

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

AURELIO GOMEZ, *Applicant*

vs.

**WEST COAST PORCELAIN;
c/o EMPLOYERS PREFERRED, *Defendants***

**Adjudication Number: ADJ15797575; ADJ16786965; ADJ15826886
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL AND
DISQUALIFICATION**

Applicant's former attorney, on his own behalf, filed a Petition for Removal. We have considered the allegation in the petition and the contents of the WCJ's Report and Recommendation on Petition for Removal and/or Disqualification. We deny the request to file supplemental pleading pursuant to our authority. (Cal. Code Regs., tit. 8, § 10964.) Based on our review of the record, and for the reasons stated below, we will deny removal and disqualification.

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 substantial 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).) Here, based upon the WCJ's analysis of the merits of petitioner's arguments, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

To the extent that petitioner requests disqualification, we deny that request. Labor Code¹ 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.) 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, the request for disqualification does not set forth a declaration or affidavit providing facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Accordingly, the request for disqualification is denied. Finally, we advise petitioner that summary judgement is not a relief permitted in workers’ compensation proceedings. (Cal. Code Regs., tit. 8, § 10515.)

¹ All further statutory references are to the Labor Code, unless otherwise noted.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 30, 2025

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

**LAW OFFICE OF SUNIL SHAH
TOBIN LUCKS, LLP
LAW OFFICE OF ROBERT OZERAN**

PAG/bp

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