

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

SPRING PALMER, *Applicant*

vs.

**FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, insured by
CYPRESS INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11404924
Fresno District Office**

**OPINION AND ORDER
DENYING PETITION FOR REMOVAL**

Defendant, Cypress Insurance Company, filed a timely Petition for Removal of two pre-trial orders issued by the workers' compensation administrative law judge (WCJ) on December 30, 2021, whereby the WCJ denied defendant's request for continued discovery and ordered the matter set for trial. Defendant contends that it was denied due process by the WCJ's decision to close discovery and move forward with trial.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal and the contents of the report of the WCJ 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 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, defendant argues that, by closing discovery and ordering the matter set for trial, the WCJ denied defendant of the opportunity to depose, or re-depose, the Neurology, Psychology, and Orthopedic QMEs regarding alleged contradictory statements made by applicant to the QMEs regarding her injuries. Defendant argues that once it discovered these alleged inconsistencies, it should have been allowed to request supplemental reporting and deposition testimony from the QMEs in order to corroborate, or rebut, applicant's allegations of injury. 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. We note that, during trial, defendant will have the opportunity to present its arguments about further developing the record, and, if the WCJ sees fit after making a proper record, he or she may order additional discovery.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the December 30, 2021 pre-trial orders of the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 10, 2023

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

**SPRING PALMER
LAW OFFICES OF BRYAN K. LEISER
LAW OFFICES OF PKNW**

AH/cs

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