

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

MARGARET JOANNE HUNTER, *Applicant*

vs.

**ACR SYSTEMS, INC.;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ882004
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR REMOVAL**

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will dismiss the petition.

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).)

We note that while we may agree with the WCJ's initial observations at trial and in his report that the matter should proceed with the testimony of the reviewer so that a record may be created (see *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc)), since there is no order by the WCJ on the pending petition to strike, we need not reach the merits of the petition at this time.

We also observe that lien claimants David Silver, M.D., and David Bresler, Ph.D., L.Ac., have jointly filed an Objection to Finding Made In WCJ's Report and Recommendation on Petition

for Removal (Objection), dated January 9, 2023. However, petitioners are not aggrieved because the WCJ's Report and Recommendation on Petition for Removal is not an "order, decision or action" as contemplated by WCAB Rule 10955, and in the absence of such an order, petitioners cannot establish that "reconsideration will not be an adequate remedy" after the issuance of such an order. (Cal. Code Regs., tit. 8, § 10955(a).)

Additionally, and insofar as lien claimant's objection constitutes a supplemental pleading, we remind the parties that WCAB Rule 10964 requires that supplemental pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Our Rules further require that a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. (Cal. Code Regs., tit. 8, § 10964(b).) Lien claimants have not sought the permission of the WCAB to file supplemental pleadings, or set forth good cause for doing so. Accordingly, we have not considered the January 9, 2023 Objection herein.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 25, 2023

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

**MEDICAL COST REVIEW
LEGAL SERVICE BUREAU**

SAR/abs

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