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

**PAUL SMITH III, *Applicant***

**vs.**

**DENVER BRONCOS FOOTBALL; GREAT DIVIDE INSURANCE COMPANY, administered by BERKLEY ENTERTAINMENT, et. al., *Defendants***

**Adjudication Number: ADJ6579284**
**Anaheim District Office**

**OPINION AND ORDER**
**DENYING PETITION**
**FOR REMOVAL**

Defendant, Denver Broncos, has filed a petition for removal from the order of joinder issued on February 4, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that joinder was not appropriate based upon the merits of the claim.

We have received an answer from applicant. 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, 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 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.

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.)

The matter was previously returned to the trial level following reconsideration with the following guidance:

> In closing, we acknowledge that the Appeals Board stated in its November 18, 2022 decision, "the only connection [of the Denver Broncos] to California…is that applicant played two games for the Broncos in California, in December 2007 [,] and that "it [was] too late" to consider re-joining the Denver Broncos as a necessary party defendant. However, as discussed in *Holmberg, supra,* the Court of Appeal in *Macklin* observed that the applicant's time in the employ of a California-based team is sufficient, in and of itself, to make the application of California workers' compensation law reasonable. As for the possibility of re-joining the Denver Broncos at this stage of the proceedings, it appears there is no dispute the team was dismissed *without prejudice*, and we are persuaded that the interests of due process and substantial justice take precedence over the supposed waiver of the re-joinder of the Denver Broncos. In connection with revisiting the question whether California workers' compensation law may properly be invoked against the Detroit Lions, the St. Louis Rams, and/or the Denver Broncos (in addition to the San Francisco 49ers), the WCJ should consider re-joining the Denver Broncos as a party defendant, with notice and opportunity for all parties to be heard.

(Opinion and Decision After Reconsideration, November 5, 2024, p. 5.)

Notwithstanding our prior guidance, and to the extent that defendant argues that it should not be joined based upon various arguments on the merits, no record exists for any such determination. The WCJ may set a hearing and create a record. The WCJ can then consider the evidence and the legal arguments raised by the parties and determine whether defendant's joinder is appropriate.

We do not address the merits of defendant's petition at this time as there is no record from which we can determine whether defendant's joinder is proper.

Accordingly, we deny the Petition for Removal.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal from the order of joinder issued on February 4, 2025, by the WCJ is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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

**OCTOBER 9, 2025**

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

**PAUL SMITH III**
**CHERNOW PINE ORANGE LAW**
**COLLECTIVE RESOURCES LONG BEACH LAW**
**DIMACULANGAN ASSOCIATES ORANGE LAW**
**GOLDBERG SEGALLA IRVINE LAW**
**LEVITON DIAZ SANTA ANA LAW**
**SHAW JACOBSMEYER LAW**

**EDL/mt**

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