

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

**CAROL ALLISON, *Applicant***

**vs.**

**MERTZ DEL AMO MOBILE HOME PARK; CALIFORNIA INSURANCE  
GUARANTEE ASSOCIATION, by its servicing facility SEDGWICK CMS, for  
SUPERIOR NATIONAL INSURANCE, in liquidation, *Defendants***

**Adjudication Number: ADJ3046670 (POM 0234030)  
Marina del Rey District Office**

**OPINION AND DECISION AFTER REMOVAL**

We previously granted removal<sup>1</sup> in order to study the factual and legal issues in this case. This is our Opinion and Decision After Removal.

In a separate Petition for Reconsideration, dated August 22, 2022, and filed on August 25, 2022, applicant requests that the Appeals Board appoint a new special master or return the matter to the trial level.

We have considered the allegations of the Petitions for Removal and Reconsideration and have reviewed the record in this matter. Based on our review of the record, and as discussed below, as our decision after removal, we will affirm the order issued by a workers' compensation administrative law judge (WCJ) on June 11, 2020; affirm our September 21, 2018 Opinion and Decision After Reconsideration (Opinion), except that we will amend it to provide that the matter is referred to the Presiding Judge (PJ) to consider appointment of a special master and to take any other appropriate action and return the matter to the trial level for further proceedings. We otherwise make no changes to our September 21, 2018 Opinion, which we adopt and incorporate herein. Finally, we will also dismiss applicant's Petition for Reconsideration.

**BACKGROUND**

In our September 21, 2018 Opinion, we issued the following orders:

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<sup>1</sup> Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Removal dated December 7, 2020. As Commissioner Lowe is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the workers' compensation administrative law judge on September 20, 2016 is RESCINDED, that the matter is REFERRED to WCJ Ralph Zamudio to act as a special master in accordance with this opinion, and that this matter is RETURNED to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

IT IS FURTHER ORDERED that applicant Carol Allison's Petition to Disqualify workers' compensation administrative law judge Martha Gaines is DENIED.

On June 11, 2020, the parties proceeded to a status conference before a different WCJ and the WCJ issued the following order: "Parties are unable to resolve. Parties stipulate that a new Special Master needs to be assigned to this case."

On November 4, 2020, applicant's attorney filed a letter and stated in pertinent part that:

"[B]efore Judge Zamudio completed his work as a special master he retired, leaving the case without a special master. It is our understanding that the case was returned to the WCAB for the appointment of a special master, but that has not yet occurred.

We respectfully request that a new special master or judge be appointed."

We treated applicant's letter as a petition for removal in response to the June 11, 2020 order by the WCJ, and on December 7, 2020, we granted removal.

On August 25, 2022, applicant filed a Petition for Reconsideration requesting that the Appeals Board appoint a new special master or return the matter to the trial level.

### **DISCUSSION**

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 significant 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).)

WCAB Rule 10955, subdivision (e) (Cal. Code Regs., tit. 8, § 10955(e) states that:

The filing of a petition for removal does not terminate the workers' compensation judge's authority to proceed in a case or require the workers' compensation judge to continue or cancel a previously scheduled hearing absent direction from the Appeals Board. After a petition for removal has been filed, the workers' compensation judge shall consult with the presiding workers' compensation judge prior to proceeding in the case or continuing or canceling a scheduled hearing.

In our September 21, 2018 order, we appointed WCJ Zamudio to act as a special master. According to applicant's November 4, 2020 petition, WCJ Zamudio subsequently retired thereby rendering our previous order moot. We granted removal on December 7, 2020. Yet, contrary to the assertions by applicant in her Petition for Reconsideration, pursuant to WCAB Rule 10955(e), the WCJ continued to have authority to proceed even after removal was granted, and the WCJ, in consultation with the PJ, could have taken appropriate action. However, in order to clarify that WCJ Zamudio is no longer the special master, we will amend our September 21, 2018 order to reflect that the matter is referred to the PJ to determine the issue of a special master and to take any other appropriate action.

Turning to applicant's Petition for Reconsideration, we note that it was filed on August 25, 2022. Although we did not act upon the petition by October 24, 2022 as required by section 5909, it was through no fault of applicant. We believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice ...." (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiple*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) Therefore, considering that the WCAB's failure to act was due to a clerical error, we find that our time to act on the petition is tolled.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues. Here, we first observe that our orders in the September 21, 2018 Opinion were not “final” orders and were merely interim orders. Accordingly, we continue to have jurisdiction to make changes to those orders.

Additionally, our December 7, 2020 Opinion and Order Granting Petition for Removal is an interim / interlocutory order, so that reconsideration is not appropriate. Thus, we dismiss applicant’s Petition for Reconsideration.

Accordingly, as our decision after removal, we affirm the June 11, 2020 Order by the WCJ and we affirm our September 21, 2018 Opinion, except that we amend it to refer the matter to the PJ to consider appointment of a special master and to take any other appropriate action, and return the matter to the trial level for further proceedings. Finally, we dismiss applicant’s Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order issued by the workers' compensation administrative law judge on June 11, 2020 is **AFFIRMED**.

**IT IS FURTHER ORDERED** that the Opinion and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on September 21, 2018 is **AFFIRMED**, except that is **AMENDED** as follows:

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the workers' compensation administrative law judge on September 20, 2016 is **RESCINDED**.

**IT IS FURTHER ORDERED** that the matter is **REFERRED** to the Presiding Judge at the Marina Del Rey district office for consideration of the appointment of a special master and to take any other appropriate action as determined by the Presiding Judge.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings and consistent with this opinion.

**IT IS FURTHER ORDERED** that applicant Carol Allison's Petition to Disqualify workers' compensation administrative law judge Martha Gaines is **DENIED**.

**IT IS FURTHER ORDERED** that applicant's Petition for Reconsideration filed on August 25, 2022 is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**



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

**NOVEMBER 21, 2022**

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

**CAROL ALLISON  
ROGARI LAW FIRM  
GUILFORD SARVAS & CARBONARA**

**AS/ara**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.  
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## **OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by applicant Carol Allison.<sup>1</sup> This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order issued by Martha Gaines, workers' compensation administrative law judge (WCJ), on September 20, 2016. The WCJ found, in pertinent part, that there "is a bona fide dispute as to Applicant's entitlement to temporary disability indemnity/permanent disability/VRMA and all other indemnity benefits including the character/periods/rates of these benefits and thus, Defendant did not unreasonably fail to pay or delay the payment of benefits and no penalties are due."

Applicant contends that she is owed penalties for defendant's delay in payments of temporary disability, vocational rehabilitation maintenance allowance, and permanent disability benefits. Applicant further contends that she was denied due process because the WCJ did not allow her to call witnesses to testify in support of her claims for penalties and the WCJ failed to perform an accounting of all sums owed to applicant, all sums paid by defendant, and the basis for awarding or denying penalties, as we had ordered on May 13, 2011. Applicant requests that WCJ Gaines be disqualified and that the case be sent to a local office other than Marina Del Rey with instructions to complete the accounting and conduct a trial hearing on the compensation issues remaining.

We received an Answer from defendant. Defendant contends that applicant failed to meet her burden of proof to show that she is entitled to penalties because the record contains inadequate medical evidence on the time periods she suffered temporary and permanent disability. Defendant further contends that an accounting was not performed because applicant failed to submit to an Independent Medical Evaluation (IME) with Dr. Silbart. Defendant also contends that applicant was not denied due process because there are valid objections to applicant's witnesses.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied because there is a bona fide dispute over applicant's entitlement to all benefits and therefore penalties cannot attach. The WCJ opined that our May 13, 2011 order for a complete accounting of sums owed and paid was made moot by the parties' March 18, 2015 settlement, which resolved entitlement to all retroactive benefits.

We have considered the allegations of the Petition, Answer, and the contents of the WCJ's Report. Based on our review of the record and, as discussed below, we rescind the September 20, 2016 Findings and Order and refer the issue of penalties and any other outstanding disputes to WCJ Ralph Zamudio, Workers' Compensation Appeals Board, 6150 Van Nuys Blvd., #105, Van Nuys, CA 91404-3373, (818) 901-5367, to act as a special master.

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<sup>1</sup> The Opinion and Order Granting Petition for Reconsideration was signed by former Deputy Commissioner Richard L. Newman and former Commissioner Frank M. Brass, who are now retired. New panel members have been substituted in their place.

The special master is given broad powers to develop the record, consider penalties and sanctions, and help the parties resolve all disputes. In the event that the parties are unable to resolve all of their disputes with the special master, the special master is directed to prepare a report that frames and narrows all issues in dispute,<sup>2</sup> lists any and all stipulated facts, and contains a proposed resolution with supporting documentation such as an accounting of when applicant became entitled to benefits, all sums paid by defendant and the dates they were paid, and any and all sums owed to applicant, including penalties and/or sanctions, if any.

## I.

This matter dates back to the year 2000 and contains several Findings and Orders that were later rescinded. Although we are unclear what findings and orders regarding temporary and permanent disability or other benefits remain in effect, we, nevertheless, highlight the following facts.

On April 7, 2009, the parties entered into Stipulations, from which an Award issued on the same date. (Exhibit L, Stipulations with Request for Award and Award.) The parties stipulated that applicant, while employed by defendant from February 1, 1996 through June 17, 1997, sustained an industrial cumulative trauma injury to her neck, and right and left upper extremities and wrists. (*Id.* at p. 5.) The parties further stipulated that the industrial injuries caused permanent disability of 76.75% for which indemnity is payable at \$230.00 per week beginning on May 13, 2003 in the sum of \$112,067.50, less credit for payments previously made, and a life pension of \$64.74 per week thereafter, with attorney's fees of \$24,911.50. (*Id.* at p. 6.) The parties noted that the following are in dispute: the rate and length of temporary disability, permanent disability advances made, and all penalty issues. (*Id.* at pp. 6-7.) Specifically, the parties noted:

ALL PENALTY ISSUES, INCLUDING SECTION 5814 PENALTIES ARE EXCLUDED FROM THIS SETTLEMENT. THE PARTIES ACKNOWLEDGE THAT THE DEFENDANT HAS MADE SIGNIFICANT TD PAYMENTS AND PAYMENTS THAT WERE MADE AS AN ADVANCE OF PD. THE PARTIES ACKNOWLEDGE THAT APPLICANT CLAIMS THAT SIGNIFICANT PERIODS OF TD WERE EITHER NOT PAID OR WERE INCORRECTLY PAID AS AN ADVANCE ON PD. THE PARTIES ACKNOWLEDGE THAT APPLICANT CLAIMS TD PAYMENTS HAVE NEVER BEEN PAID AT THE CORRECT RATE AND THAT SHE IS OWED ADDITIONAL MONIES BECAUSE REHABILITATION BENEFITS WERE NOT PAID WHEN DUE. THE PARTIES ACKNOWLEDGE THAT DEFENDANT RESERVES THE RIGHT TO ASSERT CREDIT FOR PERMANENT DISABILITY ADVANCES AND OTHER BENEFITS PAID TO THE APPLICANT. THE PARTIES ACKNOWLEDGE A DISPUTE AS TO THE NATURE/CHARACTER/AMOUNT OF BENEFITS DUE AND THAT THERE MAY BE PERIODS OF TTD/VR

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<sup>2</sup> See Minutes of Hearing dated February 9, 2016, April 21, 2016, and June 16, 2016; Applicant's Amended Post Trial Brief, dated July 6, 2016, which contains 64 pages of penalty requests. (Points and Authorities – Trial Brief – Hearing Brief, July 6, 2016.)



BENEFITS OWED AFTER THE P&S DATE, THUS CREATING A BREAK IN PD.

THE PARTIES ARE ATTEMPTING TO RESOLVE THESE ISSUES AND WILL SUBMIT ANOTHER STIPULATION SHOULD THEY DO SO.

THIS RESOLVES THE DISPUTE AS TO THE EXTENT OF PERMANENT DISABILITY.

ISSUES OF NATURE/CHARACTER/AMOUNT OF BENEFITS ARE DEFERRED.

(*Id.* at p. 7.)

On May 13, 2011, we issued an Opinion and Order Granting Reconsideration and Decision After Reconsideration in response to defendant's Petition for Reconsideration. (Opinion and Decision dated May 13, 2011.) In that Opinion and Decision, we rescinded the following findings made by the WCJ: (1) that applicant was underpaid permanent disability in the sum of \$21,624.00, (2) that defendant failed to pay the permanent disability owed pursuant to the April 7, 2009 Stipulated Award, (3) that applicant was entitled to receive a \$10,000.00 penalty pursuant to section 5814 as well as costs and attorney's fees pursuant to section 5814.5, and (4) that the record required augmentation on the issue of temporary disability. (*Id.* at pp. 1-2.)

We reasoned that the April 7, 2009 Stipulated Award "only resolved the question of the extent of applicant's permanent disability and the fees owed applicant's attorney based on the permanent disability awarded." (*Id.* at p. 4.) It did not resolve the exact amount of permanent disability to be paid. (*Ibid.*) "Paragraph 9 of the April 7, 2009 stipulations expressly note the parties' dispute about whether applicant was owed temporary disability indemnity, permanent disability indemnity or VRMA for portion of the time from May 13, 2003 to April 7, 2009. It is apparent that this dispute has not yet been resolved, as shown by the WCJ's appointment of Dr. Silbart to assist in making that determination. It is also apparent that the issues raised in paragraph 9 of the April 7, 2009 stipulations must be determined before a final decision can be made on defendant's liability under the stipulated award and on applicant's claim for penalties." (*Id.* at p. 6.) We then returned the matter to the trial level for a new decision by the WCJ on all issues in dispute after the record has been properly developed. We stated, "[i]ssuance of a comprehensive decision will avoid unnecessary bifurcation of the issues, and the new decision should include a proper and complete accounting of all sums owed to applicant, all sums paid by defendant and the basis for awarding penalties, if any." (*Id.* at p. 6; emphasis added.)

On March 18, 2015, the parties entered into the following stipulation:

The parties stipulate that, there being a dispute re issues of PD; TD; VRMA benefits due and the characterization of; correct rate of benefits; and commencement date of life pension benefits, those issues are hereby resolved as follows:

#1. Defendant will pay \$56,947.92 in settlement of all accrued PD TD & VRMA and all benefit rate issues;

#2. Defendant will pay \$12,041.64 to the applicant for life pension benefits in accordance with the 4/7/09 award through 3/18/15, and payable at the weekly rate of \$64.74 thereafter.

#3. Applicant attorney Ralph Rogari shall be paid a 15% attorney fee from each of the amounts in 1 and 2 above. [¶] Applicant attorney agrees to reimburse the applicant the amount of such attorneys fees from any future award of attorneys fees under 5814.5/5813.

#4. All other issues are deferred, including 5814 penalties, 5813 sanctions, and attorneys fees under 5814.5.

(Exhibit 46, Stipulated Order.)

## II.

We disagree with the WCJ that our May 13, 2011 Order and Decision was made moot by the May 18, 2015 settlement. (See WCJ's Report, p. 18.) Before we are able to determine if defendant timely paid benefits to applicant or unreasonably delayed benefit payments or acted in bad faith, we must first determine when applicant's entitlement to benefits began, when defendant paid benefits and in what amount, and any sums that may still be owed to applicant. (Lab. Code §§ 4650(d), 5814, 5814.5, 5813.) Due to the longevity of this case and the complexity of the facts, including the fact that it appears that the benefits owed were resolved by stipulations and not by judicial findings, we conclude that it is appropriate to utilize a special master to gather information needed to make such determinations, resolve the matter if appropriate, and to provide the WCJ with a report, if the matter is not resolved, that identifies the factors considered and the evidence in support of the special master's recommendations. (Lab. Code § 5310 [The Appeals Board may appoint one or more WCJ as it may deem necessary to oversee any proceeding]; *Borrayo v. Tobar Industries* (January 20, 2012, ADJ1714765) [2012 Cal. Wrk. Comp. P.D. LEXIS 10] [WCJ may appoint a special master pursuant to the inherent powers authorized by Labor Code section 111.]) Applicant and defendant are obligated to cooperate with the special master.

## III.

Applicant requests that WCJ Gaines be disqualified and that the case be set to a local office other than Marina Del Rey. Labor Code section 5311 provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that the WCJ has demonstrated "[t]he existence of a state of mind ... evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)).

Under WCAB Rule 10452, proceedings to disqualify 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 grounds for disqualification ... .” (Cal. Code Regs., tit. 8, § 10452 (*italics added*)). It has long been recognized that “[t]he allegations in a statement charging bias and prejudice of a judge must set forth specifically the *facts* on which the charge is predicated,” that “[a] statement *containing nothing but conclusions and setting forth no facts* constituting a ground for disqualification may be ignored,” and that “[w]here no *facts* are set forth in the statement *there is no issue of fact to be determined*.” (*Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 399 (*Mackie*) (*italics added*)).

Furthermore, even if detailed and verified allegations of fact have been made, it is settled law that a WCJ is not subject to disqualification under section 641(f) if, prior to rendering a decision, the WCJ expresses an opinion regarding a legal or factual issue but the petitioner fails to show that this opinion is a fixed one that could not be changed upon the production of evidence and the presentation of arguments at or after further hearing. (*Taylor v. Industrial Acc. Com. (Thomas)* (1940) 38 Cal.App.2d 75, 79-80 [5 Cal.Comp.Cases 61].)<sup>3</sup> Additionally, even if the WCJ expresses an unqualified opinion on the merits, the WCJ is not subject to disqualification under section 641(f) if that opinion is “based upon the evidence then before [the WCJ] and upon the [WCJ’s] conception of the law as applied to such evidence.” (*Id.*; cf. *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312 (*Kreling*) (“It is [a judge’s] duty to consider and pass upon the evidence produced before him, and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party.”).)

Also, it is “well settled ... that the expressions of opinion uttered by a judge, in what he conceives to be a discharge of his official duties, are not evidence of bias or prejudice” under section 641(g) (*Kreling, supra*, 25 Cal.2d at pp. 310–311; accord: *Mackie, supra*, 154 Cal.App.2d at p. 400) and that “[e]rroneous rulings against a litigant, even when numerous and continuous, form no ground for a charge of bias or prejudice, especially when they are subject to review” (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; accord: *Mackie, supra*, 154 Cal.App.2d at p. 400). Similarly, “when the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies” the judge under section 641(g). (*Kreling, supra*, 25 Cal.2d at p. 312; see also *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal. App. 4th 1210, 1219 (“When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons for ruling against a party constitutes evidence of judicial bias.”).)

Under no circumstances may a party’s unilateral and subjective perception of bias afford a basis for disqualification. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1034; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310–1311 (Appeals Board significant panel decision).)

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<sup>3</sup> Overruled on other grounds in *Lumbermen’s Mut. Cas. Co. v. Industrial Acc. Com. (Cacozza)* (1946) 29 Cal.2d 492, 499 [11 Cal.Comp.Cases 289].

Finally, Rule 10452 provides that when the WCJ and “the grounds for disqualification” are known, a petition for disqualification “shall be filed not more than 10 days after service of notice of hearing” and “[i]n no event shall any such petition be allowed after the swearing of the first witness.” (Cal. Regs., tit. 8, § 10452.)

Here, the request for the disqualification of WCJ Gaines does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10452, and Code of Civil Procedure section 641(f) and/or (g). Furthermore, we note that applicant’s request for the disqualification of WCJ Gaines found in her Petition dated October 14, 2016 is more than 15 days (10 days under Rule 10452 plus 5 days for mailing time under Rule 10507) after WCJ Gaines’s September 20, 2016 Findings and Order, which is the decision in which applicant alleges WCJ Gaines “failed to act with the required neutrality.” (See Petition, p. 8:8.) Accordingly, the request to disqualify WCJ Gaines is denied.

Therefore, any proposed resolution by the special master, whether by stipulation, settlement or report with recommendations, must be presented to WCJ Gaines. WCJ Gaines should, thereafter, issue a new final decision with appropriate findings and award regarding the issue of penalty and any other issues still in dispute. The new findings and decision should include a list of all the issues in dispute, each party’s respective position, and the findings with respect to each issue with supportive evidence.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings and Order issued by the workers’ compensation administrative law judge on September 20, 2016 is **RESCINDED**, that the matter is **REFERRED** to WCJ Ralph Zamudio to act as a special master in accordance with this opinion, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**IT IS FURTHER ORDERED** that applicant Carol Allison’s Petition to Disqualify workers’ compensation administrative law judge Martha Gaines is **DENIED**.