

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

JOHN FUENTES, *Applicant*

vs.

**WORKFORCE ENTERPRISES WFE, INC.; BENCHMARK INS. CO., administered by
AMERICAN CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ15329303
Long Beach 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.

While we decline to impose sanctions at this time, we **ADMONISH defendant's attorneys Kyle S. Wiele and Dabbah Haddad & Suleiman, the employer Workforce Enterprises WFE, Inc., the insurer Benchmark Insurance Company, and the claims**

administrator American Claims Management, that filing a frivolous petition and making an unmeritorious argument causes unnecessary delay and wastes judicial resources and could subject the offending party to sanctions. (See Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421(a), (b)(2), (b)(6)(A)(i).) However, while we do not impose sanctions for the filing of the Petition for Removal, the WCJ is not precluded from considering sanctions in the first instance for frivolous conduct at the trial level.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 2, 2024

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

**JOHN FUENTES
PERONA, LANGER, BECK & HARRISON
DABBAH HADDAD SULEIMAN**

LAS/ara

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