

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

ANDRES DELGADO, *Applicant*

vs.

**COBHAM ADVANCED ELECTRONIC SOLUTIONS INC;
ZURICH AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ15033613
San Diego 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.

Current WCAB Rule 10759 states in relevant part that:

(b) The parties shall meet and confer prior to the mandatory settlement conference and, absent resolution of the dispute(s), the parties shall complete a joint Pre-Trial

Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits by the *close* of the mandatory settlement conference.

(e) The joint Pre-Trial Conference Statement, the disposition, and any orders shall be completed by the *close* of the mandatory settlement conference and shall be filed by the workers' compensation judge in the record of the proceedings on a form prescribed and approved by the Appeals Board and shall be served on the parties.

(Italics added.) (Cal. Code Regs., tit. 8, § 10759(b), (e) (amended as of January 1, 2022.))

However, here the WCJ issued an order at the December 23, 2021, mandatory settlement conference, which states that: “Parties are ORDERED to meet and confer and JOINTLY prepare and efile a PTCS PRIOR to the next hearing date.” She then continued the conference to January 27, 2022. Yet, the completed statement was not filed until March 17, 2022, after the parties appeared on January 27, 2022, and March 17, 2022.

All parties are expected to comply with orders by a WCJ and by the Appeals Board, and if they are unable to comply, they must seek the appropriate relief. Parties are reminded that a willful failure to comply with an order could subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we deny the Petition.

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/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 18, 2022

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

**ANDRES DELGADO
NHN LAW
LAW OFFICES OF CRYSTAL CUNNINGHAM**

AS/mc

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