

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

**AURELIO RUIZ, *Applicant***

**vs.**

**CARRARA MARBLE COMPANY;  
EVEREST INSURANCE COMPANY,  
adjusted by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ13792318; ADJ14477369  
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 based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's report, we will deny removal. To the extent that applicant requests that Judge Howell be disqualified, we deny the request for the reasons stated in the report, which we adopt and incorporate as quoted below.

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.

We adopt and incorporate the following quote from the WCJ's report:

Finally, applicant objects to Judge Howell being the trial judge on these discovery disputes because he believes Judge Howell will be prejudiced by having to review the surveillance films. Applicant further states it is unreasonable for Judge Howell to review the surveillance films and investigative reports prior to applicant deposing the investigator(s). Applicant's contentions [lack] merit. Applicant has failed to provide any legal support for his argument that he is entitled to a different trial judge for the discovery disputes identified in the PCS. There are no separate law and motion departments or calendars in workers' compensation practice. Judge Howell is the assigned trial judge in this matter. Neither party objected to the assignment of Judge Howell at the time the first expedited hearing was set on 05/06/2021. Judge Howell presided over two trials during which witnesses were sworn in and testified. Applicant has not petitioned to disqualify Judge Howell as the trial judge. Applicant has not alleged a conflict of interest, or that Judge Howell has formed or expressed an unqualified opinion or belief as to the merits, or that she has evidenced bias toward either party.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 19, 2022**

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

**AURELIO RUIZ  
PENINSULA INJURED WORKERS CENTER  
LAUGHLIN, FALBO, LEVY & MORESI  
MICHAEL SULLIVAN & ASSOCIATES  
LAW OFFICES OF THOMAS J. BURNS**

**PAG/abs**

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