

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

ROSALVA MORA, *Applicant*

vs.

**CEJA REYES, INC.;
STAR INSURANCE, administered by
MEADOWBROOK INSURANCE, *Defendants***

**Adjudication Number: ADJ9080945
Redding District Office**

**OPINION AND ORDER
DENYING PETITION FOR
DISQUALIFICATION**

On March 24, 2023, applicant's attorney filed a Declaration for Peremptory Challenge. To the extent that it sought to petition for disqualification of the WCJ, we will treat the pleading as a Petition for Disqualification. We have considered the allegations of the Petition for Disqualification and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny the Petition for Disqualification. As noted by the WCJ in the Report, the peremptory challenge made by applicant on December 6, 2021 is still effective. Upon this matter's return, the presiding judge should set this matter before a different WCJ.

For the foregoing reasons,

IT IS ORDERED that the Petition for Disqualification is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 13, 2023

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

**ROSALVA MORA
LAW OFFICES OF PHILLIP COOKE
LAW OFFICES OF BRADFORD & BARTHEL**

PAG/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR DISQUALIFICATION

I.

INTRODUCTION

1. The petitioner contends that the case should not be set for trial in front of this judge because this judge is believed to be biased against the applicant, Rosalva Mora and against the applicant's law firm, Cooke and Marshall.
2. The petitioner is the applicant. The matter has not yet gone to trial, and no witnesses have been sworn.

II.

FACTS

Relevant to this petition, the case was previously before this judge on 12/6/21 for a Mandatory Settlement Conference. At that time the matter was set for trial, and the pre-trial conference statement clearly reflects that applicant's counsel then and there exercised his right challenge to this judge as the trial judge per CCR10788.

On 3/10/22, the parties appeared for trial in front of Judge Sulprizio, and that judge, after reviewing the evidence with the parties took the matter off calendar for further discovery.

The parties next appeared at a status conference on 11/16/22, where the parties by formal stipulation agreed to treat the status conference as a Mandatory Settlement Conference, to set the case for trial, and to adopt and apply the pre-trial conference statement from the 12/6/21 MSC to the upcoming trial. This is the same pre-trial conference statement wherein applicant's counsel unambiguously exercised his challenge against this judge.

On 3/15/23, the parties again appeared in front of Judge Sulprizio for trial, but the trial was properly continued due to the illness of the applicant.

On 3/24/23 applicant's counsel filed the Petition for Disqualification of this judge as the trial judge.

III.

DISCUSSION

The applicant's counsel's Petition for Disqualification is unnecessary as it is duplicative of his challenge of this judge at the 12/6/21 Mandatory Status Conference. That challenge is still in effect, and the case will be set for trial in front of Judge Sulprizio, or reset if it has erroneously be set in front of this judge.

Having said that, applicant's counsel should note that there is a presumption that people serving as judges do so with honesty and integrity. Any potential bias and prejudice must clearly be established by an objective standard, and courts are required to apply with restraint statutes

authorizing the disqualification of a judge because of bias. A party's unilateral and subjective belief that he or she could not obtain a fair trial from a WCJ is insufficient. See **Robbins v. Sharp Healthcare (2006) 71 CCC 1291, 1310 (significant panel decision)**, where the board stated that “Under no circumstances, however, can a party’s unilateral and subjective perception of an appearance of bias afford a basis for disqualification. (citations omitted) Otherwise, we would have a system in which disgruntled or dilatory litigants can wreak havoc with the orderly administration of dispute resolving tribunals.”

Here, the applicant’s counsel merely asserts that this judge is biased against the applicant and/or his law firm based only on belief. This mystifies this judge, as he does not know the applicant, has never spoken with her except through her attorney and an interpreter, and has always, to his knowledge, enjoyed professional and cordial relations with the law firm of Cooke and Marshall.

In summary, the applicant’s counsel’s timely and legal challenge asserted per CCR10788 at the 12/6/21 MSC is still in effect and will be honored, so the Petition for Disqualification is unnecessary and duplicative. Further, pursuant to the foregoing authorities, the petition does not state sufficient objective evidence to find good cause to support disqualification.

IV.

RECOMMENDATION

For the reasons discussed above, it is respectfully recommended that the Petition for Disqualification be denied.

Date: 3/29/23

Curt Swanson
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE