

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

VLADIMIR TKACHUK, *Applicant*

vs.

**CRYSTAL CREAM & BUTTER;
ARROWOOD INDEMNITY, *Defendants***

**Adjudication Number: ADJ4641101 (SAC0335352), ADJ8405277
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant seeks removal in response to the Order denying defendant's Emergency Petition to Stay an examination by Qualified Medical Examiner (QME) Juan Cesar Larach, M.D. and defendant's motion to close discovery and set the matter for trial, issued by the workers' compensation administrative law judge (WCJ) on December 30, 2021.

Defendant contends that the WCJ erred in taking the matter off calendar and denying defendant's emergency Petition to Stay.

We received an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record and the WCJ's analysis of the merits of petitioner's arguments, 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); *Cortez, supra*; *Kleemann, supra*.) Additionally, 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).)

We find petitioner's arguments about applicant's diligence to be unpersuasive. As the WCJ notes, the case has an extensive history and petitioner's own lack of responsiveness may have hindered discovery efforts. (Report, p. 3.) Moreover, petitioner was present for discussions about discovery issues at conferences on May 20, 2021 and December 30, 2021, including potential problems with the deficiencies in the record. (Report, pp. 3, 5.) Based on the WCJ's analysis and summary of the procedural history, 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.

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 WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2022

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

**VLADIMIR TKACHUK
EASON & TAMBORNINI
MULLEN & FILIPPI**

JB/abs

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