

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

GERHARDT KAESTLE, *Applicant*

vs.

**CONSTELLIS TRIPLE CANOPY; STARR INDEMNITY & LIABILITY COMPANY,
admin. by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ13573244
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).)

We observe that it is well established that "WCJ's have authority to decide discovery disputes." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 662 [84 Cal.Rptr.2d 915, 64 Cal.Comp.Cases 624].) In the event that the statutory provisions of the Labor Code are not adequate or convenient, "on appropriate motion and on appropriate showing of good cause, the trial judge has, and should exercise the authority conferred on him by § [10330] of our rules to issue such interlocutory orders relating to discovery as he determines are necessary to insure the

full and fair adjudication of the matter before him, to expedite litigation and to safeguard against unfair surprise.” (*Hardesty v. Mccord & Holdren* (1976) 41 Cal.Comp.Cases 111, 114 [1976 Cal. Wrk. Comp. LEXIS 2406].) Here, defendant may raise its discovery contentions with the trial WCJ in the first instance. Thereafter, the trial WCJ may, within their sound discretion, determine whether to hear and decide the discovery dispute prior to hearing the balance of the issues raised by the parties.

Accordingly, 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.

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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 24, 2024

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

**GERHARDT KAESTLE
MEHR & ASSOCIATES
DIETZ, GILMOR & CHAZEN**

SAR/abs

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