WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARCO GARCIA, *Applicant*

vs.

AEROSPACE DYNAMICS INTERNATIONAL; ACE AMERICAN INSURANCE COMPANY, administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ13381754
Van Nuys 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 August 17, 2026, by the workers' compensation administrative law judge (WCJ).

Defendant contends that discovery is not yet complete.

We have received an Answer from applicant. Defendant filed a supplemental petition without requesting leave to file such a petition, and thus we do not accept the supplemental petition for filing. (Cal. Code Regs., tit. 8, § 10964.) 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, once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. Specifically, as part of that process, the parties will have an opportunity to raise the issue of whether further development of the record is appropriate. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

We make no judgment at this time whether additional discovery is warranted since without a formal record available to review, we have no ability to make this determination.

Both parties have raised the issue of sanctions. That issue is deferred to the trial level.

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 August 17, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 26, 2026

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

MARCO GARCIA
LAW OFFICE OF ROWEN, GURVEY & WIN
HARRISON, EICHENBERG AND MURPHY LLP

EDL/cm

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