

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

**BRENDA ESPINOZA, *Applicant***

**vs.**

**U.S. FOODS INC.; ACE AMERICAN INSURANCE COMPANY,  
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ12801649  
Los Angeles District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR REMOVAL**

Defendant filed three Petitions for Removal. The first Petition filed on March 31, 2021 challenged the Minute Order issued by the workers' compensation administrative law judge (WCJ) on March 16, 2021. By the Minute Order, the WCJ took the matter off calendar.

In response to defendant's first Petition, the WCJ issued an Order Denying Letter Request to Amend MOH; Order Setting the Case for Hearing pursuant to WCAB Rule 10955(d) on April 2, 2021. (Cal. Code Regs., tit. 8, former § 10843(d), now § 10955(d) (eff. Jan. 1, 2020).) The WCJ set the matter for a status conference for June 2, 2021.

On April 9, 2021, defendant filed a second Petition for Removal challenging the WCJ's April 2, 2021 Order Denying Letter Request to Amend MOH; Order Setting the Case for Hearing.

In response to defendant's second Petition, the WCJ issued an Order Setting Case for Mandatory Settlement Conference After Removal Reg 10955(d) on April 13, 2021. By this Order, the WCJ rescinded the April 2, 2021 Order Denying Letter Request to Amend MOH; Order Setting the Case for Hearing per WCAB Rule 10955(d). The WCJ also set the matter for a mandatory settlement conference for June 2, 2021.

On May 6, 2021, defendant filed a third Petition for Removal challenging the April 13, 2021 Order issued by the WCJ. Defendant contends that the WCJ has abused her discretion and requests the matter be set for an AOE/COE trial.

We did not receive an answer from applicant to defendant's Petitions. The WCJ issued a Report and Recommendation on 3<sup>rd</sup> Petition for Removal (Report) recommending that we dismiss

defendant's third Petition.

WCAB Rule 10955(d) provides as follows:

A workers' compensation judge may, within 15 days of the filing of the petition for removal, rescind the order or decision in issue, or take action to resolve the issue raised in the petition. **If the workers' compensation judge so acts, or if the petitioner withdraws the petition at any time, the petition for removal will be deemed automatically dismissed, requiring no further action by the Appeals Board.** The issuance of a new order or decision, or the occurrence of a new action, will recommence the time period for filing a petition for removal as described above.

(Cal. Code Regs., tit. 8, former § 10843(d), now § 10955(d) (eff. Jan. 1, 2020), emphasis added.)

With respect to defendant's first and second Petitions, the WCJ took action to resolve the issues raised in these Petitions per WCAB Rule 10955(d), including rescinding the April 2, 2021 Order. Therefore, these Petitions are deemed automatically dismissed with no further action required by the Appeals Board to address them.

With respect to defendant's third Petition, we will deny the Petition. 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 significant 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, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

The matter remains set for a mandatory settlement conference on June 2, 2021, at which time defendant may present its contentions to the WCJ.

In the span of approximately one month, defendant filed three Petitions for Removal in this matter. Multiple filings regarding the same or similar issues expend precious judicial resources and give rise to the appearance of bad faith actions or frivolous tactics. We caution defendant to exercise restraint in the future before seeking judicial intervention or risk the imposition of

sanctions per Labor Code section 5813. (Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, former § 10561, now § 10421 (eff. Jan. 1, 2020).)

Therefore, we will deny defendant's Petition.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal of the Order Setting Case for Mandatory Settlement Conference After Removal Reg 10955(d) issued by the WCJ on April 13, 2021 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**June 9, 2021**

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

**BRENDA ESPINOZA  
LAW OFFICES OF ALEXANDER SOLHI  
MORGAN LEAHY**

*AI/pc*

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