

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

**MORDECHAI COHEN, *Applicant***

**vs.**

**AIRGAS INCORPORATED;  
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, *Defendants***

**Adjudication Number: ADJ9042051  
San Francisco District Office**

**OPINION AND ORDERS  
DENYING PETITION FOR  
DISQUALIFICATION  
GRANTING PETITION  
FOR REMOVAL  
AND DECISION AFTER  
REMOVAL**

Applicant in pro per seeks removal of an order compelling attendance at medical examination with Dr. Sabsovich (Order) issued by the workers' compensation administrative law judge (WCJ) on September 27, 2024.<sup>1</sup> Applicant asserts the order issued improperly as the injuries are orthopedic in nature and Dr. Sabsovich is not a spine surgeon, orthopedic surgeon or orthopedic doctor. Applicant, however, does not object to seeing Dr. Sabsovich for pain management.

Applicant also seeks disqualification of the WCJ due to the order compelling having issued without the WCJ examining medical documents or providing applicant with the opportunity to respond to defendant's petition to compel.

We have received an Answer from defendant.

The WCJ issued both a Report and Recommendation on Petition for Removal and a Report on the Petition for Disqualification, each recommending the respective petitions be denied.

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<sup>1</sup> Commissioner Lowe, who was on the panel that issued a previous decision on April 11, 2022, no longer serves on the Appeals Board. Another panelist was appointed in her place.

On October 30, 2024, applicant filed a supplemental pleading entitled Supplemental Petition for Reconsideration which simply states see attached documents. Attached to the supplemental pleading are seven pages including one page that appears to be blank.

While we utilize our discretion to accept the supplemental pleading pursuant to our authority under WCAB Rule 10964, we remind applicant that WCAB Rule 10964 requires that supplemental pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Our Rules further require 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, § 10964(b).) Applicant did not seek the permission of the WCAB to file a supplemental pleading, nor set forth good cause for doing so. Supplemental pleadings filed in the future that fail to adhere to such requirements may be disregarded nor deemed filed for any purpose. (Cal. Code Regs., tit. 8 § 10964(c).) Although we have considered applicant's supplemental petition, the attached documents were not relied on.

We have considered the allegations of the Petition for Removal, the supplemental pleading, and the Answer, 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 as discussed below, we will grant the Petition for Removal, rescind the WCJ's order, and return this matter to the WCJ for further proceedings consistent with this decision.

We have considered the allegations of the Petition for Disqualification and the Answer and the contents of the Report of the 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 the Petition for Disqualification.

## **BACKGROUND**

We note applicant, who is currently unrepresented, was represented by counsel off and on throughout this case's history. The following is a limited summary of events:

An application for adjudication of claim was filed by the unrepresented applicant on August 6, 2013, for a right knee injury occurring on January 12, 2007.

On January 30, 2017, applicant, then represented by counsel, appeared at a mandatory settlement conference where a signed pre-trial conference statement (PTCS) was completed in

which the parties stipulated applicant sustained injury while employed with defendant on January 12, 2007, to the left knee, low back and bilateral groin. Multiple issues including a claim for permanent total disability were set for trial. (PTCS pages 2-3.)

On April 19, 2017, the case was taken off calendar for further discovery with a qualified medical examiner (QME).

On October 11, 2021, an expedited hearing was held on issues of medical treatment. Applicant was represented by counsel, and the minutes reflect a stipulation that applicant sustained injury to his “knees and left shoulder” and further claimed to have sustained injuries to other body parts which were not identified.

Findings of Fact and Orders and Award (F&A) issued February 4, 2022. The F&A included a finding that applicant sustained injury to his knees and left shoulder.

Defendant filed a petition for reconsideration of the F&A and then withdrew the petition which resulted in our April 11, 2022, Opinion and Order Dismissing Petition for Reconsideration.

On October 24, 2022, an order issued compelling that “applicant appear and submit to the evaluation by Dr. Ilya Sabsovich on November 4, 2022[,] at 3:30 p.m.”

An expedited hearing on September 23, 2024, was ordered off calendar. The comments to the minutes read: “Issue for expedited hearing was resolved as applicant saw Dr. Shortz. Applicant has had multiple surgeries since he last saw Dr. Sabsovitch who is the QME. That appointment is scheduled for 10/11/2024 at 5:30 pm.”

Applicant filed a Declaration of Readiness (DOR) that same day requesting a hearing with the issues listed as temporary disability, permanent disability, future medical treatment, discovery, refused Dr. Sabsovich appointment and dismiss Dr. Sabsovich and all other reports.

Defendant filed a petition to compel attendance at PQME examination with Dr. Sabsovich two days later, on September 25, 2024.

The WCJ issued an Order on September 27, 2024, compelling applicant’s attendance at medical examination with Dr. Sabsovich on October 11, 2024, at 5:30 pm. The Order was served by the district office on October 1, 2024.

On October 9, 2024, applicant filed a timely Petition for Removal of the order compelling attendance at medical examination as well as a separate Petition for Disqualification of the WCJ.

There are additional filings directed to the WCJ and additional filings after applicant’s Petitions, which we do not consider nor further discuss here.

## DISCUSSION

### I.

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).)

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 477 (Appeals Bd. en banc); Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787.)

As required by Labor Code section 5313<sup>2</sup> and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Here, applicant filed a DOR on multiple issues including the Dr. Sabsovich appointment and dismissing Dr. Sabsovich’s reports. Two days later, on September 25, 2024, defendant filed a petition to compel attendance at the examination with Dr. Sabsovich. Before the hearing was held on these matters, the WCJ issued an order compelling applicant’s attendance at Dr. Sabsovich’s appointment.

It appears from the Report on Petition for Removal that the WCJ’s Order was based solely on discussions with the parties. While the WCJ provides reasoning for the Order in the Report and Recommendation on Petition for Removal, no opportunity to create a record and provide evidence or testimony was afforded to the parties before the Order issued. We observe that under these circumstances, the preferred procedure would have been for the WCJ to issue a notice of intention. (Cal. Code Regs., tit. 8, § 10832.)

On the current record, we are unable to determine the appropriateness of the Order due to the lack of an adequate record. Further, it appears applicant’s position may reasonably be considered as a request for a replacement panel. (Cal. Code Regs., tit. 8, § 31.5.) Therefore, we must rescind the Order compelling attendance at medical evaluation and return this matter to the trial level for further proceedings to allow the parties an opportunity to create a record and provide evidence and/or testimony.

Thus, for the reasons discussed above, it is apparent the parties must be afforded due process and that substantial prejudice, or irreparable harm will result if removal is not granted, and further, that reconsideration will not be an adequate remedy.

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<sup>2</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

## II.

The Petition for Disqualification seeks disqualification of the WCJ for: 1) issuing the order compelling without examining medical documents; 2) not giving applicant an opportunity to respond to defendant's petition to compel; and 3) assigning Dr. Sabsovich who is not a spine or orthopedic doctor.

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. Here, although not stated explicitly in the petition, it appears the relevant grounds for possible 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.)

It is well settled 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.) 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 (Significant Panel Decision).)

In substance, applicant seeks disqualification of the WCJ for issuing an order compelling applicant's attendance at a medical evaluation with Dr. Sabsovich. While we rescind the order on due process grounds we reach no opinion on the merit of such order. We do note applicant was previously ordered to attend an appointment with Dr. Sabsovich, and applicant did not challenge that order.

The Petition to Disqualify fails to set forth facts that establish the WCJ has formed or expressed an unqualified opinion or belief as to the merits of the action or shown the existence of a state of mind evincing enmity or bias against a party. The mere issuance of an order by the WCJ, even if erroneous, does not support disqualification. The Petition does not meet the requirements to establish disqualification pursuant to section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Accordingly, the petition will be denied.

Accordingly, we grant applicant's Petition for Removal, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this opinion. We deny applicant's Petition for Disqualification.

For the foregoing reasons,

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

**IT IS ORDERED** that the Petition for Removal of the Order of September 27, 2024, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order of September 27, 2024, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

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



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

**SEPTEMBER 22, 2025**

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

**MORDECHAI COHEN  
THE LEVITZ LEGAL GROUP  
STANDER RUEBENS THOMAS KINSEY**

**PS/oo**

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