

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

**GUILLERMO GONZALEZ, *Applicant***

**vs.**

**THE BICYCLE CASINO; ARCH INDEMNITY INS. CO.,  
Administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ12226694  
Los Angeles District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION  
AND GRANTING REMOVAL  
ON MOTION OF THE  
APPEALS BOARD**

On February 6, 2024, applicant's attorney, Susan Garrett, through hearing representative Lance Garrett, filed a Petition for Reconsideration from an order denying continuance issued on January 26, 2024 by the workers' compensation administrative law judge (WCJ) and the April 7, 2022 Order Approving Compromise and Release (OACR). Susan Garrett contends that a provision contained within the OACR, which purports to resolve attorney's fees under Labor Code section 5710 is invalid.

On March 29, 2024, applicant's attorney filed a supplemental Petition for Reconsideration, which sought to amend the initial petition to seeking removal as an alternative remedy.

We have not received an Answer from defendant.

We have considered the allegations of the Petitions and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons stated below and for the reasons stated by the WCJ in the Report, we will deny the petition to the extent that it seeks reconsideration of the April 7, 2022 OACR, dismiss reconsideration to the extent that it seeks removal from the denial of a continuance request, and we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

Every issue raised in lien claimant’s Petition for Reconsideration was an issue that was set to be decided at trial, which was to occur on February 8, 2024. On the eve of trial, rather than allow the trial judge to create a record and decide the issues raised, applicant’s attorney instead filed a Petition for Reconsideration. In essence, applicant’s attorney requests summary judgment issue in her favor without any record having been created. This is not proper. (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc); see also, Cal. Code Regs., tit. 8, § 10515 [“Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted.”].) It is unclear upon what good-faith basis the Petition for Reconsideration was filed. It appears that the Petition for Reconsideration may have been filed solely to delay the trial proceedings. Accordingly, we will issue an order denying reconsideration and grant removal on our own motion to investigate whether sanctions and/or an award of reasonable expenses, including costs and/or attorney’s fees should issue.

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers’ compensation matter, “the proceedings in any claim.” This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers’ Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

This is not a final decision on the merits of removal, and we will order that issuance of the final decision after removal is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**IT IS FURTHER ORDERED** that **REMOVAL** of this case to the Appeals Board is **GRANTED** on the motion of the Appeals Board.

**IT IS FURTHER ORDERED** that a decision after removal is **DEFERRED** pending further review of the merits of the Petition for Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

**IT IS FURTHER ORDERED** that pending the issuance of a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**CRAIG SNELLINGS, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**April 8, 2024**

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

**GUILLERMO GONZALEZ  
GARRETT LAW GROUP  
HITZE & FERRAN**

**EDL/oo**

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