

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

**PEGGY SKAINS, *Applicant***

**vs.**

**STATE COMPENSATION INSURANCE FUND;  
Legally Uninsured, c/o THE HARTFORD, *Defendants***

**Adjudication Number: ADJ10137307  
Santa Rosa District Office**

**OPINION AND ORDER  
DENYING PETITION FOR REMOVAL**

State Compensation Insurance Fund, legally uninsured, c/o The Hartford (collectively defendant) seeks removal of the Minute Order issued by the workers' compensation administrative law judge (WCJ) on November 9, 2020. As relevant herein, the WCJ ordered the parties to file a joint pre-trial conference statement and set the trial to begin in December 2020.

Defendant contends that further discovery is necessary before the issue of the reasonableness and necessity of applicant's vocational rehabilitation costs are ripe for adjudication.

Applicant filed an answer. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will deny removal.

**FACTUAL BACKGROUND**

The factual background is taken from the Report:

Defendant employer State Compensation Insurance Fund, through their attorney of record, Goldman, Magdalin & Krikes, LLP, filed a timely, verified Petition for Removal challenging the Minute Order dated November 9, 2020, in which the issue of liability for vocational evaluation expenses is set for trial.

The case in chief has not been resolved. Discovery is not complete regarding the level of permanent disability, and in particular, whether the permanent disability

rating schedule has been rebutted. Counsel for Applicant filed a Petition Seeking Order for Vocational Expert Costs, Interest, Penalties, Sanctions, and Attorney's Fees ("Petition for Vocational Costs") and a Declaration of Readiness on July 15, 2020. (EAMS Doc ID 33077999 and 3078000). A Status Conference was held on October 7, 2020. The parties were not able to resolve the dispute. The matter was continued to a MSC regarding the Petition for Vocational Costs. (October 8, 2020 Minutes; EAMS Doc ID 73356362).

At the November 9, 2020 MSC, the parties were again unable to agree to a resolution. The matter was set for trial regarding the Petition for Vocational Costs. (Nov. 9, 2020 Minutes; EAMS Doc ID 73487081). The Petition for Removal followed.

(Report, *supra*, at pp. 1-2.)

### DISCUSSION

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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)(1)-(2); 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).)

We agree with the WCJ that the arguments defendant made in its Petition can be made at trial. Thus, defendant has failed to demonstrate that it will suffer irreparable harm or that Reconsideration will not be an adequate remedy. For these reasons, we deny removal.

We note that our decision in *Costa v. Hardy Diagnostic* (2007) 72 Cal.Comp.Cases 1492 [2007 Cal. Wrk. Comp. LEXIS 346] (Appeals Board en banc) acknowledged that determining liability for the costs of evidence on and/or in rebuttal to a permanent disability rating, such as vocational expert fees, is a fact-intensive inquiry, which does not necessarily have to wait until the conclusion of the case-in-chief. We provided the principles to follow when determining whether to allow costs on and/or in rebuttal to a permanent disability rating. (*Id.* at p. 1497-1500.) We recommend that the parties become acquainted with *Costa*.

Accordingly, we deny removal.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal of the November 9, 2020 Minute Order is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**February 3, 2021**

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

**PEGGY SKAINS  
LAW OFFICE OF JOHN BLOOM  
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAKLAND)  
GOLDMAN MAGDALIN & KRIKES  
THE HARTFORD**

**SS/abs**

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