

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

DAVID MATTHEWS, *Applicant*

vs.

**SIMI VALLEY CYCLES;
AMGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ14069848
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR REMOVAL AND
DISMISSING PETITION FOR DISQUALIFICATION**

Defendant seeks removal in response to determinations made by workers' compensation administrative law judge (WCJ) Lynn Devine during a hearing that occurred on May 11, 2022. The petition also appears to seek the disqualification of WCJ Devine.

Defendant argues that during the May 11, 2022 hearing, WCJ Devine "erred by declining to provide additional discovery to address AOE/COE and instead going forward with Trial to determine injury arising out of and during the course of employment only. Judge Devine further erred by deferring all other issues." (Petition, p. 2; Minutes of Hearing, May 11, 2022, p. 3.) In its prayer for relief, defendant also requests that the case be reassigned to an "impartial judge." (Petition, p. 8.)

We received a response from applicant. The WCJ filed a Report and Recommendation on Removal (Report) recommending that we deny defendant's Petition for Removal (Petition) because defendant will not suffer significant prejudice or irreparable harm, and that defendant fails to cite to any evidence that the WCJ lacks impartiality.

We have considered the allegations of the Petition for Removal and the contents of the WCJ's report with respect thereto. Based on our review of the record, and based upon the WCJ's analysis of the merits of defendant's arguments in the WCJ's report, we will deny the Petition for Removal and dismiss the Petition to the extent that it seeks disqualification of WCJ Devine.

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 defendant'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 defendant.

In its prayer for relief, defendant also appears to seek disqualification of WCJ Devine, requesting that the case be reassigned to an "impartial judge." (Petition, p. 8.) Nowhere else in its Petition does defendant discuss or provide the grounds for this request, which, in any event, fails to meet the requirements of Appeals Board Rule 10960, which governs petitions for disqualification of a WCJ. Appeals Board Rule 10960 states:

Proceedings to disqualify a workers' compensation judge under Labor Code section 5311 shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail facts establishing one or more of the grounds for disqualification specified in section 641 of the Code of Civil Procedure. The petition to disqualify a workers' compensation judge and any answer shall be verified upon oath in the manner required for verified pleadings in courts of record.

If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.

A petition for disqualification shall be referred to and determined by a panel of three commissioners of the Appeals Board in the same manner as a petition for reconsideration.

(Cal. Code Regs., tit. 8, § 10960.)

Here, defendant failed to file a supporting affidavit or declaration under penalty of perjury stating in detail the facts establishing the grounds for disqualification. Thus, to the extent that defendant's Petition seeks to disqualify WCJ Devine, it is dismissed.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Disqualification is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2022

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

**THE BRIDGFORD LAW OFFICE
COLEMAN CHAVEZ
DAVID MATTHEWS**

AH/oo

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