

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

JUAN OLVERA MEDINA, *Applicant*

vs.

EAT SWEET FARMS, LLC; XL INSURANCE AMERICA, INC., *Defendants*

**Adjudication Number: ADJ13943845
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

We have considered the allegations of defendant's Petition for Removal, applicant's answer 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 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) 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.

Applicant's answer and the WCJ's report indicate that defendant's Petition contains misrepresentations of fact. Defendant is reminded that a party or attorney may be sanctioned for

executing a declaration or verification to any petition, pleading or other document filed with the Appeals Board that contains substantial misrepresentations of facts. (Cal. Code Regs., tit. 8, former § 10561(b)(5)(A), now § 10421(b)(5)(A) (eff. Jan. 1, 2020); see also Lab. Code, § 5813.)

Therefore, we will deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Minute Order issued by the WCJ on April 28, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 8, 2021

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

**FLOYD SKEREN
JUAN OLVERA MEDINA
SPRENKLE & GEORGARIOU**

AI/pc

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