant*

vs.

**UNITED PACIFIC; EVEREST PREMIER INSURANCE CO.,
administered by BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ17817958; ADJ17817957
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL AND
NOTICE OF INTENT
TO IMPOSE SANCTIONS**

Defendant has filed a petition for removal from the order taking the matter off calendar issued on April 24, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that the matter should proceed upon the bifurcated issue of its affirmative defense under Labor Code section 3208.3(d).

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 and for the reasons discussed below, we will grant the Petition for Removal and issue a Notice of Intention to impose sanctions of up to \$2,500.00 jointly and severally against defendant employer United Pacific, defendant insurer Everest Premier Insurance Company; defendant's administrator Broadspire; and defendant's attorneys the Law Offices of Schlossberg & Umholtz and Brittany Luedecke (CA BAR #289896).

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, 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.

In workers' compensation, the general rule is that all matters are submitted at a single trial. (Cal. Code Regs., tit. 8, § 10787(a).) However, it is within the discretion of a WCJ to bifurcate any issue if good cause is presented. Here, and for the reasons discussed by the WCJ in the Report, we agree that the WCJ properly acted within her discretion in declining to bifurcate the issue of Labor Code section 3208.3(d).

However, and notwithstanding the above, we will grant the petition for removal solely to address the issue of sanctions.

Section 5813 permits the Workers' Compensation Appeals Board to issue sanctions of up to \$2,500.00, for acts which result from ". . . bad-faith actions or tactics that are **frivolous** or **solely intended to cause unnecessary delay**." (§ 5813, (emphasis added).)

WCAB Rule 10421(b) states in relevant part that:

Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.

WCAB Rule 10421(b) further provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, subdivision (b) states that a party may be subject to sanctions where the party has engaged in the following actions:

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure . . .

(6) Bringing a claim, conducting a defense or asserting a position:

(A) That is:

(i) Indisputably without merit;

(7) Presenting a claim or a defense, or raising an issue or argument,
that is not warranted under existing law . . .

(8) Asserting a position that misstates or substantially misstates the
law . . .

(Cal. Code Regs., tit. 8, § 10421(b).)

Business and Professions Code section 6068 provides in part that an attorney must respect the courts of justice and judicial officers (subdivision (b)); maintain only actions that are legal or just (subdivision (c)); be truthful at all times, including never to mislead a judge or judicial officer by false statement of fact or law (subdivision (d)); and, refrain from beginning or continuing a proceeding from “any corrupt motive” (subdivision (g)). Rule 3.3 of the California Rules of Professional Conduct provides in part that a lawyer shall not: “(1) knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2). . . knowingly misquote to a tribunal the language of a book, statute, decision or other authority.”

Petitions for removal are verified under penalty of perjury and they must fairly state all of the material evidence relative to the point or points at issue. (Cal. Code Regs., tit. 8, § 10945(a).) Each contention contained in a petition for removal must be stated separately and clearly set forth. (*Ibid.*) The petition shall support its evidentiary statements with specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) “A petition for reconsideration, removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record **and to the principles of law involved.**” (Cal. Code Regs., tit. 8, § 10972, (emphasis added).) In short, failure to cite the record and failure to fully and accurately set forth the facts and evidence is grounds to deny a petition for removal. (§ 5902; Cal. Code. Regs., tit. 8, § 10972.)

Here, defendant cited to the panel decision in *Muldrow v. AMS Outsourcing / Staffchex*, 2019 Cal. Wrk. Comp. P.D. LEXIS 452.¹ Defendant argues that the *Muldrow* panel reversed the

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and the Workers’ Compensation Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal. App. 3d 1260, 1264, fn.

WCJ and ordered the issue of section 3208.3(d) to proceed to trial because it is a threshold issue to be decided prior to a panel QME evaluation. However, the panel decision does not support this argument. The *Muldrow* panel stated:

Previous panel decisions have rejected the argument that the issue of length of employment for purposes of section 3208.3(d) must be determined prior to a psychiatric QME evaluation. (See e.g., *Lal v. US Airways Group, Inc.* (April 23, 2012, ADJ362898) [2012 Cal. Wrk. Comp. P.D. LEXIS 191]; *Morfin v. Araujo's Mexican Grill* (October 12, 2015, ADJ9877170) [2015 Cal. Wrk. Comp. P.D. LEXIS 601].) **We are therefore not persuaded that the issue of whether applicant is barred from compensation for her psychiatric claim by section 3208.3(d) must be adjudicated prior to a psychiatric QME evaluation.**

However, in this matter, the July 20, 2017 minute order by WCJ Shields specified that in the event of “a timely objection [to the psychiatric QME panel] by either party based upon the applicability of LC § 3208.3(d), this issue will be fully litigated prior to the setting of any psychiatric PQME evaluation.” None of the parties sought removal of this order. The WCJ at trial chose to treat Mitsui’s August 18, 2017 DOR as an objection to the psychiatric QME panel and this “objection” was timely made within 30 days of the July 20, 2017 minute order.

(*Id.* at *9-10, (emphasis added).)

Contrary to defendant’s argument, the *Muldrow* panel does not support the proposition that section 3208.3(d) is a threshold issue. Instead, that panel was decided based upon the unique facts of the case, which included a prior non-appealed order of the WCJ that declared section 3208.3(d) a threshold issue in that case.

Next, defendant cites to *Mangan v. Oakdale Inn*, 2022 Cal. Wrk. Comp. P.D. LEXIS 219. Defendant argues that the *Mangan* panel stands for the following:

The WCAB held that “where there is a threshold legal issue that may bar a claim entirely, that issue should be resolved before ordering medical-legal evaluations that may ultimately be unnecessary.” The WCAB emphasized that the six-month rule is a “clear statutory prerequisite” to the compensability of psychiatric injury claim and that this prerequisite should be addressed before incurring the costs of medical-legal evaluations.

(Petition for Removal, p. 4, lines 24-28.)

2. [54 Cal.Comp.Cases 145].) Practitioners should proceed with caution when citing to a panel decision and verify its subsequent history.

Defendant's quotations do not appear to exist. We could not find these quotes in any published panel decision of the Appeals Board. It appears that the above citations are fabricated. The *Mangan* panel stands in complete opposite of defendant's representations as it affirmed the WCJ's order issuing a psychiatric panel and deferring the issue of section 3208.3(d).

It is unclear how an attorney licensed by the California State Bar, who signed the Petition for Removal under penalty of perjury, could have read the panel decisions above and cited them in the manner they were presented. It appears that the Petition was not reviewed before filing. Thus, it appears that defendant's filing was frivolous and not in good faith. In its response, defendant is invited to discuss, in detail, how these citations were generated.

Accordingly, we grant the Petition for Removal to address the issue of sanctions.

We issue a Notice of Intention to impose sanctions of up to \$2,500.00 jointly and severally against defendant employer United Pacific, defendant insurer Everest Premier Insurance Company; defendant's administrator Broadspire; and defendant's attorneys the Law Offices of Schlossberg & Umholtz and Brittany Luedecke (CA BAR #289896).

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the order taking the matter off calendar issued on April 24, 2025 by the WCJ is **GRANTED**.

NOTICE IS HEREBY GIVEN that absent written objection in which good cause to the contrary is demonstrated, within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice, pursuant to Labor Code section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421), the Workers' Compensation Appeals Board will order defendant **UNITED PACIFIC**; defendant's insurer **EVEREST PREMIER INSURANCE COMPANY**; defendant's administrator **BROADSPIRE**; and defendant's attorneys **LAW OFFICES OF SCHLOSSBERG & UMHOLTZ** and **BRITTANY LUEDECKE** (CA BAR #289896), to jointly and severally pay sanctions of up to \$2,500.00 payable to the General Fund.

IT IS FURTHER ORDERED that all responses to this Notice must be electronically filed in the Electronic Adjudication System (EAMS) within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice. **Untimely or misfiled responses may not be accepted or considered.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2025

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

**STEPHANIE TOVAR
LAW OFFICE OF BOB NEHORAY
LAW OFFICES OF SCHLOSSBERG & UMHOLTZ**

EDL/mc

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