

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

SANDRA MARICELA VARGAS, *Applicant*

vs.

**LUCILE PACKARD CHILDREN'S HOSPITAL AND SAFETY NATIONAL
CASUALTY CORPORATION, adjusted by TRISTAR INSURANCE GROUP, *Defendants***

**Adjudication Numbers: ADJ12852074; ADJ9517738
San Francisco 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.

Here, as discussed in the WCJ's report, if we were to treat the petition for removal as one for disqualification, the petition does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10960

(Cal. Code Regs., tit. 8, § 10960, and Code of Civil Procedure section 641(f) and/or (g)). Accordingly, to the extent that the petition could be construed as seeking to disqualify the WCJ, we would also have denied it.

Accordingly, we deny the petition for removal.

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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2022

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

**SANDRA MARICELA VARGAS
LAUGHLIN, FALBO, LEVY & MORESI
KENNETH MARTINSON**

AS/ara

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