

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

LORETTA NEWMAN, *Applicant*

vs.

**UCLA MEDICAL CENTER, Permissibly Self-insured;
Administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ2209220
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION AND REMOVAL**

Lien claimant, David Silver, M.D., seeks removal and/or reconsideration of the November 29, 2022, Findings of Fact wherein the workers' compensation administrative law judge (WCJ) found that ClaimLogix complied with all elements of WCAB rules 10401 and 10751.¹ The WCJ also found that there was no legal basis to award costs and sanctions to Legal Services Bureau and/or Dan Escamilla.

Lien claimant contends that the WCJ should have found that ClaimLogix did not comply with the WCAB rules of practice and procedure and that the WCJ should have awarded costs and sanctions. Lien claimant explains that they filed a Petition for Reconsideration in addition to a Petition for Removal "out of an abundance of caution" because the WCJ did not explicitly defer the issue of the lien claim and the Findings and Order could be construed as a final decision. (Petition, p. 2, fn 1.) Lien claimant also contends that the WCJ should have included the parties' stipulation that the issue of the lien claim was deferred in the Findings of Fact.

We have considered the allegations of the Petition for Reconsideration/Removal and the contents of the report prepared by the WCJ. For the reasons discussed below, we will deny removal and reconsideration.

¹ Commissioner Sweeney, who was a panel member in this matter, has retired and has been replaced by another panelist.

Labor Code section 5815 requires that a WCJ shall determine “all issues presented for determination by the appeals board prior thereto and not theretofore determined.” In this case, the parties stipulated that they were deferring the issue of the lien claim and the WCJ acknowledged that stipulation in the Opinion on Decision. Therefore, the issue of the lien was not “presented for determination” and there is no decision adverse to the petitioner with respect to the lien.

Turning to the remainder of lien claimant’s petition, 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).) 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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration and Removal of the November 29, 2022, Findings of Fact is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2022

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

**DAVID SILVER, MD
DAN ESCAMILLA, LEGAL SERVICES BUREAU
CLAIMLOGIX
SEDGWICK UC**

MWH/mc

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