

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

HECTOR ESTRADA, *Applicant*

vs.

**EMPLOYER HR LLC, PERSONNEL STAFFING GROUP LLC DBA KBS STAFFING,
GOBBLE INC, SCHAEFER SYSTEMS INTERNATIONAL, HEDY HOLMES
STAFFING SERVICES; ZURICH SACRAMENTO, PRIME ADMINISTRATORS,
MITSUI SUMITOMO, GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ13280143
Oakland 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.

Defendant Zurich American Insurance Company (Zurich) seeks removal in response to an October 23, 2023 order issued by a Workers' Compensation Administrative Law Judge (WCJ) taking this matter off calendar. The Minutes of Hearing indicate that the request for hearing was filed by Zurich for the purpose of requesting that the WCJ order two previously joined parties to appear before the Workers' Compensation Appeals Board. (Minutes of Hearing, October 23, 2023.) The WCJ's comments on the Minutes of Hearing observe that "the sole issue is contribution," and that "the WCJ has no jurisdiction." Accordingly, the WCJ ordered the matter taken off calendar and directed the parties to proceed with arbitration. (Ibid.)

Zurich's Petition for Removal (Petition) contends that "issues regarding whether a party is properly joined to a case as a codefendant for contribution issues does not typically fall under Arbitration," and that "[t]he two (2) missing defendants need to make an appearance and agree to subject themselves to the Arbitration proceedings." (Petition, at p. 2:13; 2:25.)

Pursuant to Labor Code section 5275(a), "[d]isputes involving the following issues shall be submitted for arbitration," including the "[r]ight of contribution in accordance with Section 5500.5." (Lab. Code, § 5275(a)(2).) Here, Zurich requests that "the WCAB retain jurisdiction to hear issues such as liability and coverage for the CT case in question and the proper parties to proceed to Arbitration." (*Id.* at p. 2:16.) However, pursuant to section 5275(a), the issue of contribution is subject to mandatory arbitration. While the WCJ retains the necessary jurisdiction to *join* necessary parties pursuant to WCAB Rule 10382 (Cal. Code Regs., tit. 8, § 10382), such authority does not extend to the adjudication of contribution disputes. We therefore concur with the WCJ's conclusion that jurisdiction over the dispute rests with the arbitrator.

We also observe that section 5272 provides that "[a]rbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge, as set forth in Chapter 1 (commencing with Section 5300) of Part 4" (Lab. Code, § 5272.) In addition, and insofar as a party wishes to commence the mandatory arbitration process, section 5271(b) provides that "[i]f the parties cannot select an arbitrator by agreement, either party may request the presiding workers' compensation judge to assign a panel of five arbitrators selected at random from the list of eligible attorneys." (Lab. Code, § 5271(b).) WCAB Rule 10900 (Cal. Code Regs., tit. 8, § 10900) provides that "[a]ny party may file an arbitration submittal form after a petition for contribution pursuant to Labor Code section 5500.5 has been filed." Thus, any party to the contribution dispute may file the arbitration submittal form to commence the selection of an arbitrator at any time following the

filing of a petition for contribution. We therefore agree with the WCJ's jurisdictional analysis and discern neither substantial prejudice nor irreparable harm in the order taking the matter off calendar. We will deny the Petition, accordingly.

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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 23, 2024

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

**BRADFORD BARTHEL
DOUGLAS MACKAY
EMPLOYMENT DEVELOPMENT DEPARTMENT
EMPLOYER HR LLC
GALLAGHER BASSETT
GOBBLE, INC.
HECTOR ESTRADA
HEDY HOLMES STAFFING SERVICES
KOREY RICHARDSON
MITSUI SUMITOMO
NMCI MEDICAL CLINIC
PACIFIC WORKERS
PERSONNEL STAFFING GROUP LLC DBA KBS STAFFING
PRIME ADMINISTRATORS
SCHAEFER SYSTEMS INTERNATIONAL
ZURICH SACRAMENTO**

SAR/abs

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