

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

ROSENDO SILVA JARAMILLO, *Applicant*

vs.

**ROBER CROSS, dba CAMINO REAL KITCHENS, INC.; SUNZ INSURANCE
COMPANY, administered by NEXT LEVEL FOLSOM, *Defendants***

**Adjudication Numbers: ADJ17350152
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL AND
DECISION AFTER REMOVAL**

Defendant has filed a petition for removal from the Finding and Order, which issued on September 18, 2024, by the workers' compensation administrative law judge (WCJ), which found good cause to issue a replacement panel in orthopedic surgery

Defendant contends that good cause did not exist to order a replacement panel, or in the alternative, the WCJ should have allowed a trial on the issue.

We have not 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 and the contents of the WCJ's Report. Based on our review of the record, we will grant removal and as our Decision After Removal we will rescind the September 18, 2024 Finding and Order and return this matter to the trial level for further proceedings.

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, and based upon the analysis below, the Finding and Order is not supported by any record and defendant has a due process right to set the issue of a replacement panel for trial. The violation of defendant's right to due process constitutes substantial prejudice and irreparable harm. Thus, we will grant removal.

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].)

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.)

We make no judgment at this time whether a replacement panel is warranted since without a formal record available to review, we have no ability to make this determination.¹

Accordingly, we grant removal and as our Decision After Removal, we rescind the September 18, 2024 Finding and Order and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the September 18, 2024 Finding and Order issued by the WCJ is **GRANTED**.

¹ However, and to assist the parties in moving this case forward, we would observe that based on the analysis in the WCJ's Report, if all of the facts that defendant has alleged in its petition are ultimately proven true, it would appear that the WCJ's decision to issue a replacement panel may have been appropriate.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the September 18, 2024 Finding and Order issued by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, 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.

**ROSENDO SILVA JARAMILLO
NEXT LEVEL FOLSOM
EMPLOYERS DEFENSE GROUP**

EDL/mt

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