

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

MIGUEL AGUILERA, *Applicant*

vs.

CASTREJON, INC., ET AL., *Defendants*

**Adjudication Number: ADJ11562135
Bakersfield District Office**

**OPINION AND DECISION
AFTER REMOVAL**

We previously granted removal in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Removal.

We have considered the allegations of applicant's Petition for Removal and the contents of with 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 below, we will vacate our grant of removal and dismiss the petition because applicant was not aggrieved by the July 9, 2020 notice of disposition.

The workers' compensation administrative law judge (WCJ) issued Supplementary Minutes of Hearing, Summary of Evidence and Notice of Submission for Decision (NIT) on July 9, 2020 stating "The above-captioned case will be submitted for decision as of July 31, 2020." On July 30, 2020, one day prior to the submission of this matter, applicant filed a Petition for Removal requesting that the intention to submit the case be withdrawn and that he be allowed to conduct further discovery. The matter was subsequently submitted on July 31, 2020. The notice of intention to submit a matter for decision is not a final or non-final order subject to either reconsideration or removal. Accordingly, we find that applicant was not aggrieved.

If we were not dismissing removal for the reasons stated above, we would deny removal based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's report. 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).)

For the foregoing reasons,

IT IS ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that our September 28, 2020 Opinion and Order Granting Petition for Removal is **VACATED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 7, 2021

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

**KONRAD KUENSTLER
ALBERT AND MACKENZIE
MICHAEL SULLIVAN & ASSOC.
STATE COMPENSATION INSURANCE FUND
STANDER REUBENS THOMAS KINSEY
STOCKWELL HARRIS
YRULEGUI & ROBERTS
TOBIN LUCKS
GILSON DAUB
ROSSI LAW GROUP
JAVIER ALABART
VALLEY LAW GROUP**

PAG/pc

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