

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

CAL DEMERCURIO JR., *Applicant*

vs.

**ALL SEASONS ROOFING;
STATE COMPENSATION INS. FUND, *Defendants***

Adjudication Numbers: ADJ15760386, ADJ18891808

Redding District Office

**OPINION AND ORDER
GRANTING PETITION
FOR REMOVAL ON
MOTION OF
THE APPEALS BOARD**

On April 25, 2024 applicant's attorney filed a Petition for Disqualification seeking to disqualify the entire Redding and Eureka District Offices from hearing an attorney fee lien dispute in this matter. Applicant's attorney filed an amended petition for disqualification on May 20, 2024.

The workers' compensation administrative law judge (WCJ) filed a Report and Recommendation on Petition for Disqualification, which recommends that disqualification be denied.

Applicant's attorney alleges that the entirety of the Redding and Eureka District Offices should be disqualified because, in the past, they have approved attorney's fees in cases, where it is alleged that a proper DWC Form 3 was not filed.

We have received an Answer from lien claimant.

We have considered the allegations of the Petition, lien claimant's Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons stated below, we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers' compensation matter, "the proceedings in any claim." This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers' Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

Removal is being granted in this matter so that the Appeals Board may obtain additional information from the parties. A notice of intent requesting such information shall issue in a separate order.

This is not a final decision on the merits of removal, and we will order that issuance of the final decision after removal is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

IT IS ORDERED that **REMOVAL** of this case to the Appeals Board is **GRANTED** on the motion of the Appeals Board.

IT IS FURTHER ORDERED that a decision after removal is **DEFERRED** pending further review of the merits of the Petition for Disqualification and further consideration of the entire record in light of the applicable statutory and decisional law.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING, NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 28, 2024

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

CAL DEMERCURIO, JR.
GORMAN LAW
RILEY LAW OFFICES, INC.

EDL/mc

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