

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

ALLEN FLORES, *Applicant*

vs.

**PACIFIC CRANE MAINTENANCE COMPANY; ARCH INSURANCE COMPANY,
Administered by CHARLES TAYLOR, third-party administrator, *Defendants***

**Adjudication Number: ADJ8301447
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITIONS FOR
DISQUALIFICATION**

Applicant, in pro per, has filed a Petition for Disqualification on April 5, 2021 and a supplemental Petition for Disqualification on April 13, 2021. Pursuant to our authority, we accept applicant's supplemental petition. (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) However, 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.

We have considered the allegations of the Petitions for Disqualification 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 below, we will dismiss the Petitions for Disqualification.

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, 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.)

In this case, applicant has made several allegations of misconduct against the defense attorney which are still pending before the WCJ, to the extent that the allegations are within the WCJ’s jurisdiction. However, the Petitions for Disqualification failed to alleged grounds for disqualification, declared under penalty of perjury, that are sufficient to establish disqualification of the WCJ pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Accordingly, we will dismiss the Petitions for Disqualification. If we were not dismissing the Petitions for Disqualification, we would deny them on the merits for the reasons stated by the WCJ in the report, which we would adopt and incorporate.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Disqualification are **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2021

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

**ALLEN FLORES
FLYNN DELICH
LEONARD CARDER**

PAG:acw

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

REPORT AND RECOMMENDATION
ON PETITION FOR DISQUALIFICATION OF WCJ

I
INTRODUCTION

This case involves an in propria persona applicant, Allen Flores, who has filed the petition to disqualify this WCJ, dated 03/24/2021. Applicant has demonstrated throughout the proceedings an animosity towards the attorney for defendants, Lisa Conner, Esq. There have been many hearings and the matter has proceeded on the record many times and with testimony, but not yet completed. This petition by applicant only comes after this WCJ issued the correspondence, dated 03/10/2021, in response to applicant's written request, dated 02/10/2021, regarding his desire to have Conner charged with perjury, among other things. Being displeased with this WCJ's response, the applicant has filed the rather inflammatory petition to disqualify this WCJ. For the reasons set forth hereinafter, the petition should be denied.

II
FACTS

The procedural history of this matter regarding the hearings and actions by this WCJ herein is set forth accurately by defendant in their response to applicant's petition, dated 04/05/2021, and this WCJ has nothing further to add regarding the procedural history of this case.

III
DISCUSSION

The applicant has made many generalized statements against this WCJ that are either exaggerations, distortions of the truth and/or completely false to include that this WCJ "has his finger on the scale in favor of the defendants." At no time did this WCJ deny applicant any due process rights, nor unduly influence him to withdraw any of the many petitions he has filed, nor act in the manner in which applicant asserts toward either of the parties and certainly has not placed his finger on the scale in favor of defendant. Furthermore, applicant has made false statements that this WCJ refused to hear just AOE/COE at his request. It is quite the opposite. This WCJ suggested on several occasions to limit the issues to injury AOE/COE, since the original trial was set from a Priority Conference in front of WCJ Coulter. It was applicant who insisted on proceeding on all issues which this WCJ granted. There have been many hearings that were necessary and brought about by the unreasonable conduct of the applicant. He wanted to offer over 6,000 exhibits at trial and had filed many petitions for discovery and/or sanctions against the defendants, particularly against Ms. Conner which required hearings in order to address them. What is most notable is that applicant had no complaints against this WCJ at any time since this matter first came before this WCJ on 12/05/2017 until the correspondence sent to applicant by this WCJ regarding his perjury allegations against Ms. Conner dated 03/10/2021. In support of this this WCJ recommends the Appeals Board review the following Court Reporter Minutes of Hearing as follows:

- Minutes of Hearing – March 19, 2019
- Minutes of Hearing – September 24, 2019
- Minutes of Hearing – December 3, 2019
- Minutes of Hearing – January 7, 2020
- Minutes of Hearing – February 20, 2020
- Minutes of Hearing – June 4, 2020
- Minutes of Hearing – January 5, 2021

This WCJ consulted with Presiding WCJ Cynthia Quiel regarding applicant's letter wishing perjury charges against Ms. Conner and with her input the response was sent to applicant by this WCJ, dated 03/10/2021. Applicant's conduct in this matter, which appears to mirror his conduct in his USL&H case, has demonstrated to this WCJ that he has animosity towards Ms. Conner and files petitions and penalties against her alleging perjury and seeking sanctions and costs. When applicant does not get the results he wants he then makes exaggerations, distortions of the truth and/or completely false statements disparaging the trial judge. This conduct gives rise to applicant being a vexatious litigant and separate independent proceedings in this regard may be necessary pursuant to WCAB Rule 10430 so that ultimately the case-in-chief may finally be completed and submitted for decision.

Lastly, applicant's statements regarding this WCJ in his petition appear to have been made in bad faith and to be patently insulting, offensive, intemperate, abusive and/or disrespectful in violation of Labor Code Sec. 5813 and WCAB Rule 10421. This also gives rise to vexatious litigant proceedings being needed herein for an independent determination.

IV RECOMMENDATION

Based on the above discussion it is respectfully recommended that the petition for disqualification of the WCJ be denied.

DATE: April 29, 2021

MICHAEL T. JUSTICE
WORKERS' COMPENSATION JUDGE