

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

MARIANO FLORES LOPEZ, *Applicant*

vs.

**ALEY & L GROUP CORPORATION, BARRETT BUSINESS SERVICES, INC.,
ACE AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ17607195
Marina del Rey 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.

We do not agree, however, that in order to for this matter to proceed to trial, the WCJ will need to first await the arbitrator's decision as to coverage, and recommend this be returned to the trial calendar as soon as the WCJ deems appropriate, after determining the relevant issues at this juncture.

While the Minutes of Hearing (MOH) dated March 5, 2024 list employment and insurance coverage as threshold issues, injury arising out of and in the course of employment (AOE/COE) is not a listed issue, which would be a necessary finding prior to determining the issues of temporary disability, further medical treatment, or attorney fees, also listed in dispute.

As for the insurance coverage dispute, such issue is rightfully the subject of the pending arbitration, per Labor Code section 5275(a)(1).

Those findings are distinct from a WCJ's determinations regarding issues of employment, injury, and benefits. Any and/or all parties found liable could be named jointly and severally in a Findings, Award, and Order with one party named as administrator, and a petition for reimbursement can address any dispute as to benefits paid.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 27, 2024

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

**MARIANO FLORES LOPEZ
HINDEN & BREVSLAKY
LAW OFFICES OF JESSE A. MARINO
EMPLOYER DEFENSE**

LAS/abs

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