

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

STEPHEN MCCARTY, *Applicant*

vs.

**FCI CONSTRUCTORS;
ZURICH AMERICAN INSURANCE COMPANY, *Defendants***

Adjudication Number: ADJ2919928

Santa Ana District Office

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

We have considered the allegations of the Petitions 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.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the decision issued on September 6, 2023 is **DENIED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal of the decision issued on September 6, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 1, 2023

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

**STEPHEN MCCARTY
LAW OFFICE OF JODIE P. FILKINS, A.P.C
DONNELL, MELGOZA & SCATES LLP
STOCKWELL, HARRIS, WOOLVERTON & FOX**

AS/mc

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