

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

GILLIAN CLARKE, *Applicant*

vs.

COUNTY OF ALAMEDA; AIMS, *Defendants*

**Adjudication Number: ADJ13828921
Oakland 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, 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, for the reasons stated in the WCJ's report, 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 the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2024

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

**GILLIAN CLARKE, IN PRO PER
VALEN CIA WILBER DING & ROMERO**

AS/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

By timely, unverified petition filed on September 15, 2023, applicant Gillian Clarke seeks removal to the appeals board of the decision filed herein on August 29, 2023, and served by mail on August 31, 2023, in this case, which arises out of injury, claimed but denied, to the psyche of a deputy public conservator. Petitioner, hereinafter applicant, contends that it was error to set this matter for trial despite a number of errors that she believes were made in the past and had not been corrected. An answer has not reached the file; this report is submitted at first opportunity given the approaching trial of substantive issues.

Applicant seeks leave “to file the proper workers’ compensation claim.” However, simultaneous with the filing of her petition, she has filed an amended application for adjudication of claim that appears to have remedied the errors Ms. Clarke believes were made in previous pleadings. One other error concerns minutes of hearing, dated April 11, 2023, involving a different case and misfiled by defendant in this case; we have set in motion the deletion of that document from this file; there is no indication that this clerical mistake has had any impact on this matter.

At the last mandatory settlement conference (MSC), applicant expressed her understanding that she was to wait until the trial of her case before filing a report, long discussed at MSCs, by her treating physician in rebuttal to the opinions of an agreed medical evaluator (AME),¹ who concluded that her claim was not compensable. The issues surrounding such report are not discussed in the instant petition, but they

¹ The AME agreement was made when applicant was represented by an attorney.

bear mentioning because they had figured so prominently in the proceedings to date. On this topic, contrary to Ms. Clarke's understanding, the need to procure any rebuttal report in advance of an MSC setting the case for trial was repeatedly stressed to her, and she was given several opportunities to procure such a report. (The clearest such instance appears in the minutes of hearing dated April 25, 2023, where the following is written in the comments section: "Matter is off-calendar [sic] for Ms. Clarke to obtain rebuttal report from Dr. Roberts.") When, on August 29, 2023, the case was finally set for trial, admissibility of any documents not exchanged by the time of the MSC was deferred to the trial judge, who will address such issue, should it arise, at or before the trial on November 1, 2023. In any event, should the instant petition be seen as taking issue with the closure of discovery at the MSC (the relevant portion of Labor Code section 5502 was read aloud to the parties at that hearing), I believe any prejudice has been foreclosed by deferring admissibility to the trial judge.

RECOMMENDATION

I recommend that applicant be given leave to file a verification of her petition, that her amended application for adjudication of claim be treated as her formal pleading on the matters therein amended, and that removal be denied.

Date: September 21, 2023

Respectfully submitted,

Christopher Miller
Workers' Compensation Judge