

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

LINDA DRYER, *Applicant*

vs.

**AB CELLULAR HOLDING / AT&T WIRELESS;
ATLANTIC MUTUAL INSURANCE, in liquidation, by
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ3301560 (LBO 0308581); ADJ3209063 (LBO 0308583)
Pomona District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Lien claimant has filed a petition for removal from a minute order excusing a witness from trial issued on September 10, 2025, by the workers' compensation administrative law judge (WCJ).

Lien claimant contends that the WCJ denied lien claimant its right to cross examine the witness, which violated lien claimant's right to due process.

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

Lien claimant filed a supplemental petition. While lien claimant requested permission as required by WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964), the pleading does not appear to add any new information or authority for lien claimant's position. Thus, although it appears to be frivolous, we accept the supplemental petition.

We have considered the allegations of the Petition for Removal and the supplemental petition 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 cannot find error in the current record, and thus 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.

Labor Code section 5908 states that the appeals board "shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." The right to present evidence implicates the right to due process. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102]; *Pence v. Industrial Acci. Com.* (1965) 63 Cal.2d 48, 51 [30 Cal.Comp.Cases 207, 209].)

To be clear, the Appeals Board is not bound to follow the text of Evidence Code section 776; however, principles of due process require that the spirit of the Evidence Code is followed so as not to deprive any party the due process right to cross-examination. This conforms with the guidance provided in a recent en banc opinion:

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) . . . "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].)

(*Perez v. Chicago Dogs* (2025) 90 Cal. Comp. Cases 830, 838, (Appeals Board en banc).)

Here, lien claimant argues that the WCJ should not have dismissed a witness because lien claimant wanted to cross examine the witness. However, lien claimant appears to be significantly misrepresenting the facts of this case. Lien claimant did conduct a substantial cross examination of the witness as documented in the minutes. (Minutes of Hearing and Summary of Evidence, September 10, 2025, p. 13, line 22 through p. 16, line 7.) The cross examination summarized in the minutes is not limited simply to an email as lien claimant suggests. The summary lasts nearly three pages. Lien claimant David Silver, M.D., and lien claimant's representative, Dan Escamilla and Legal Service Bureau is admonished not to misrepresent or omit material facts in the future.

Next, lien claimants petition fails to acknowledge that it called no witnesses at all during its case in chief. To the extent that lien claimant argues that this witness was required to present critical evidence, lien claimant appears to have invited this error by not calling the witness during its case in chief.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Removal from the minute order excusing a witness from trial issued on September 10, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 14, 2025

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

**DAVID SILVER, M. D.
DAN ESCAMILLA
LEGAL SERVICE BUREAU
CANTRELL & GREEN
LINDA DRYER
FLOYD SKEREN MANUKIAN LANGEVIN, LLP**

EDL/mc

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