

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

CARLOS MALDONADO, *Applicant*

vs.

COUNTY OF FRESNO; ACCLAMATION, *Defendants*

**Adjudication Numbers: ADJ13646327, ADJ13669911
Fresno District Office**

**OPINION AND ORDER
DISMISSING 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, except as noted below, we will dismiss the petition.

Because the subpoena issue raised in the petition for removal is moot, the proper disposition is to dismiss removal rather than deny it. The WCJ may consider the issue of sanctions raised in the petition at the trial level in the first instance.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 14, 2022

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

**CARLOS MALDONADO
LAW OFFICES OF DAN EPPERLY & ASSOCIATES, P.C.
GINA G. BARSOTTI, A PROFESSIONAL LAW CORP.**

PAG/ara

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

REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL

I
INTRODUCTION

APPLICANT has filed a Petition for Removal IN ALL SIX of the applicant's cases. However, the offending action was an Order Quashing Subpoenas Duces Tecum dated 08/26/2021, filed in the two above cases ONLY, in response to a Petition to Quash filed in the two above cases ONLY.

II
FACTS

The petition for removal admits the Order granting the petition to quash is void due to the fact the target subpoenas were executed and the requested records were delivered PRIOR TO THE PETITION TO QUASH BEING FILED. (PFR; 2: 9-13).

However, petitioner actually filed a "hybrid" petition to remove by including a petition for 5813 remedies, in ALL SIX of the applicant's cases, not just the two above cases. This represents a request for action by the WCAB which bypasses the trial court level and is therefore improper. (PFR).

III
DISCUSSION

The subpoena(s) were executed and petitioner received the records. The petition to quash was issued post-delivery of the requested records. Therefore the order to quash is moot, and by operation of law, the petition to remove the order to quash is also moot, as doing so would have no effect on the parties' discovery status.

The other issues raised by petitioner are not subject for the appeals board's review of action. The over-zealousness of the petitioner is not a first occurrence in this case(s). A review of the history of these cases will show a preference for petitions to remove for less than substantial reasons, on more than one occasion. The court would ask the appeals board to make any finding on that topic it sees fit to determine.

The court has attempted to have the parties reign in the seemingly unappeasable appetites for *crow*, but to no avail. The current petition is just another example.

IV
RECOMMENDATION

It is recommended the petition for removal be found moot, and DENIED. The remaining issues shall be addressed by the court in due course.

DATE: 12/06/2021

/s/ J. DIAMOND
Jeffry Diamond
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE