

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

JAIME RUIZ, *Applicant*

vs.

EMILIO JAIME RICHART ORTEGA dba RICHART TRUCKING, *Defendants*

**Adjudication Number: ADJ14429241
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. 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.

WCAB Rule 10788 (Cal. Code Regs., tit. 8, § 10788) states in pertinent part that:

A party shall be entitled to automatic reassignment of a trial or expedited hearing to another workers' compensation judge in accordance with the provisions of this rule. Consolidated cases are to be considered as one case within the meaning of this rule.

(a) An injured worker shall be entitled to one reassignment of a workers' compensation judge for trial or expedited hearing. The defendants shall be entitled to one reassignment of a workers' compensation judge for a trial or expedited hearing, which may be exercised by any of them. This rule is not applicable to conference hearings. In no event shall any motion or petition for reassignment be entertained after the swearing of the first witness at a trial or expedited hearing.

(b) If the parties are first notified of the identity of the workers' compensation judge assigned for trial at a mandatory settlement conference, at a status conference, at a lien conference, at a priority conference or upon reassignment at the time of trial, to exercise the right to automatic reassignment a party must make an oral motion immediately upon learning the name of the workers' compensation judge to whom the case has been assigned for trial. The motion shall be acted upon immediately by the presiding workers' compensation judge.

(c) If the parties are first notified of the identity of the workers' compensation judge assigned for trial or expedited hearing by a notice of trial served by mail, to exercise the right to automatic reassignment a party must file a petition requesting reassignment not more than 5 days after receipt of the notice of trial or expedited hearing. The presiding workers' compensation judge shall rule on any petition for automatic reassignment.

As explained by the WCJ in his Report:

The court has the obligation to ensure all parties are afforded due process and promote substantial justice under the law.

In this case, applicant's attorney's first opportunity to request an automatic reassignment of a judge was when Judge Thompson was assigned as the trial judge held on August 24, 2022; this trial judge assignment was issued in the MOH dated April 27, 2022, at the priority conference. There was no objection or request for reassignment when Judge Thompson was assigned as the trial judge.

The attorneys appeared at trial before Judge Thompson on August 24, 2022 and the hearing was continued to October 26, 2022. The October 26, 2022 trial was canceled according to the MOH which stated the parties had submitted an email requesting to take the hearing off the official calendar (“OTOC”).

The matter returned on calendar for a Mandatory Settlement Conference with the Honorable Sharon Renzi on July 26, 2023 and continued to November 22, 2023. At the MSC held on November 22, 2023, the matter was set for trial with Judge Thompson for December 23, 2023.

(Report, p. 4.)

Here, applicant’s attorney conflates the time limitation in subdivision (a), which sets forth the **last date** to file a petition for automatic reassignment by any party in a case, with the time limitations in subdivisions (b) and (c), which set forth the dates that **begin the period to file a motion**.

Applicant attended the hearing on April 27, 2022, wherein WCJ Thompson was assigned for trial on August 24, 2022. Thereafter, applicant served the minutes of hearing on April 29, 2022. On May 10, 2022, applicant filed a petition to advance the date of the trial and did not raise the issue of WCJ Thompson presiding over the trial. On May 12, 2022, WCJ Thompson issued an order denying the petition. On August 22, 2022, applicant filed a trial brief, and again did not raise the issue of WCJ Thompson presiding over the trial. On August 24, 2022, applicant appeared for trial before WCJ Thompson and made no objection to WCJ Thompson presiding over the trial. The matter was continued to October 26, 2022, for trial before WCJ Thompson, and again applicant made no objection to WCJ Thompson presiding over the trial.

Here, applicant attorney’s entire course of conduct between April 27, 2022 and August 24, 2022 makes clear that applicant’s attorney was aware that WCJ Thompson was to preside over the trial and yet, at no time voiced an objection to WCJ Thompson. The purpose of WCAB Rule 10788 is fairness. All parties are given notice of the WCJ who will preside and are given an opportunity to object. The time limits are short to ensure that parties can rely on the trial calendar and appropriately prepare for trial. Once the time expires for an individual party, the right to automatic reassignment of that WCJ in that case is not available to that party.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 26, 2024

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

**JAIME RUIZ
ENGLISH LLOYD & ARMENTA
EMILIO JAIME RICHART ORTEGA EMILIO JAIME RICHART ORTEGA DBA
RICHART TRUCKING
OFFICE OF THE DIRECTOR, LEGAL – LOS ANGELES**

AS/mc

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