

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

JAIME MOLINA, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS-SAN QUENTIN,
Legally Uninsured; STATE COMPENSATION INSURANCE FUND/
STATE CONTRACT SERVICES, *Defendants***

**Adjudication Number: ADJ16947266
Santa Rosa 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, 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, for the reasons stated in the WCJ's report, 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 Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 17, 2023

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

**JAIME MOLINA
JEREZ LAW GROUP
STATE COMPENSATION INSURANCE FUND, LEGAL**

AS/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

INTRODUCTION

Applicant seeks removal of this matter in connection with my December 8, 2022, order reassigning venue to the Santa Rosa District Office of the Appeals Board, which was issued following defendant's timely objection pursuant to Board Rule 10488 (Cal. Code Regs., tit. 8, § 10488). Applicant alleges that the order will cause him significant prejudice and irreparable harm. The petition is timely and verified. Defendant has filed an answer.

FACTS

1. Procedural background.

On November 15, 2022, applicant, through counsel, filed an electronic application for adjudication alleging a December 2021 industrial injury. According to that document, applicant lived in Petaluma, California, at the time of its filing and worked at San Quentin State Prison at the time of the claimed injury. The San Francisco District Office was selected by applicant as the venue, purportedly on the basis of the location of the alleged injury (i.e., under the authority of paragraph 2 of subdivision (a) of Labor Code section 5501.5¹). On December 6, 2022, defendant filed a verified objection to the venue assignment, asserting that the only way San Francisco could have been chosen as the venue was paragraph 3 of the subdivision, even though that was not the box checked on the face of the application. Defendant further argued that venue must be reassigned to the Santa Rosa District Office pursuant to paragraph 1 of the subdivision.

2. Reassignment of venue to Santa Rosa.

On December 8, 2022, having reviewed defendant's objection and the application for adjudication, I issued an order transferring venue to the Santa Rosa District Office. In doing so, I found that paragraph 2 of subdivision was not a valid basis for venue assignment at the time the application was filed; as such, the county of applicant's attorney's place of business was the only

¹ Hereinafter "the subdivision."

nexus to San Francisco. I also determined that Santa Rosa is the proper venue according to paragraph 1 of the subdivision, as it is located in the county of applicant's residence.

3. Contentions on removal.

In his petition for removal, applicant asserts that defendant's venue objection was invalid because he selected venue not on the basis of his attorney's place of business, but by entering the location of the alleged injury in the DWC's online ZIP code search tool, which returned San Francisco. Applicant further contends that paragraph 2 of the subdivision is controlling here and, accordingly, venue is proper in San Francisco. Finally, applicant alleges that he will suffer significant prejudice and irreparable harm if the case remain[s] assigned to the Santa Rosa District Office.

DISCUSSION

1. Defendant's venue objection is valid because paragraph 3 of the subdivision was the only authority under which the application could have been filed in San Francisco.

In his petition for removal, applicant does not dispute the accuracy of his application with respect to his current residence and the location of the claimed injury: the former is in Petaluma, Sonoma County; the latter is in San Quentin, Marin County. It is also apparent, from the application and the petition for removal, that applicant's attorney's practice is located in the city and county of San Francisco.

Since there is no Appeals Board district office in Marin County, paragraph 2 of the subdivision was not valid authority for venue assignment. While applicant makes reference, in his petition for removal, to relying on the DWC's online ZIP code search tool,² that listing does not dictate where applications for adjudication may be filed. In fact, according to the web site, for each ZIP code entered in the search field, it produces "the corresponding district office for filing most forms" (emphasis added). Rather, the statutory authority for venue assignment is in the Labor Code. The subdivision gives three options: "(1) In the county where the injured employee ... resides on the date of filing. [¶] (2) In the county where the injury allegedly occurred.... [¶] (3) In the county where the employee's attorney maintains his or her principal place of business..." (Labor Code § 5501.5, subd. (a) [emphasis

² <<https://www.dir.ca.gov/asp/DWCZipSearch.html>> as of this date.

added]). The ZIP code search tool becomes relevant only if subdivision (d) of the statute³ is invoked because none of the three options apply.

Thus, irrespective of the box checked by applicant on the first page of the electronic Application for Adjudication, venue was assigned with the San Francisco District Office by virtue of paragraph 3 of the subdivision, on the basis of his attorney's San Francisco office location; otherwise, the filing should have been rejected. As such, under subdivision (c) of Labor Code section 5501.5, defendant had 30 days from receipt of notice of the venue assignment to object. Upon such timely objection, venue must be reassigned to a location justified by either paragraph 1 or 2 of the subdivision. Here, defendant's objection was filed on December 6, or 21 days after notice of the application was served on all parties by the Appeals Board; thus, it was timely.⁴ As mentioned above, paragraph 2 of the subdivision does not apply because there is no district office in the county of Marin, where the alleged injury occurred. There is, however, an office in Sonoma County, where applicant resides. Consequently, Labor Code section 5501.5 mandates that venue be assigned in Santa Rosa and it is neither necessary nor appropriate to resort to subdivision (d) of the statute.

2. Petitioner has not demonstrated that he will suffer significant prejudice or irreparable harm if removal is not granted.

Finally, although the petition for removal includes two italicized allegations that the "involvement of Venue" will cause applicant significant prejudice and irreparable harm, this contention is entirely unsupported in the pleading. There is no reason to believe—and petitioner does not allege—that the Santa Rosa District Office is somehow less capable of administering substantial justice than San Francisco. Moreover, I take judicial notice of the fact that applicant's residence is located approximately 15 miles from the Santa Rosa office, but 41 miles from the San

³ "If there is no appeals board office in the county where venue is permitted under subdivision (a), the application shall be filed at the appeals board office nearest the residence on the date of filing of the injured employee..., or the nearest place where the injury allegedly occurred..., or nearest the location where the attorney of the employee maintains his or her principal place of business, unless the employer objects under subdivision (c)." (Labor Code § 5501.5, subd. (d).)

⁴ While defendant's venue objection is technically non-compliant with Board Rule 10488 (Cal. Code Regs., tit. 8, § 10488), which requires the objecting party to state, under penalty of perjury, the date it received notice of the case number and venue, the objection avers that such notice had not been received at all at the time of its filing. I take judicial notice of the EAMS register of communications for the date of service of the notice of application. Also, since defendants' objection was filed within 30 days of the filing and service of the Application for Adjudication, its timeliness is not in question.

Francisco office. Thus, applicant has not met the Board Rule 10955⁵ standard for removal, beyond simply alleging so.

RECOMMENDATION

For the foregoing reasons, I recommend that applicant's Petition for Removal, filed herein on December 22, 2022, be denied.

DATED: January 6, 2023

Eugene Gogerman
Presiding Workers' Compensation Judge
Workers' Compensation Appeals Board

The Report and Recommendation on Petition for Removal was filed and served on all parties listed in the Official Address Record, by their preferred method of service.

Date: January 6, 2023

By: A. Paraiso

⁵ California Code of Regulations, title 8, section 10955 (incorrectly cited in the petition for removal as Rule 10843).