

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

ELEAZAR LOPEZ HERNANDEZ, *Applicant*

vs.

**AMOROSO LIMITED PARTNERSHIP; BERKSHIRE HATHAWAY HOMESTATE
COMPANIES; PACIFIC COMPENSATION INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ20340059
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Applicant has filed a petition for removal from the order taking the matter off calendar issued on January 2, 2026, by the workers' compensation administrative law judge (WCJ).

Applicant contends that the matter is ready to proceed to trial.

We have not received an Answer from defendants. 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 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 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.

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, it appears that the primary dispute is whether to compel a second deposition of applicant prior to proceeding to trial. The WCJ initially ordered the deposition to proceed, but then rescinded that order after applicant sought reconsideration and noticed an intent to set that issue for hearing, which was the proper procedure. At any subsequent hearing the parties 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 deposition of applicant 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 additional discovery is warranted since without a formal record available to review, we have no ability to make this determination.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the order taking the matter off calendar issued on January 2, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 26, 2026

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

**ELEAZAR LOPEZ HERNANDEZ
WATCHEL LAW
COLEMAN CHAVEZ & ASSOCIATES
COPPERPOINT LEGAL**

EDL/mt

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