

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

**ROOSEVELT BINGHAM, *Applicant***

**vs.**

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS &  
REHABILITATION, NORTH KERN STATE PRISON, legally uninsured, Administered  
by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9071271  
Bakersfield 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. Pursuant to our authority, we accept petitioner's supplemental filing. (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) 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, 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.

There is no evidentiary record in this matter. As such, the level of factual allegations and assertions made in the pleading and report is inappropriate. All awards, orders and decisions of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code § 5952(d); *Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280 [39 Cal.Comp.Cases 310].) That record must permit us to conduct meaningful review of the issues raised. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).)

In *Hamilton*, we stated that:

The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.

\* \* \*

The evidence submitted by the parties must be formally admitted and must be included in the record to enable the parties to comprehend the basis for the decision.

Furthermore, a proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.

\* \* \*

The WCJ must prepare the minutes of hearing and a summary of evidence at the conclusion of each hearing. These must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence and the disposition of the matter. (Cal. Code Regs., tit. 8, §10566.)

\* \* \*

Medical reports and other admitted documentary evidence must be clearly listed in the recorded minutes of the conference hearing or trial. Such admitted evidence should be clearly labeled with exhibit numbers conforming to the list of admitted evidence.

The filing of a document does not signify its receipt in evidence, and only documents that have been received in evidence or are listed in Board rule 10750 shall be included in the record of proceedings on the case. (Cal. Code Regs., tit. 8, §10600.) ....

\* \* \*

In summary, the Labor Code and the Board's rules contain explicit instructions concerning the contents of the record of a case. It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.

*(Hamilton v. Lockheed Corporation, supra, 66 Cal.Comp.Cases at pp. 475 – 477; see also Cal. Code Regs., tit. 8, former §§ 10566, 10600, 10750, now §§ 10787, 10670, 10803, respectively (eff. Jan. 1, 2020).)*

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/ DEIDRA E. LOWE, COMMISSIONER**

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



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

**MAY 24, 2021**

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

**ROOSEVELT BINGHAM  
ADAMS FERRONE  
STATE COMPENSATION INSURANCE FUND**

**PAG/acw**

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

CS