

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BENJAMIN ROJAS, *Applicant*

vs.

**EMPLOYERS OUTSOURCING, LLC, illegally uninsured,
administered by PRIME ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ17568026
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a petition for removal from the order setting the matter for trial issued on October 21, 2025, by the workers' compensation administrative law judge (WCJ).

Defendant contends that because the matter has settled via Compromise and Release, the issue of sanctions is moot. Defendant further contends that the WCJ has prejudged the matter.

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.

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.

The WCJ previously issued a notice of intent to impose sanctions as it appeared that defendant failed to properly identify themselves as an illegally uninsured employer in making appearances before the Appeals Board. This failure to identify the party liable for payment of benefits, particularly when the party is illegally uninsured, could be considered sanctionable, particularly in light of the Appeals Boards recent *en banc* decision in *DiFusco v. Hands On Spa*, (2025) 90 Cal.Comp.Cases 1007. “Read together, WCAB Rules 10390, 10400 and 10401 ensure that all parties, representatives and liable entities are fully identified in each case. Compliance with these rules is important to avoid errors such as misidentification of parties, inadvertent omission of parties from pleadings, and incorrect case captions.” (*Id.* at pp. 1018-1019.) Given the legal ramifications of illegally uninsured employment, both applicant and the court must be aware at all times of defendant’s insurance status.

Although this matter settled via Compromise and Release, the issue here is whether to impose judicial sanctions *to the court*. This is not an issue of sanctions due to applicant in the form of costs. Sanctions to the court cannot be resolved by private agreement. (Cal. Civ. Code, § 3513, [“Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.”].)

Under WCAB Rule 10960, proceedings to disqualify a WCJ “shall be initiated by the filing of a petition for disqualification **supported by an affidavit or declaration under penalty of perjury** *stating in detail facts* establishing one or more of the grounds for disqualification” (Cal. Code Regs., tit. 8, § 10960, emphasis added.) Petitions for disqualification must be timely filed: “If the workers’ compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.” (Cal. Code Regs., tit. 8, § 10960.)

To the extent that defendant alleges the WCJ is biased, defendant has failed to file a petition for disqualification. Even if we treated defendant’s petition for removal as a petition for disqualification we would have dismissed it as it was neither timely filed nor accompanied by an affidavit under penalty of perjury.

On December 11, 2025, defendant filed a letter advising that it wished to withdraw its petition for removal. Although defendant appears to withdraw its petition, defendant further appears to wish to avoid any hearing on the issue of sanctions. As the letter seeks contrary positions, we have proceeded with issuing this decision. The effect of withdrawing its petition for removal is that this matter remains on calendar for *trial*. Defendant's letter states that it "acknowledges the sanctions ordered by the (WCJ)", however no sanctions order has issued. Only a notice of intent has issued. This matter is set for trial so that a record may be created to determine the issue of sanctions and the proper amount of such sanctions, if ordered.

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.)

We would further note that the issue of sanctions is against all parties acting on behalf of defendant, including both the uninsured employer, Prime Administrators, and their attorneys.¹ If counsel is representing all parties as the notice of representation suggests, counsel may wish to consider whether such representation could lead to a conflict of interest.

At trial, the WCJ should make a proper record, determine whether sanctions should issue, and if so, determine the appropriate level of such sanctions.

Accordingly, we deny removal.

¹ To the extent that the original notice of intent generically listed "defendants" as those against whom sanctions could be imposed, the WCJ may wish to consider issuing an amended notice naming the specific persons and/or entities involved.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the order setting the matter for trial issued on October 21, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 21, 2026

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

**BENJAMIN ROJAS
PRUSSAK WELCH & AVILA, APC
EMPLOYER DEFENSE GROUP, LLP
COPPERPOINT LEGAL
ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP**

EDL/mt

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