

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

CLEVELAND WALLACE, *Applicant*

vs.

**COUNTY OF MONTEREY, P.S.I., administered by
INTERCARE HOLDINGS INSURANCE SERVICES, *Defendants***

**Adjudication Numbers: ADJ7967261; ADJ10430549
Salinas 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, the WCJ issued an order regarding further development of the record, and the WCJ and the Appeals Board have the discretionary authority to develop the record when the medical record is not substantial evidence. (See Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) A defendant is generally not irreparably harmed by the cost of potential additional medical-legal discovery as

defendants are responsible for such costs under the Labor Code. (See *Lopez v. Fresno Unified School District* 2018 Cal.Wrk.Comp. P.D. LEXIS 127.) 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.

We note that an adequate and complete record is necessary to understand the basis for the WCJ's decision (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787) and that decisions of the Appeals Board "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc)). However, here we conclude that we are able to reach the merits of the defendant's Petition as it seeks review of a non-final order regarding further discovery, and we do not believe that the lack of a record prejudiced or irreparably harmed defendant. We also observe that if the matter ultimately proceeds to a final decision adverse to petitioner, a complete record will have been created at trial, and reconsideration will provide an adequate remedy at that time.

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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 17, 2025

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

**CLEVELAND WALLACE
SPRENKLE & GEORGARIOU, LLP
WITZIG, HANNAH, SANDERS & REAGAN, 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*