

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

**KYUNGHEE KIM, *Applicant***

**vs.**

**ADP TOTALSOURCE GROUP, INC.; CHROMIUM DENTAL II, dba SPECTRUM  
DENTAL LABS; AIU INSURANCE COMPANY, administered by HELMSMAN  
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ18150673  
Los Angeles District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR REMOVAL**

Applicant has filed a petition for removal from the “Order for Payment of Applicant’s Attorney’s Deposition Fee Pursuant to Labor Code § 5710” (“Order”) issued on January 29, 2025, by the workers’ compensation administrative law judge (WCJ). In the Order, the WCJ awarded applicant a reduced attorney’s fee of \$800.00 and permitted either party to file a written objection to the order within 20 days.

Applicant contends that the WCJ improperly reduced the fee awarded in this matter.

We have not received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ’s Report. Based on our review of the record, we will deny removal and return this matter to the trial level so that the WCJ may treat the Petition as one requesting to set aside the January 29, 2025 Order.

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.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ... ." (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The] commission, ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at 577.)

A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].)

Here, the petition for removal seeks to set aside the January 29, 2025 Order. Accordingly, the most prudent course is to return this matter to the trial level to consider whether the January 29, 2025 order should be set aside. Once the parties proceed to trial, they will have an opportunity

to create a record, raise all relevant issues, and submit evidence. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed. We make no judgment at this time as to whether additional attorney's fees are warranted since without a formal record available to review, we have no ability to make this determination.

We would further note that it is permissible, and perhaps in cases like these encouraged, for the WCJ to rescind an offending order and to set the matter for hearing upon receiving a petition for removal. (Cal. Code Regs., tit. 8, § 10955(d).)

A workers' compensation judge may, within 15 days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. If the workers' compensation judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board. The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

*(Ibid.)*

Drafting an order of rescission promotes judicial economy as such orders would likely take less time to draft than a report and recommendation on removal. Such orders also conserve the limited resources of the Appeals Board to respond to such petitions. Such orders further promote all parties' right to due process, particularly as in here, when an order is issued without a hearing and a party subsequently objects. In such cases a record must be created, and thus the proper procedure is to rescind the offending order and set the issue for hearing. Following a hearing, and after a record is created, the WCJ may determine whether to reinstate the original order.

Accordingly, we deny removal and return this matter to the trial level where the Petition can be treated as a petition to set aside the January 29, 2025 Order.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Removal from the Order for Payment of Applicant's Attorney's Deposition Fee Pursuant to Labor Code § 5710 issued on January 29, 2025, by the WCJ is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**/s/ PAUL F. KELLY, COMMISSIONER**



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

**OCTOBER 8, 2025**

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

**KYUNGHEE KIM  
BRADFORD BARTHEL LAW  
HONG LAW  
THE HANOVER LAW OFFICE**

**EDL/mt**

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