

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

**ERIN GARIBALDI, *Applicant***

**vs.**

**COUNTY OF MARIN, Permissibly Self-Insured, administered by ATHENS  
ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ14002953  
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.

The substantiality of medical evidence is an issue for the trial judge to determine at trial. At present, there is no record by which to determine the substantiality of Dr. Chmura's opinion. We further note that discovery has not closed.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



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

**May 20, 2021**

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

**ERIN GARIBALDI  
BROWN & DELZELL, LLP  
RTGR LAW**

**PAG/pc**

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