

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

**MOHAMMAD TOOSI, *Applicant***

**vs.**

**CALIFORNIA DEPT. OF TRANSPORTATION, *Legally Uninsured*;  
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11863604  
Van Nuys District Office**

**OPINION AND ORDERS  
DENYING PETITION FOR RECONSIDERATION  
AND DISMISSING PETITION FOR  
DISQUALIFICATION**

We have considered the allegations of the Petition for Reconsideration 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 reconsideration. Additionally, we agree with the WCJ that applicant's petition should also be considered a petition to disqualify the WCJ, and for the reasons set forth in the Report, we will also dismiss the petition as one for disqualification.

For the foregoing reasons,

**IT IS ORDERED** that applicant's petition for reconsideration of the Findings and Order issued by the WCJ on April 6, 2023, is **DENIED**.

**IT IS FURTHER ORDERED** that applicant's petition for disqualification of the WCJ filed on April 25, 2023, is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**June 26, 2023**

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

**MOHAMMAD TOOSI  
STATE COMPENSATION INSURANCE FUND**

**JMR/pc**

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

**STATE OF CALIFORNIA**  
**Division of Workers' Compensation**  
**Workers' Compensation Appeals Board**  
**CASE NUMBER: ADJ11863604**

**MOHAMMAD TOOSI**

vs

**CALIFORNIA DEPARTMENT OF TRANSPORTATION, Legally  
Uninsured**

**WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:  
Steven Carbone**

**DATE: 5/9/2023**

**REPORT AND RECOMMENDATION ON PETITION FOR  
RECONSIDERATION AND PETITION FOR DISQUALIFICATION**

Applicant, in pro per, filed a Petition for Reconsideration on April 25, 2023. The Petition is timely and verified. The statutory grounds in the Petition are: By the order, decision or award; The board acted without or in excess of its powers; The evidence does not justify the findings of fact; the finding of facts do not support the order, decision or award. To wit the applicant offers the following assertions:

1. The WCJ thanked the defendant employees for their state service which is inappropriate and because they are a waste of the taxpayers' money, only interested in their own advancement and personal benefit;
2. The WCJ decision is in retaliation for applicant's ethics advisory committee complaint against this WCJ;
3. The WCJ ruled against applicant due to the WCJ's affiliation to California State University, Los Angeles, where many lesser co-workers attended;
4. Applicant's co-workers knew that his Internet and cell phone were being monitored by others and they had knowledge of these illegal activities without revealing the truth.
5. Applicant was subjected to involuntary servitude by his co-workers' actions and compensation.
6. The WCJ decision is politically motivated and biased despite the fact that applicant has no prejudice or problem with diversity.

7. The WCJ decision nor defendant personnel understand engineering and the decision lacks accountability and ethics.
8. Applicant's description was more explanatory and well-reasoned than panel Qualified Medical Evaluator psychiatrist Ann Davis, M.D.

This WCJ recommends denial of the Petition for Reconsideration because applicant has not met his burden of proof for industrial injury and also this WCJ will treat the petition as a Petition for Disqualification which should be dismissed.

The Qualified Medical Evaluator psychiatrist report of Ann Davis, M.D. dated May 30, 2019, exhibit B, states a history of alleged injury:

The applicant was hired by the California Department of Transportation on February 16, 2018. He was hired as a transportation engineer. Job responsibilities included updating CAD drawings for roadway infrastructure using Microstation software, and preparing project specifications and cost estimates, such as ADA enhancements and traffic signal upgrades. He wrote project reports and was the project lead for a nearly million-dollar project he applicant worked five days a week, eight hours a day. His hours were later adjusted so that he had every other Friday off. His pay started at \$84,000 annually and increased to \$87,300. He did not have any concurrent' employment while employed with the California Department of Transportation.

His supervisor was Fatimeh Ansari. He received one performance review, in which he was given an average rating. He felt that this rating understated his abilities and was a way for his supervisor' to "discount me and show me who's boss," he reports. His belief that the review was unfairly negative led to conflict with his supervisors, as detailed below.

[He] did not have any leaves of absence or periods of modified duty during his employment with the California Department of Transportation. He reports that he requested an accommodation but was denied. On February 12, 2019, he was put on administrative leave until February 20, 2019. He was then told that he would not become a permanent staff member after his one-year probation period. Be has not had any work since being terminated. His current source of income is rental income from a residence he owns in Irvine. He reports that he is not eligible for disability income.

#### **Alleged injuries**

The applicant reports that his emotional injury began on his first day on the job at the California Department of Transportation. He felt constantly abused by his colleagues and supervisor. He describes the work environment as a government agency that was very hierarchical with many layers of management; and his input was not accepted by executives as it had been in previous jobs. He does not have a professional engineer's license, but reported to others who did, including a colleague named Kenny Nguyen. One day he was working in the field with Kenny and another colleague, Eric Morales, and the applicant challenged Kenny regarding a disagreement about a technical subject. The applicant felt that Kenny was ignoring his technical input and making an incorrect decision. Kenny began yelling at him and told him that he did not want to work with him.

The applicant discussed this with Fatimeh, who met with each of them separately. She brought them back together and they shook hands. They continued to work together after this incident. A similar event occurred where the applicant asked for clarification on an issue from Eric. Kenny yelled at him again for doing so. After this incident, he again went to his supervisor, Fatimeh. He felt this was a pivotal point as she made them stop working together after this and she took away his overtime. The applicant felt that his rights were being taken away and that his expertise was being ignored. He believes that her decisions were supported by the chief, Grish Biglarian.

After taking away his overtime, she also asked him to report to a lower-level engineer, Xochitl. While he found Xochitl to have very limited expertise, he accepted this as he got along with her. He was the project lead for a nearly million-dollar project. He was instructed to ask Xochitl if he had any questions regarding the project. In order to perform his work, however, he believed he needed to communicate directly with other departments. His supervisor got very angry when he spoke with others as he was told that everything needed to go through Xochitl. This specific behavior was noted in his evaluation in a negative way. The applicant felt that this was harassment and believed it was very controlling. He also reports being routinely "criticized and harassed" in meetings and felt that his input and technical skills were devalued because of his lower place in the organizational hierarchy.

He contacted both human resources and his union to start the process of filing a grievance regarding the concerns above. Around this same time, a new lead named Thomas Tadeo started with the company. Thomas appeared to recognize the applicant's skills, as

well as the problems with his supervisor, however the applicant felt that Thomas used this understanding to "play games with me. 11 Thomas initially seemed to side with the applicant and urged him not to "give in to Fatimeh.11 However, the applicant reported that Thomas also made comments that made him feel uncomfortable, such as "I thought you were a white guy, 11 making a distinction between white and nonwhite team members and suggesting that the applicant was not joining with the nonwhite majority of the company in "going with the flow" and accepting how things worked at Caltrans. Thomas also reportedly made personal comments, such as joking that the applicant should make a Tinder profile in which he showed a picture of himself in front of his new house.

In January 2019, Thomas called him into a meeting with a senior and junior colleague present as witnesses. Thomas reported to him that Fatimeh had said she wanted to make the applicant a permanent employee, but she was afraid that he planned to file a grievance against her. Thomas urged him to write a letter to Fatimeh to let her know that he had no intention of filing a grievance. The applicant felt "oppressed and controlled" by this request but did what Thomas had suggested. He copied Grish on the letter.

Shortly thereafter, on January 7, his department had a luncheon. The applicant thanked Fatimeh and Grish for the luncheon, to which Grish replied, "thank her." The applicant believed that Grish's manner indicated that Grish was unhappy with him. He also noted that coworkers asked him odd questions about his personal life at the luncheon, such as his marriage plans.

Around the same time, the applicant finished his report on a large project a month early, but Grish took a month to review his report, which the applicant interpreted as Grish harassing him. He describes feeling very nervous and anxious that management had "an agenda" and that he would not make it through his probationary period. He sent a harsh email to upper management, in which he collected the offensive comments made to him and complained about his treatment at the company. He describes the letter as his way of screaming for help. Grish then called a meeting with himself and Fatimeh to discuss the email. The applicant refused to go to the meeting for fear that they would harass him and make up things he had not said. Later that day, he saw Grish in the hallway and Grish insisted that the applicant come to his office. The applicant again refused, telling Grish, "I'm not going to let you abuse me, I'm doing my job." He returned to his desk, with Grish following behind him. After further insistence from Grish, he returned to Grish's office to meet with him and Fatimeh. Upon entering the office, he looked at

Fatimeh and felt that her body language suggested she was going to write him up. He decided not to stay for the meeting.

The applicant's brother worked in the same office and asked him to go talk with him. The applicant then noticed Grish and Fatimeh standing nearby with a security officer and an employee from safety. His brother spoke to the group and told them that the applicant needed reasonable accommodation. They all went into a conference room and Fatimeh presented him with forms to fill out for accommodation. He later found out that security had been called by Thomas and colleagues when they overheard him and Grish arguing.

The applicant's testimony bears out this medical report history is essentially accurate and substantial.

### **APPLICANTS CONTENTIONS**

The contentions raised in the Petition are repeated and answered:

1. Applicant is correct that the WCJ thanked the defendant employees for their state service which is just courtesy but inappropriate in the mind of the Applicant. This is irrelevant and is a courtesy in no way indicative of bias. Applicant's assertions regarding waste of the taxpayers' money, about his co-workers, did not affect the decision. Part of the responsibility of a factfinder is to evaluate ad hominem remarks and only consider information relevant to the decision to be made. The applicant's assertions regarding his coworkers being a waste of taxpayers' money was not relevant.
2. The WCJ decision is not in retaliation for applicant's ethics advisory committee complaint against this WCJ. The investigation report therein where the complaint was published was not negative to this WCJ. This WCJ also applauds the applicant for pursuing his rights. However, the applicant's filing of ethics advisory committee complaint was not relevant nor considered as part of this decision.
3. The Petition also states the WCJ ruled against applicant due to the WCJ's affiliation to California State University, Los Angeles, where many co-workers attended. The WCJ attended UCLA, just like applicant claims. This did not create any bias towards or against the applicant or any of the witnesses. This is simply a fact.
4. No credible evidence was provided regarding his coworkers alleged knowledge of Internet and cell phone monitoring by others, or a lack of credible testimony on the part of the coworkers.

5. Applicant's assertions regarding alleged involuntary servitude by his coworker's actions and his compensation were not supported by credible evidence or credible testimony.
6. Regarding the WCJ decision being politically motivated and biased, this appears to be simply an ad hominem attack as the applicants claim of industrial injury was found not to be supported by credible evidence or testimony.
7. Despite the applicants assertion an understanding of the intricacies and nuances of a particular profession is not required to make a credibility determination based on the medical and testamentary evidence presented.
8. The applicant testified on his own behalf and his credibility was found to be lacking primarily based on the conclusions that he made regarding the motivation and intent of his coworkers, supervisors, and employers. Heavy reliance was placed on the credible determinations of the psychiatric panel Qualified Medical Evaluator Ann Davis, M.D. The finder of fact is charged with determining credibility of witnesses based on the statements and corroborating evidence.

The Petition continues that the WCJ decision is politically motivated and biased despite the fact that applicant has no prejudice or problem with diversity. The WCJ decision nor defendant personnel understand engineering and the decision lacks accountability and ethics. Applicant's description was more explanatory and well-reasoned than panel Qualified Medical Evaluator psychiatrist Ann Davis, M.D. These last three are nonsense and not correct. The reports of Dr. Davis are substantial medical evidence and not sufficient to prove industrial injury. Finally, Applicant believed his assertions but that did not make them credible to this WCJ.

The WCJ spent extensive time on this matter to be sure that the applicant was provided his due process rights and was not inappropriately deprived of his opportunities to move his case forward.

The decision was primarily based on the medical reporting of the panel Qualified Medical Evaluator psychiatrist Ann Davis, M.D. The applicant's testimony at trial was not sufficient to overcome the findings of Dr. Davis. This WCJ recommends denial of the Petition for Reconsideration because applicant has not met his burden of proof for industrial injury.

## **DISQUALIFICATION**

To the extent the petition contends that the WCJ should be disqualified, 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, § 10960, 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.)

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>1</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 ["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

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<sup>1</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].

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 (Significant Panel Decision).)

Here, as discussed 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 (t) and/or (g). Accordingly, the WCAB should deny the petition to the extent it seeks to disqualify the WCJ.

For the foregoing reasons,

It is recommended that the Petition for Reconsideration is **DENIED** and the Petition for Disqualification is **DISMISSED**

DATE:  
05/10/2023

/s./STEVEN S. CARBONE  
Steven Carbone  
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE