

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

JUAN ONTIVEROS, *Applicant*

vs.

**PROGRESSION DRYWALL CORPORATION; CYPRESS INSURANCE, administered
by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ19084557
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a petition for removal from the order taking the matter off calendar issued on July 30, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that a bifurcated trial should proceed upon its affirmative post-termination defenses prior to completion of discovery.

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 and based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will deny removal.

To the extent that defendant's petition appears to challenge the July 9, 2025 Order Vacating and Setting Aside Order Setting this Matter for Trial, we do not address these arguments as the petition is not timely with respect to that order.

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.)

In workers' compensation, the general rule is that all matters are submitted at a single trial. (Cal. Code Regs., tit. 8, § 10787(a).) However, it is within the discretion of a WCJ to bifurcate any issue if good cause is presented. Here, and for the reasons discussed by the WCJ in the Report, we agree that good cause was not presented to bifurcate the issue of defendant's post-termination defenses.

We would further note that multiple panels have recently cautioned defendant's attorneys against proceeding upon what appear to be frivolous arguments presented in various petitions for removal. (See *Henry v. Acco Engineered Systems, et. al.*, ADJ17195356, ADJ17201936, (Sept. 26, 2025); *Koenig v. Hertz Corporation, et. al.*, ADJ17262639 (Sept. 29, 2025); *Carrillo vs. Neal Trucking, Inc., et. al.*, ADJ18395672, (Oct. 13, 2025); *Gomez v. Garfield Beach CVS, et. al.*, ADJ17808664, (Oct. 22, 2025).)

Defendant wishes to litigate an affirmative defense *to a finding of industrial injury*, prior to completion of discovery on the issue of injury. If defendant is confident in its defense, it may simply stipulate that the injury is industrial and proceed to trial upon its affirmative defense. Absent such stipulation, applicant has a due process right to complete discovery on the issue within a reasonable time. Furthermore, as we have reminded defendant in multiple panels, it has an equivalent duty to investigate. (Cal. Code Regs., tit. 8, § 10109.)

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the order setting the matter for trial issued on July 30, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 20, 2025

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

**JUAN ONTIVEROS
LEE LEGAL LOS ANGELES
MICHAEL SULLIVAN & ASSOCIATES, LLP**

EDL/mt

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