

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

GERARDO MIJARES MIRELES, *Applicant*

vs.

**MCBRIDE DOOR & HARDWARE, INC.;
EVEREST NATIONAL INSURANCE COMPANY,
administered by AMERICAN CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ12129597
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

We have considered the allegations of applicant's Petition for Removal, defendant's answer 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 applicant's arguments in the WCJ's report and for the reasons discussed below, 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 significant 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).) Here, based upon the WCJ's analysis of the merits of applicant's arguments, we are not persuaded that significant 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 applicant.

It is noted that a party is not automatically entitled to a replacement qualified medical

evaluator (QME) panel based on a late supplemental report. (See *Corrado v. Aquafine Corp.* (June 24, 2016, ADJ9150447, ADJ9150446) [2016 Cal. Wrk. Comp. P.D. LEXIS 318] [the WCJ has discretion to order a replacement QME panel based on a late supplemental report since a replacement is not mandated by the Labor Code or Administrative Director Rule 31.5(a)(12)].) However, since the parties in this matter agreed to a replacement panel, applicant has not shown that he will suffer significant prejudice or irreparable harm by the disputed Finding and Order.

Therefore, we will deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the Finding and Order Re: Additional QME Panel issued by the WCJ on February 19, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2021

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

**GERARDO MIJARES MIRELES
KEGEL TOBIN & TRUCE
THE NIELSEN FIRM**

AI/pc

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