

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

MARCELINO ZAMORA, *Applicant*

vs.

**WHOLE FOODS MARKET, INC., LIBERTY MUTUAL INSURANCE,
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ21029209
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR REMOVAL**

Applicant seeks removal and requests that the Appeals Board decide a panel dispute issue in the first instance.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we dismiss the petition and consider the issue of sanctions.

We have considered the allegations of the Petition for Removal, the Answer and the contents of the WCJ's Report. Based on our review of the record and based upon the WCJ's analysis of the merits contained in the WCJ's Report, we will dismiss the Petition for Removal as applicant failed to identify any order or decision of the WCJ from which removal is sought.

Pursuant to WCAB Rule 10955:

(a) At any time within 20 days **after the service of the order or decision**, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

- (1) The order, decision or action will result in significant prejudice.
- (2) The order, decision or action will result in irreparable harm.

(Cal. Code Regs., tit. 8, § 10955(a), (emphasis added).)

Here petitioner does not identify any order or decision of the WCJ from which removal is being sought. Instead, petitioner requests that the Appeals Board remove an issue to be tried at the Appeals Board in the first instance. That is not a valid basis for removal. There is not presently any order or decision from the WCJ that is ripe for adjudication. Upon return, applicant may request a hearing to address any pending discovery disputes. After the WCJ issues an order or decision regarding the discovery dispute, any aggrieved party may seek appropriate relief.

We politely admonish applicant's attorney Derek Sean Tucker (CA #276728) of his duty to follow the Appeals Board's Rules of Practice and Procedure. (Cal. Code Regs., tit. 8, §§ 10300 - 10999.) Multiple additional rule violations are present on both the Petition for Removal and in other documents found in the adjudication file. For example, applicant's attorney has failed to include his bar number on the petition. (Cal. Code Regs., tit. 8, § 10520.) Furthermore, in future cases, if counsel later recognizes that a petition is filed incorrectly, counsel should inform the court that the petition is withdrawn.

Accordingly, we will dismiss the Petition for Removal as not ripe for adjudication.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal filed on July 21, 2025 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 7, 2025

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

**MARCELINO ZAMORA
MAISON LAW GLENDALE
RTGR LAW**

EDL/mt

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