

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

**EDUARDO ALBERDIN, *Applicant***

**vs.**

**STATE COMPENSATION INSURANCE FUND, *Defendants***

***Real Parties in Interest:***

**Med-1 Medical Center, *Lien Claimant***

**Adjudication Number: ADJ2452007 (STK 0169879)  
Stockton District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR REMOVAL**

Lien claimant Med-1 Medical Center (lien claimant) seeks removal of the order continuing the trial in this case (Order) issued on May 3, 2023 by a workers' compensation administrative law judge (WCJ).

Lien claimant contends that its right to due process has been violated because the Order is just the last in a series of orders continuing these consolidated matters since January 21, 2020 (when the January 19, 2005 stay was lifted) because the Stockton District Office is not equipped to handle a consolidated case of this magnitude.

Defendant State Compensation Insurance Fund (SCIF) filed an Answer to Petition for Removal (Answer). The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending the removal be denied given that the parties were on day three of trial including the testimony of two witnesses, with two more witnesses expected to testify.

We have reviewed the record of proceedings in this matter, the allegations in the Petition for Removal and Answer, as well as the contents of the Report. Based on the reasons set forth in the Report and the reasons set forth below, we dismiss the Petition for Removal as moot.

As an initial matter, we have detached all documents attached to the Petition for Removal because they were attached in violation of WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945). We admonish lien claimant for attaching hundreds of pages of documents to the petition for removal that all appear to be pleadings and/or case related correspondence already in the Electronic Adjudication Management System (EAMS), i.e., that are already part of the adjudication file. We remind lien claimant that Labor Code section 5813 sanctions can be assessed against any party based on, “. . . bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) “Violations subject to the provisions of section 5813 shall include but are not limited to . . .(4) Failing to comply with the Workers’ Compensation Appeals Board’s Rules of Practice and Procedure . . .” (Cal. Code Regs., tit. 8, § 10421(b)(4).)

Next, removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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, § 10843(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, § 10843(a).)

As stated in the Report, trial has already proceeded in these consolidated matters for two days, and the third day of trial is set for August 31, 2023. It appears that lien claimant’s contentions are actually unfounded as the trial is already proceeding. To grant removal at this stage would only interrupt what lien claimant argues that it wants – that these consolidated matters go to trial.

Accordingly, the Petition for Removal is moot and we will therefore dismiss the Petition for Removal.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Removal of the order continuing the trial in this case issued on May 3, 2023 by a workers' compensation administrative law judge is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**AUGUST 31, 2023**

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

**MED-1 MEDICAL CENTER  
CARLSON & JAYAKUMAR  
LAW OFFICES OF T. MAE YOSHIDA  
STATE COMPENSATION INSURANCE FUND**

**AJF/cs**

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