

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GARY HARRISON, *Applicant*

vs.

DISTRICT COUNCIL 16 NOR CAL JOINT APPRENTICESHIP; ARCH INSURANCE COMPANY, administered by SOUNDVIEW CLAIMS SOLUTIONS, INC., *Defendants*

Adjudication Number: ADJ20235103
Oakland District Office

OPINION AND ORDER
DENYING PETITION
FOR REMOVAL

Defendant has filed a petition for removal from the “Order Limiting Subpoena Duces Tecum” (Order) issued on October 3, 2025, by the workers’ compensation administrative law judge (WCJ).

Defendant contends that discovery of medical records should not be restricted to orthopedic records, where applicant has only claimed injury to orthopedic body parts.

We have 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, the Answer, and the contents of the WCJ’s Report. 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.

Although applicant waived a certain degree of privacy upon filing a claim alleging orthopedic injury, “. . . the scope of such ‘waiver’ must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities.” (*Britt v. Superior Court of San Diego County* (1978) 20 Cal.3d. 844, 859.) The discovery sought must be directly relevant to the claim and disclosure by applicant must be essential to the fair resolution of the claim. (*Id.*)

Here, defendant suggests that discovery of information unrelated to orthopedic injury is relevant. However, defendant has not made any offer of proof as to the relevancy of this information. No record exists upon which we can decide relevancy. The WCJ maintains jurisdiction over discovery in this matter. If defendant requires a hearing to present evidence or testimony, defendant may petition the court to either set aside or otherwise modify the current discovery order and request a hearing on the issue. Defendant may then create a record establishing the relevance of the information requested. On the record before us, it does not appear that non-orthopedic medical records are relevant to an orthopedic injury claim.

Defendant next suggests that the modification of the subpoena is vague and thus unenforceable. It is not manifestly evident that the term “orthopedic records only” is vague. Accordingly, whether the term is vague must be established in the record, however again, defendant has created no record nor provided any offer of proof as to how it would establish its argument. It would be incumbent upon the entity producing the records to advise the parties if the records request is vague or they do not understand it or cannot otherwise comply with it. Then, the parties should meet and confer in good faith to address the concerns of the record holder. Absent an agreement as to further modifying the records request, the parties may seek assistance from the court. It does not appear that defendant has proceeded to enforce the subpoena and thus, its argument as to vagueness is not ripe for adjudication.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the Order Limiting Subpoena Duces Tecum issued on October 3, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2025

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

**GARY HARRISON
GEARHEART & SONNICKSEN
GILSON DAUB**

EDL/mt

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