

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

ROSA ROBINSON, *Applicant*

vs.

**LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY (LAMCTA);
ST. PAUL TRAVELERS INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ4622458 (MON 0209643)
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Lien Claimant David Silver, M.D., (petitioner) seeks removal in response to the workers' compensation administrative law judge's (WCJ) minute order designating a briefing schedule on the issue of "whether Dr. Silver has the threshold burden of proof on reasonableness and necessity, without a stipulation by the parties as to reasonableness and necessity" on October 20, 2020 (Order).

Petitioner contends that it is entitled to a determination of the proper valuation of its lien and that the Order permitting additional issues or evidence outside of the Pretrial Conference Statement will result in significant prejudice and irreparable harm. Petitioner also argues that in failing to previously raise the issue of reasonableness and necessity, defendant has waived the issue.

Defendant filed an Answer. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny the Petition for Removal (Petition).

We have considered the allegations of the Petition for Removal, the 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, we will deny the Petition for 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, 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.

Petitioner contends generally that allowing the adjudication of additional issues not raised by the parties in the PTCS will prejudice petitioner. However, while the parties are free to raise the issue of waiver and the WCJ may adjudicate it, generally when the Appeals Board grants reconsideration, rescinds a prior decision, and returns the matter to the trial level for further proceedings, the prior decision is in effect annulled and the record is reopened on all issues. (See *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1256; see also *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229, fn. 7 (Appeals Board en banc).) Accordingly, we are not persuaded that petitioner will suffer substantial prejudice or irreparable harm by the WCJ's Order. In this case, the Appeal Board granted reconsideration and the matter was returned to the WCJ for further proceedings to ensure full notice and due process on the issues to be tried. (Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, October 11, 2019.) The WCJ is therefore permitted to address any outstanding issues not yet adjudicated. More specifically, petitioner's discussion of whether defendant has waived the issue of the reasonableness and necessity of treatment may still be raised by petitioner and adjudicated at the trial level. Thus, we find no irreparable harm and deny the Petition for removal.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 22, 2021

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

**ROSA ROBINSON
TENNENHOUSE MINASSIAN & ADHAM
LEGAL SERVICE BUREAU
SOBOL ORTHOPEDIC MEDICAL GROUP**

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