

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 Case No. **ADJ6859121**
(Marina del Rey District Office)

4 **ALVARO GIRON,**

5 *Applicant,*

6 vs.

7 **ARI THANE FOAM PRODUCTS, INC.;**
8 **STATE COMPENSATION INSURANCE**
9 **FUND,**

Defendants.

**ORDER DENYING
PETITION FOR REMOVAL**

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11 We have considered the allegations of the Petition for Removal and the contents of the report of
12 the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of
13 the record, and for the reasons stated in the WCJ's report which we adopt and incorporate, we will deny
14 removal.

15 Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers'*
16 *Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5];
17 *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases
18 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial
19 prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(a);
20 see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration
21 will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code
22 Regs., tit. 8, § 10843(a).) Here, for the reasons stated in the WCJ's report, we are not persuaded that
23 substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will
24 not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Removal is **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

5 *F. M. Brass*

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7 **FRANK M. BRASS**

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10 I CONCUR,

11 *Marguerite Sweeney*
12 **MARGUERITE SWEENEY**

13 *Jose H. Razo*
14 **JOSÉ H. RAZO**



15
16 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

17 **MAR 24 2016**

18
19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
20 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

21 **ALVARO GIRON**
22 **BARKHORDARIAN LAW FIRM**
23 **STATE COMPENSATION INSURANCE FUND**

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25
26
27 mm *AG*

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ6859121

ALVARO GIRON

vs. ARI THANE FOAM PRODUCTS, INC.

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

ROBERT F. SPOERI

REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

I.
INTRODUCTION

A verified Petition For Removal has been filed by the applicant challenging this judge's order of 02-09-2016, which indicated that the applicant was not entitled to a replacement panel for a QME in the field of internal medicine based on applicant's attorney's argument. Essentially, the applicant's attorney had argued that that Dr. Laqui had "violated" the fee schedule for cross examination by allegedly overcharging for a proposed records review which then allegedly "impacts his credibility as panel QME..." and "which might affect his impartiality as QME."

II.
RELEVANT PROCEDURAL HISTORY

The applicant saw Dr. Laqui on 10-08-2014 for a panel QME appointment in internal medicine/rheumatology at Dr. Laqui's Bellflower office. Applicant saw Dr. Laqui for a panel QME exam on 12-08-2014 at Dr. Laqui's Garden Grove office. On 02-25-2015 applicant saw Dr. Laqui yet again for a panel QME exam at Dr. Laqui's Corona office. Dr. Laqui prepared a report dated 03-17-2015. In this report he indicated that there was no interpreter present at the

time of the 02-25-2015 appointment. Dr. Laqui did not make the applicant permanent and stationary at that time, but instead arranged to have a new appointment for the applicant on 04-03-2015. There is no evidence on whether the applicant ever kept that appointment. Neither the applicant nor the defense attorney ever advised the WCJ of any of this information at the time of the conference on 02-09-2016, when they were discussing the issue of the petition for a replacement panel.

There was a suggestion in the report of Dr. Laqui that his QME license was set to expire in April of 2015 and this may explain why he was in a hurry to get the final exam with the applicant as quickly as possible. This potential situation was never brought up by either side to the WCJ at the conference of 02-09-2016.

On 11-18-2015 the applicant's attorney filed a request for a replacement panel in internal medicine for panel number 1662869. Applicant's attorney said that he tried to set the deposition of Dr. Laqui at the office where Dr. Laqui had examined the applicant. The applicant attorney decided to set the deposition of Dr. Laqui at the court reporter's office in Van Nuys for 11-25-2015 at 10:00 a.m. Dr. Laqui said that "his bill for the deposition includes" payment at \$250.00 per hour for one hour of deposition time and three hours of record review for a total of \$1000.00. The hourly rate of \$250.00 is correct as is the deposition time. There is a question about the amount of record review time for this particular case. Dr. Laqui never refused to show up for the deposition if he were not paid in advance.

The applicant's attorney then took it upon himself to contend on Dr. Laqui's behalf that Dr. Laqui was making himself unavailable for his deposition, although there was no evidence that this was so. The applicant's attorney then cancelled the deposition of Dr. Laqui on his own because applicant's attorney was upset that Dr. Laqui wanted to bill for three hours of records review and applicant's attorney felt that going forward with a cross examination in such a situation "will cause substantial prejudice and/or irreparable harm to the applicant...."

III.
DISCUSSION OF PETITIONER'S CONTENTIONS

The WCJ failed to see at the time of the conference how Dr. Laqui asking to be paid for three hours of records review instead of one hour causes irreparable harm or substantial prejudice. The applicant's attorney could have paid for one hour of deposition time and one hour of records review and the parties could have sorted out the dispute on payment after the time of Dr. Laqui's deposition. The doctor never refused to show up for the deposition if he were not paid the entire \$1000.00 in advance. The defense attorney has been arguing that the applicant's attorney has been looking for a way to escape from using Dr. Laqui as the panel QME. A careful review of his report suggests that his report might be open to attack on other grounds. This would require development of additional evidence.

IV.
RECOMMENDATIONS

For the reasons stated above, it is recommended the Petition For Removal be denied.

DATE: 02/25/2016

Robert F. Spoeri

Robert F. Spoeri
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

BY: *L. Lamb* 02/25/2016
L. LAMB