

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JANICE HEREDIA, *Applicant*

vs.

**CITY OF SUNNYVALE, permissibly self-insured,
administered by LWP CLAIMS SOLUTIONS, INC., *Defendants***

**Adjudication Number: ADJ21502564
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Applicant has filed a petition for removal from the order taking the matter off calendar issued on November 5, 2025, by the workers' compensation administrative law judge (WCJ).

Applicant contends that she is suffering hardship and that her case should proceed to expedited hearing, notwithstanding the fact that her claim is presently denied.

We have received an Answer from defendant. 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 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.

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, it appears that applicant’s claim is denied. It does not appear that applicant has obtained an opinion establishing the industrial causation of her claims pursuant to Labor Code section 3208.3. It would further appear that defendant has a due process right to allow adequate time to complete discovery on the issue of injury prior to proceeding to trial.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the order taking the matter off calendar issued on November 5, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 23, 2025

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

**JANICE HEREDIA
MULLEN & FILIPPI LLP**

EDL/mt

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