

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

SANDRA GIRON, *Applicant*

vs.

**LOS FELIZ HEALTHCARE WELLNESS CENTRE, LP and XL SPECIALTY
INSURANCE COMPANY, administered by INTERCARE INSURANCE SERVICES,
*Defendants***

**Adjudication Number: ADJ12401537
Marina del Rey District Office**

**OPINION AND ORDER
DENYING 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, 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.

On February 3, 2022, we issued our "Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration." (February 3, 2022 Opinion). In that

decision, we rescinded the WCJ's December 1, 2021 Findings & Order in its entirety. We explained that the findings were not supported by substantial evidence and specifically, we stated that: "For the reasons discussed herein, it is appropriate that we return this matter to the WCJ for further development of the record." (February 3, 2022 Opinion, p. 3.)

On September 12, 2022, without submitting any new evidence or further creating a record, the parties submitted the case on the same record.

On October 3, 2022, the WCJ issued a new Findings & Order.

On December 22, 2022, we issued our "Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration." (December 22, 2022 Opinion). In that decision, we rescinded the WCJ's October 3, 2022 Findings & Order in its entirety. We again explained that the findings were not supported by substantial evidence, a not unexpected result since the parties made no effort to develop the record. We stated in pertinent part that:

As quoted above, in our Opinion and Order, we explained why the reports from Dr. Boyko do not constitute substantial evidence. Based on the fact that the trial record did not contain substantial evidence pertaining to the issue of applicant's injury claim, we returned the matter for development of the record. Applicant's dismissal of the psychiatric injury claim does not impact the orthopedic injury claim. Having been informed that the trial record did not contain substantial evidence, it is not clear why the parties chose to re-submit the matter for decision "on the existing record."

[I]t is the parties' responsibility to submit substantial evidence pertaining to the issues submitted for decision. Upon return of this matter, the most expedient means of resolving the disputed issues would be by settlement of the injury claim. If the parties are unable to settle the matter, they may choose to have applicant evaluated by a qualified medical examiner (QME) or in the alternative, they may request that the WCJ appoint a regular physician. (Lab. Code § 5701.) *Counsel are reminded that if the matter is again submitted for decision on the existing record, the issues of burden of proof as well as frivolous and/or bad faith conduct will be considered. (Lab. Code, § 5705; Cal. Code Regs., tit. 8, § 10421, subd. (b).)*

(December 22, 2022 Opinion, pp. 3, 4.)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in

order to fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Here, we have clearly stated that further development of the record is warranted, and we have warned counsel about submitting the case on the same record.

Yet, in the pending Petition for Removal, defendant appears to contend that further development of the record is not appropriate. All parties before the Appeals Board are expected to cooperate and to resolve disputes amicably wherever possible.

Defendant *Los Feliz Healthcare Wellness Centre LLP*, insured by *AXA AL*, administered by *Intercare Pasadena* and its attorneys *Stephen J. Alves* and the *Alves Law Office* are hereby admonished that they must comply with orders of the Appeals Board and that a failure to do so may result in sanctions.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 6, 2023

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

**SANDRA GIRON
HINDEN & BRESLAVSKY, APC
ALVES LAW OFFICE**

AS/ara

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