

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

**CRYSTAL MUNSON, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES,  
permissibly self-insured, *Defendant***

**Adjudication Numbers: ADJ10739154; ADJ10739153; ADJ10822699  
Los Angeles District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
REMOVAL AND DISQUALIFICATION AND  
PETITION FOR RECONSIDERATION**

Applicant, in pro per, filed a Petition for Removal and Disqualification and a Petition for Reconsideration on June 9, 2023. We have considered the allegations of applicant's pleadings and the contents of the WCJ's report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss applicant's requests for removal, disqualification, and reconsideration.

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, the February 17, 2023 Order Denying Request to Change Trial to MSC and Continued Denial of Request for Virtual Hearing is solely an intermediate procedural order. It does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision. Therefore, the petitions will be dismissed to the extent they seek reconsideration.

To the extent applicant requested removal, there are 25 days allowed within which to file a petition for removal from a “non-final” decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10955(a).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for removal must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10615(b), 10940(a).)

The petition in this matter was filed on June 9, 2023. This was more than 25 days after the service of the WCJ’s February 17, 2023 decision. Applicant’s petition is therefore untimely.

Finally, we address to the request for disqualification. 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. (Lab. Code, § 5311; see also Code Civ. Proc., § 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 10960, proceedings to disqualify a 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 one or more of the grounds for disqualification ... .” (Cal. Code Regs., tit. 8, former § 10452, now § 10960 (eff. Jan. 1, 2020), 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, italics added.)

WCAB Rule 10960 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 or after grounds for disqualification are known.”

Here, the petition for disqualification does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Moreover, the petition is untimely pursuant to WCAB Rule 10960. Accordingly, the request for disqualification will be dismissed.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal and Disqualification and the Petition for Reconsideration are **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ NATALIE PALUGYAI, COMMISSIONER**



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

**August 8, 2023**

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

**CRYSTAL MUNSON  
LOS ANGELES COUNTY COUNSEL**

**PAG/abs**

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