

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

DALE BROWN, *Applicant*

vs.

IHSS; as administered by INTERCARE ROSEVILLE, *Defendants*

**Adjudication Number: ADJ11761777
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.

Furthermore, defendant's request for an expedited hearing on the issue of whether the QME's report is substantial evidence is not supported by the statutes or governing regulations.

California Labor Code section 5502 provides for expedited hearings in certain limited circumstances, which do not include trying the issue of the substantiality of a given piece of medical evidence. (Cal. Lab. Code, § 5502.) Similarly, while WCAB Rule 10782 authorizes expedited hearings in certain additional circumstances, those circumstances do not include a dispute as the substantiality of a QME report. (Cal. Code Regs., tit 8, § 10782.) Finally, to the extent that defendant relies upon WCAB Rule 10787 (Cal. Code Regs., tit 8, § 10787) and the possibility of bifurcating issues for trial, we note that such a request lies within the WCJ's discretion, and that although a party may request that a trial be bifurcated, such a request should not function as a backdoor way to request an expedited hearing on an issue that would not otherwise qualify for such treatment.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 26, 2022

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

**DALE BROWN
THOMAS DEBENEDETTO & ASSOCIATES
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP**

AW/ara

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

CS