

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

**MORIAH PHAM, *Applicant***

**vs.**

**RECON INDUSTRIES INC and EVEREST NATIONAL  
INSURANCE COMPANY, administered by GALLAGHER  
BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ13445576  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR REMOVAL**

Defendant seeks removal in response to the Order granting a continuance (Order) issued by the workers' compensation administrative law judge (WCJ) on March 2, 2022, wherein the WCJ denied defendant's request for trial, set the matter for further status conference, and requested an inquiry into the pro per applicant's whereabouts.

Defendant contends that the WCJ granted a trial continuance at the request of applicant's former counsel, a non-party, while denying defendant's request for a trial date.

We have not received an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record and the WCJ's Report, we will deny removal.

**DISCUSSION**

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); *Cortez, supra*; *Kleemann, supra*.) Additionally, 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, the pro per applicant failed to appear at the February 23, 2022 status conference. The WCJ was unable to ascertain whether applicant's discovery was complete and thus found it premature to set the matter for trial. (Lab. Code, § 5502; Cal. Code Regs., tit. 8, § 10785(b).) 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.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE ZALEWSKI, CHAIR

**I CONCUR,**

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



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

**JUNE 15, 2022**

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

**MORIAH PHAM, IN PRO PER  
PACIFIC ATTORNEY GROUP  
BLACK AND ROSE**

**JB/abs**

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