

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

WYATT MITCHAM, *Applicant*

vs.

**APPSHOSTING, INC.; BYUNG SAM YUN, ASHOK BALASUBRAMANIAN and
LARRY WENSHAN ZHAO, individuals and substantial shareholders, *Defendants***

**Adjudication Numbers: ADJ7965556; ADJ7965560
Anaheim District Office**

**OPINION AND ORDER
DISMISSING 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. Pursuant to our authority, we accept applicant's supplemental addendum. (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) Based on our review of the record and for the reasons stated below, we will dismiss the Petition for Disqualification.

Preliminarily, we caution applicant that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) We expect applicant to comply with this requirement in the future.

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.)

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)).

In this case, applicant did not support his petition by an affidavit or declaration under penalty of perjury stating in detail *facts* establishing one or more of the grounds for disqualification and he did not include a verification with his petition. Furthermore, the verification included at the end of the supplemental addendum does not cure the lack of verification of the original Petition for Disqualification. Therefore, we will dismiss the Petition for Disqualification.

If we were not dismissing the petition for lack of verification and affidavit or declaration under penalty of perjury, we would have denied it on the merits for the reasons stated in the WCJ’s report, which we would adopt and incorporate.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2021

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

**WYATT MITCHAM
APPSHOSTING INC. (2)
OFFICE OF THE DIRECTOR-LEGAL UNIT
DJG LAW GROUP**

PAG/bea

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