

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

**GENNESIS GONZALEZ GARCIA, *Applicant***

**vs.**

**GOLDEN CHINA RESTAURANT; TECHNOLOGY INSURANCE COMPANY,  
Administered by AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ12080649, ADJ12141359, ADJ13034016  
Salinas 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.

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 further observe that Workers' Compensation Appeals Board (WCAB) Rule 10396(a) provides:

(a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:

- (1) Whether there are common issues of fact or law;
- (2) The complexity of the issues involved;
- (3) The potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
- (4) The avoidance of duplicate or inconsistent orders; and
- (5) The efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(Cal. Code Regs., tit. 8, § 10396(a).)

Subsection (b) further provides that consolidation of two or more cases may be ordered by the Appeals Board either on its own motion or based upon a petition filed by one of the parties. (Cal. Code Regs., tit. 8, § 10396(b).)

Here, the WCJ has analyzed the merits of a potential joinder of applicant's pending cases. The WCJ observes that applicant has filed multiple claims of injury allegedly sustained in 2019 with two different employers, and that the claims involve overlapping body parts. (Report and Recommendation on Petition for Removal, at p. 4.) The WCJ observes that several considerations relevant to a potential joinder of applicant's pending matters merit further consideration, including the "existence of common issues of fact, the need to avoid inconsistent orders, and the potential prejudice to the applicant." (Report, at p. 3.)

However, we also observe that the issue of a potential joinder has not yet been raised by the parties or by the Appeals Board pursuant to Rule 10396(b). A hearing on the issue will accord to the parties the requisite due process, including notice of the proposed action and opportunity for the parties to object and be heard. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Accordingly, we recommend that upon return of this matter to the trial level, the WCJ consider initiating proceedings for the consolidation of the cases as discussed in the Report, in compliance with the requirements set forth in WCAB Rule 10396. In the alternative, any party

may file a Declaration of Readiness to Proceed and request a hearing on the issue of consolidation.  
(See Cal. Code Regs., tit. 8, § 10396.)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**January 12, 2024**

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

**GENNESIS GONZALEZ GARCIA  
RUCKA, O'BOYLE, LOMBARDO & MCKENNA  
LLARENA, MURDOCK, LOPEZ & AZIZAD  
LAURA CHAPMAN & ASSOCIATES**

**SAR/abs**

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