

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

TERENCE CHRISMAN, *Applicant*

vs.

**AC TRANSIT, permissibly self-insured,
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ8606673
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION
FOR DISQUALIFICATION**

Applicant seeks disqualification of the workers' compensation administrative law judge (WCJ) based upon the allegation that the WCJ is prejudiced against the applicant.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Disqualification (Report) recommending that we deny disqualification.

We have considered the allegations of the Petition for Disqualification and the contents of the WCJ's Report. Based on our review of the record and based upon the WCJ's analysis of the merits contained in the WCJ's Report, we will deny disqualification.

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. (§ 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

¹ All future references are to the Labor Code unless noted.

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.)

Next, petitions for disqualification must be timely filed: “If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.” (Cal. Code Regs., tit. 8, § 10960.)

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].) 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 (emphasis added).) Similarly, “when the state of mind of the trial judge appears to be adverse to one of the parties but is based 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, and as noted in the WCJ’s Report, the Petition for Disqualification fails to adequately establish a factual basis for bias or prejudice. Furthermore, it would appear that to the extent the Petition is alleging prejudice due to a prior ruling against applicant in 2024, such a ruling does not establish prejudice and would appear to make the petition untimely.

Finally, and to the extent that applicant continues to discuss other **unfiled cases**, not included in this present case number, we would continue to emphasize that no determination resolving the scope of applicant’s settlement in this case has been litigated in any other proceeding. Presently, applicant has a single adjudication number assigned to a single claim of injury, which occurred on December 30, 2011. It does not appear that any other adjudication numbers have been assigned to any other claims.

Section 5303 contains what is traditionally referred to as the anti-merger provisions of workers’ compensation and place limits upon the subject matter jurisdiction of the Appeals Board:

There is but one cause of action for each injury coming within the provisions of this division. All claims brought for medical expense, disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the appeals board, be joined in the same proceeding at any time; provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.

Furthermore, pursuant to section 3208.2:

When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, **all questions of fact and law shall be separately determined with respect to each such injury**, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

The sole injury upon which the Appeals Board presently may assert subject matter jurisdiction is applicant's specific injury of December 30, 2011. No other injuries have been pled to date.² In short, the Appeals Board cannot make any rulings as pertains to any other dates of injury, until those injuries are formally pled.

Accordingly, and if applicant wishes to seek a future medical award for a date of injury that does not presently have an adjudication number assigned, applicant should contact the Information and Assistance Office and obtain information on how to file an application for adjudication and to obtain adjudication numbers for any claims of injury that are presently unpled. The parties may then proceed with appropriate litigation in *those* cases.³

² A Compromise and Release may be used as a case opening document to invoke the Appeals Board's jurisdiction to settle previously unpled claims. (Cal. Code Regs., tit. 8, § 10450(a) ["[P]roceedings for the adjudication of rights and liabilities before the Workers' Compensation Appeals Board shall be initiated and **jurisdiction of the Workers' Compensation Appeals Board invoked** by the filing of an Application for Adjudication of Claim, a case opening Compromise and Release Agreement, a case opening Stipulations with Request for Award or a Request for Findings of Fact under rule 10460."].) However, it does not appear that the parties obtained adjudication numbers for any unpled claims in this case. We do not decide at this time what effect this may have upon proceedings in those unpled claims.

³Alternatively, we encourage the parties to engage in meaningful settlement discussions to resolve any possible disputes as to unpled dates of injury.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ filed on January 27, 2025, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 7, 2025

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

**TERENCE CHRISMAN
BOXER & GERSON
COHEN AND ASSOCIATES
J. THOMAS TROMBADORE LAW OFFICE
OFFICE OF DIRECTOR-LEGAL UNIT (OAKLAND)**

EDL/mt

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