

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

**TERESITA DE JESUS ASCENCIO, *Applicant***

**vs.**

**TWIN DOLPHIN HOSPITALITY LLC DBA COMFORT INN;  
ILLINOIS MIDWEST INSURANCE AGENCY LLC  
ON BEHALF OF NATIONAL CASUALTY COMPANY, *Defendants***

**Adjudication Number: ADJ16406595  
Van Nuys 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, the record reflects that applicant filed a petition for additional panels on April 12, 2024, and that defendant was served with the petition that same day. The basis for applicant's request was Dr. Schwartz's January 8, 2024 deposition, which was admitted into evidence as Exhibit Y at the trial on April 24, 2024. Further, the Minutes of Hearing from trial on April 24, 2024, indicate that applicant raised the issue of additional panels. (Minutes of Hearing, April 24, 2024, p. 2, lines 20-21.) Moreover, in his Opinion on Decision, the WCJ specifically points to the April 12, 2024 petition. (Opinion on Decision, p. 1.)

Yet, in defendant's verified Petition for Removal, it alleges that: "Nowhere in the Pre-Trial Conference Statement or the Minutes of Hearing, does it show that Applicant submitted a Petition for Additional Panels or any evidence to support its request for additional panels." (Petition, p. 4.) It further alleges that: "Applicant could have filed the Petition for additional panels prior to the MSC of January 23, 2024. As noted in the Opinion on Decision, the Petition for additional panels was filed on April 12, 2024. Applicant offered no exhibits in the PTCS to support its request for "additional panels." (Petition, p. 8.)

WCAB Rule 10803(a)(2) (Cal. Code Regs., tit. 8, § 10803(a)(2)) defines the record of proceedings as:

. . . the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

A petition is part of the record of proceedings and need not be "admitted" as evidence. Thus, defendant's allegations are, at a minimum, simply incorrect.

More significantly however, WCAB Rule 10421(b) provides that bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics "that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421(b).) The Rule then describes some of the violations that are subject to the provisions of Labor Code section 5813.

As relevant here, sanctionable conduct includes filing a verified pleading with the Appeals Board that contains statements of fact that are: “substantially misleading;” “substantial misrepresentations of fact;” “made without any reasonable basis or with reckless indifference as to their truth or falsity;” “literally true, but are intentionally presented in a manner reasonably calculated to deceive;” and/or “[c]onceal[] or substantially conceal[] material facts.” (Cal. Code Regs., tit. 8, § 10421(b)(5).)

***Defendant’s attorneys Julianne B. Crawford and Bradford & Barthel LLP, and defendants Illinois Midwest Insurance Agency LLC on behalf of National Casualty Company and Twin Dolphin Hospitality LLC dba Comfort Inn are admonished that making statements in a petition that appear to mislead the Appeals Board, even if technically true, still constitutes conduct that is in bad faith and such conduct may be equally subject to sanctions.***

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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**December 19, 2024**

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

**TERESITA DE JESUS ASCENCIO  
FOCIL LAW FIRM, APC  
BRADFORD & BARTHEL, LLP**

**AS/mc**

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