

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

GERARDO MONTIEL, *Applicant*

vs.

**SPEC FORMLINERS; STATE NATIONAL INSURANCE COMPANY, INC.,
adjusted by CANNON COCHRAN MANAGEMENT SERVICES INC., *Defendants***

**Adjudication Number: ADJ12795755
Los Angeles 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) 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.

We agree with the WCJ that applicant may raise the issue of additional QMEs with the trial judge. However, we do not agree with the statement in the WCJ's Report that "this Court made findings concerning the substantive rights of the parties, including the finding that applicant was

employed by the Defendant and sustained admitted industrial injuries to specific parts of body alleged.” The July 7, 2021 Minutes of Hearing do not contain any final findings or orders but only non-final, interlocutory orders. Therefore, petitioner appropriately filed a Petition for Removal to challenge said order.

Finally, we caution applicant’s attorney to ensure service to defendant at the correct address as listed in the Official Address Record.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 23, 2021

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

**GERARDO MONTIEL
JCR LAW GROUP
SCHLOSSBERG UMHOLTZ**

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