

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

3
4 **SHARI HERNANDEZ,**

5 *Applicant,*

6 vs.

7 **FREMONT BANK, administered by CHUBB**
8 **GROUP OF INSURANCE COMPANIES,**

9 *Defendants.*

Case No. ADJ9778321
ADJ9778380
(Oakland District Office)

**ORDER DENYING
PETITION FOR REMOVAL**

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

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

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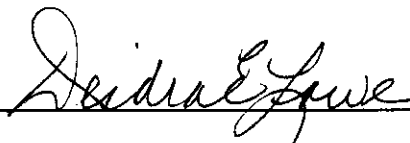
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1 For the foregoing reasons,

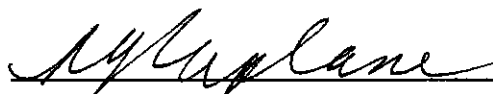
2 **IT IS ORDERED** that the Petition for Removal is **DENIED**.

3 **WORKERS' COMPENSATION APPEALS BOARD**

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6 **DEIDRA E. LOWE**

7 **I CONCUR,**

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11 **RONNIE G. CAPLANE**

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13 
14 **MARGUERITE SWEENEY**



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

17
18 **AUG 19 2015**

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

21 **BLUE SHIELD OF CALIFORNIA**
22 **BOEHM & ASSOCIATES**
23 **BOXER & GERSON**
24 **EMPLOYMENT DEVELOPMENT DEPARTMENT**
25 **FEDERAL INSURANCE**
26 **FREMONT BANK**
27 **SHARI HERNANDEZ**
THE MCLEAN LAW GROUP



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

**SHARI HERNANDEZ v. FREMONT BANK
and FEDERAL INSURANCE
WCAB CASE NOS.: ADJ9778321, ADJ9778380**

JUDGE STANLEY E. SHIELDS

**REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL**

ISSUE PRESENTED

Whether Defendant will suffer irreparable harm or significant prejudice from the Judge's Order to the Medical Unit to issue an additional QME panel in the field of psychiatry.

INTRODUCTION

Defendant filed a timely, verified Petition for Removal in these matters on July 24, 2015. To date, no Answer has been filed by Applicant.

Applicant, a bank teller for Fremont Bank, claims to have sustained injury to her knee (unspecified, but believed to be left knee) on October 10, 2014. This has been assigned Case No. ADJ9778321. Applicant then filed an Application for injury to her left leg and foot in a cumulative period to November 13, 2014, also while employed by Fremont Bank. This has been assigned Case No. ADJ9778380. Both Applications were amended on April 23, 2015, to

include claim of injury to psyche. Both Applications were amended again on July 14, 2015, to include injury to stomach and internal organs. Defendant has filed Answers to each Application denying injury.

At some point, the Medical Unit issued a panel in the field of pain medicine. According to papers filed by Applicant, Defendant unilaterally cancelled the Qualified Medical Evaluation which was set up on the basis of the panel assignment. According to Defendant's Petition for Removal, the parties later decided to utilize Joel Renbaum, M.D., as an orthopedic Agreed Medical Evaluator ("AME").

Applicant petitioned for assignment of an additional panel in psychiatry, and an Order to that effect was issued by the undersigned on July 7, 2015. It is from this Order that Defendant claims to be aggrieved.

DISCUSSION

Defendant relies on Labor Code Section 4660.1(c)(1), which it quotes as follows: "there shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction or psychiatric disorder, or any combination thereof arising out of a compensable physical injury' for injuries occurring on or after 1/1/13." Defendant goes on, "Therefore, a medical legal evaluation in the specialty of psychiatry is inappropriate."

Defendant conveniently leaves out the second sentence of 4660.1(c)(1), which states, "Nothing in this section shall limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury."

The appropriate procedure to resolve a dispute over injury is to utilize the panel Qualified Medical Evaluator mechanism (or agree to an AME). The fact that compensation for a permanent psychiatric impairment is not available to this injured worker does not deprive her of her potential right to medical care or, for that matter, temporary disability indemnity on a psychiatric basis.

Defendant's further argument that "any possible psychiatric injury is subject to Utilization Review, not the Med-legal process" is disingenuous. Utilization Review is only available, and only relevant, where injury has been accepted.¹

Defendant is not irreparably harmed or significantly prejudiced by the undersigned's discovery Order; in fact, both Applicant and Defendant are benefited by moving forward with necessary discovery and determination of injury in the first instance.

RECOMMENDATION

Deny Petition for Removal.



Dated: July 27, 2015

Stanley E. Shields
Workers' Compensation Judge

¹ Labor Code Section 4610(g)(7) provides that, "Utilization review of a treatment recommended shall not be required while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Section 4062."