

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

**ELOISA SILVA, *Applicant***

**vs.**

**CALIFORNIA MENS COLONY, legally uninsured,  
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ17267767; ADJ19390574  
Santa Barbara District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
REMOVAL  
AND DECISION AFTER  
REMOVAL**

Defendant has filed a petition for removal from the “Joint Order Vacating Submission, Appointing L.C. § 5701 ‘Regular Physician’ & Ordering the Matter Off Calendar” (Orders) issued on August 29, 2025, by the workers’ compensation administrative law judge (WCJ).

Defendant contends that the appointment of a regular physician is not supported by the record and that the parties should be provided the opportunity to return to the original evaluators.

We have not received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ’s Report. Based on our review of the record, we will grant removal and as our Decision After Removal, we will rescind the August 29, 2025 Orders and return this matter to the trial level for further proceedings.

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).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, where the medical record remains deficient following a return to the prior physicians, or where good cause exists otherwise, the WCJ may order an examination of applicant to proceed with a regular physician appointed by the WCJ. (Lab. Code, § 5701.)

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).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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, § 10761.)

Here, the WCJ ordered the trial off calendar for further development of the record and appointed a regular physician. In reviewing the record, we agree with defendant that the trial judge issued this order prematurely and that the current record does not establish good cause to deviate from the standard procedure of returning to the evaluators who have already reported in the case. The WCJ's order thus violates the parties right to due process and removal is appropriate.

Upon return, the parties should proceed with appropriate development of the record as discussed above.

Accordingly, we grant removal and as our Decision After Removal, we rescind the August 29, 2025 Orders and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Removal from the Orders issued on August 29, 2025, by the WCJ is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Orders issued on August 29, 2025, by the WCJ are **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**November 17, 2025**

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

**ELOISA SILVA  
STOUT, KAUFMAN, HOLZMAN & SPRAGUE  
STATE COMPENSATION INSURANCE FUND**

**EDL/mc**

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