

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

LEON SIMPSON, *Applicant*

vs.

**COLLEGE MEDICAL CENTER;
NATIONAL CASUALTY INSURANCE administered by
BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ9838074, ADJ9838134
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted¹ reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Cost Petitioner Citywide Scanning Service, Inc., (Citywide) has filed the following pleadings: (1) a Petition for Disqualification filed on February 28, 2020; (2) a Petition for Reconsideration filed on March 9, 2020, regarding the February 12, 2020 Findings, Order and Notice of Intention to Sanction (NIT) wherein the WCJ found that Citywide did not meet its burden to prove that its services were valid medical-legal expenses because there was no valid petition filed and therefore no jurisdiction; and (3) a Petition for Reconsideration filed on April 13, 2020 regarding the March 10, 2020 Order Imposing Sanctions wherein the WCJ ordered that Citywide and hearing representatives Ana Martinez, Israel Montes, Amy Cosio, and Ani Balian each pay \$750.00 in sanctions and also ordered Citywide and hearing representatives Ana Martinez, Israel Montes, Amy Cosio, and Ani Balian jointly and severally pay \$5,000.00 in fees and costs.

We have considered the record, Citywide's pleadings, and the reports of the WCJ. We did not receive any answers. With regard to the Petition for Disqualification, for the reasons stated in

¹ We granted reconsideration in both Case Nos. ADJ9838074 and ADJ9838134. However, the February 12, 2020 and March 10, 2020 decisions issued only in Case No. ADJ9838074 and reconsideration was sought only in that case. Therefore, our decision here only addresses Case No. ADJ9838074 and we will vacate the grant of reconsideration in Case No. ADJ9838134.

the WCJ's March 10, 2020 report, as quoted below, we deny Citywide's request for disqualification. As to the Petitions for Reconsideration filed on March 9, 2020 and April 13, 2020, we will rescind the WCJ's February 12, 2020 Findings, Order and the March 10, 2020 Order Imposing Sanctions and return this matter to the trial level for further proceedings.

Preliminarily, we note to be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within 25 days from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1), former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).) A petition for reconsideration of a final decision by a workers' compensation administrative law judge must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).)

The Division of Workers' Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19).² In light of the district offices' closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (*In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020.³ Therefore, the filing deadline for a petition for reconsideration that would have occurred during the district offices' closure was tolled until April 13, 2020.

In this case, the WCJ issued the Order Imposing Sanctions on March 10, 2020. Based on the filing deadline extension cited above, we will consider the Petition for Reconsideration filed on April 13, 2020 to be timely.

We now turn to Citywide's pleadings. For the reasons stated in the WCJ's March 10, 2020 report, which we adopt and incorporate as quoted below, we deny Citywide's Petition 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. Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the

² The March 16, 2020 DWC Newline may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

³ The April 3, 2020 DWC Newline regarding reopening the district offices for filing may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

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 10452, proceedings to disqualify 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 grounds for disqualification” (Cal. Code Regs., tit. 8, § 10452 (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 (*Mackie*) (italics added).)

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 (*Kreling*) (“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). 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 (Appeals Board significant panel decision).)

* * *

The undersigned did his job in this case. Specifically, the undersigned advised petitioner that repeated attempts to obtain thousands of dollars from the defendant without a legal basis is a very serious matter. In fact, it can be considered fraud. Also, the issue of jurisdiction was not waived, and can be raised at trial....

In spite of petitioner’s unprofessional behavior, the undersigned maintains that there is no bias, and that all proceedings will be conducted in manner that is fair.

(Report, 3/10/20, at pp. 7-10 (emphasis in original).)

We now address the issues raised on reconsideration. Pursuant to the parties’ stipulation, applicant claimed injury arising out of and in the course of employment (AOE/COE) to his head, jaw, neck, knee, and other body parts while employed as a technician on October 18, 2014. (Minutes of Hearing (MOH), 8/15/19, p. 2:5-7.) The case-in-chief never resolved due to applicant’s death on September 3, 2015. (MOH, 8/15/19, p. 2:10-11.)

Citywide filed a Declaration of Readiness to Proceed (DOR) on February 14, 2019 in Case No. ADJ9838074 “[SEEKING] WCAB ASSISTANCE FOR RESOLUTION OF THEIR PETITION FOR DETERMINATION OF NON-IBR MEDICAL-LEGAL DISPUTE FILED ON 12/24/2018 PURSUANT TO RULE 10451.1(C)(3)....” The December 24, 2018 petition to which Citywide refers in the DOR was a petition in the case of applicant Maria Godinez in Case Nos. ADJ10327297 and ADJ10324868 and not related to this matter. The parties proceeded to a settlement conference on May 2, 2019 and to a trial on August 15, 2019 on several issues related to Citywide’s entitlement to payment for medical-legal costs in this case.

Citywide sought payment for services rendered from February 23, 2015 to January 16, 2017 in the amount of \$10,718.55. (MOH, 8/15/19, p. 2:14-16.) On August 30, 2019, the WCJ issued a Findings, Award and Orders finding that Citywide did not meet its burden to prove that its services were valid medical-legal expenses, except for date of service #14. Based on this finding, the WCJ ordered defendant to pay Citywide the amount of \$437.68, plus penalty and interest. Citywide sought reconsideration.

On November 25, 2019, we issued an Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration. Therein, we granted reconsideration, rescinded the August 30, 2019 decision, and returned this matter to the trial level for consideration of the issues in light of our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc) which clarified the parties' burdens of proof pursuant to sections 4620, 4621, and 4622.

This matter came on trial calendar again on January 31, 2020. At that time, the WCJ made the following record:

LET THE MINUTES REFLECT that pursuant to Findings, Award and Order s August 30, 2019, defendant paid Citywide Scanning Service \$437.68 on September 13, 2019, for the date of service for Healthpointe Medical of June 1, 2015, billed June 25, 2015, per check No. 6750340548, but defendant did not pay penalties and interest.

LET THE MINUTES FURTHER REFLECT that, for the first time, Citywide Scanning Service in this case admits that they were paid by defendant for the date of service they previously asserted defendant failed to make payment on which was date of service February 26, 2015, for Southern California Permanente billed on March 5, 2015, which was discussed in the Opinion on Decision of August 30, 2019, and was discussed in the Report on Petition for Reconsideration of September 30, 2019, and Citywide Scanning Service now on the record apologizes to the Court for asserting that they had been paid for that date of service and seeking additional benefits for it when, in fact, that was incorrect.

LET THE MINUTES REFLECT that, for the first time in this case, the Judge has recognized defendant's assertion that the underlying Petition filed by Citywide Scanning in this case was an incorrect filing; said Petition addresses *Maria Godinez v. Royal Oaks Convalescent Hospital*, Case Nos. ADJ10327297 and ADJ10324868, and this Judge has again reviewed FileNet and has not found any petition by Citywide Scanning Service for the case of Leon Simpson.

LET THE MINUTES FURTHER REFLECT that the Court has advised Citywide Scanning Service that they have, in fact, not filed a Petition for Determination of Non-IBR Medical-Legal Dispute because they accidentally filed the wrong petition; therefore, I have told Citywide that I do not have jurisdiction; nevertheless, Citywide Scanning insists on going forward.

LET THE MINUTES FURTHER REFLECT that Citywide Scanning's motion today to file the correct petition is denied because we have already tried the case and you cannot have the trial before filing the petition and I believe that you are in a position where you will be sanctioned and yet you still, even with my warning, continue to wish to go forward.

* * *

LET THE MINUTES REFLECT that Citywide Scanning Service at this point continues to seek payment for 11 dates of service where each date of service was billed at \$30.00, where each date of service \$41.57 is sought, which includes penalty and interest and, in each case, defendant did not make any payment whatsoever on the 11 dates of service in question. The 11 dates of service in question are listed in Joint Exhibit X as dates of service 15 through 25. All dates of service apparently are September 24, 2015, except perhaps the last one, which is September 25, 2015, and the billing dates appear to all be September 25, 2015.

LET THE MINUTES FURTHER REFLECT that defendant's position is no money is owed for the 11 outstanding dates of service for extra records on two grounds: One, no petition was ever filed in this case because the underlying Petition was in Maria Godinez, which is the wrong case, so there is no jurisdiction; and No. 2, there were never any work orders filed that would say who ordered the additional records. They still do not know who ordered the additional records.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), 1/31/20, at pp. 2:5 - 4:18.)

On January 31, 2020, Citywide filed a Petition for Determination of Non-IBR Medical-Legal Dispute by Medical-Legal Provider Citywide Scanning Service, Inc., in Accordance with WCAB Rules of Policy and Procedures § 10451.1; § 10451.1c); § 10451.1(c)(3) in both Case Nos. ADJ9838074 and ADJ9838134.

On February 12, 2020, the WCJ issued the Findings, Order and NIT subject to reconsideration herein. Therein the WCJ found that Citywide "did not meet its burden of proving that the services it provided were valid medical-legal expense because there was no valid petition

filed, and therefore no jurisdiction.” Based on this finding, the WCJ ordered that Citywide take nothing by way of its claim. The WCJ also issued an NIT stating in its entirety:

NOTICE OF INTENTION TO SANCTION

1) NOTICE OF INTENTION TO SANCTION per Labor Code §5813 and Title 8, Cal Code Regs § 10421 against Citywide Scanning Service of Los Angeles, Ana Martinez, Ani Balian, Israel Montes, and Amy Cosio up to \$1,500.00.

NOTICE IS HEREBY GIVEN that, absent written objection and demonstration of good cause to the contrary filed and served at the Oxnard Workers Compensation Appeals Board, 1901 N. Rice Avenue, Suite 200, Oxnard CA 93030, within fifteen (15) days after service of this Notice, this WCJ will order Citywide Scanning Service of Los Angeles, Ana Martinez, Ani Balian, Israel Montes, and Amy Cosio, jointly and severally, to remit forthwith sanctions in the amount up to \$1,500.00 to the General Fund, and the payment of defendant’s costs will be ordered.

The NIT made no further factual assertions as to the basis for the intention to impose sanctions. In the Opinion on Decision, the WCJ stated “[t]he undersigned found at the time the case was submitted there were multiple intentional misrepresentations regarding date of service #7, there was no valid petition on file, there was no jurisdiction, no payments were due...” (Opinion on Decision, 2/12/21.) On February 27, 2020, Citywide filed an Objection to Notice of Intention to Sanction arguing, in part, that the NIT denied it a meaningful opportunity to challenge the WCJ’s assertions.

On March 10, 2020, the WCJ issued the Order Imposing Sanctions subject to reconsideration herein. The WCJ ordered that Citywide and hearing representatives Ana Martinez, Israel Montes, Amy Cosio, and Ani Balian each pay \$750.00 in sanctions and also ordered Citywide and hearing representatives Ana Martinez, Israel Montes, Amy Cosio, and Ani Balian jointly and severally pay \$5,000.00 in fees and costs.

DISCUSSION

“The appeals board is vested with full power, authority and jurisdiction to try and determine finally all the matters specified in Section 5300 subject only to the review by the courts as specified in this division.” (Lab. Code, § 5301.) “The Workers’ Compensation Appeals Board ... shall exercise all judicial powers vested in it under this code.” (Lab. Code, § 111.) This jurisdiction

includes the power to award the reimbursement of medical-legal expenses. (Lab. Code, § 4622; Cal. Code Regs., tit. 8, former § 10451.1, now § 10786 (eff. Jan. 1, 2020).) Thus, subject matter jurisdiction is present.

Rather than involving an issue of “jurisdiction,” it appears the WCJ may be referring to the issue of whether Citywide is barred from recovery due to its error in filing a Petition for Determination of Non-IBR Medical Legal Dispute regarding a different case. However, pursuant to WCAB Rule 10617 “A document that is subject to a statute of limitations or a jurisdictional time limitation may be rejected for filing ***if it does not contain a combination of information sufficient to establish the case or cases to which the document relates*** or, if it is a case opening document, sufficient information to open an adjudication file.” (Cal. Code Regs., tit. 8, § 10617, emphasis added.) In this case, a Petition for Determination of Non-IBR Medical Legal Dispute pertaining to a different case was filed with a February 14, 2019 DOR in this case clearly giving defendant and court notice of Citywide’s intention to litigate its claim for reimbursement of medical-legal costs in this case. In fact, neither the court nor defendant were aware of the incorrectly filed pleading through the first trial and reconsideration proceedings. The incorrectly filed pleading did not come to light until the trial on January 31, 2020. Citywide’s filings, therefore, contained a combination of information sufficient to give notice to the court and defendant of the claims and issues made in this case and to allow for litigation of same.

Moreover, while we cite to WCAB Rule 10617 as informative, that rule specifically applies to documents that are subject to a statute of limitations or a jurisdictional time limitation. There is no statute of limitation or jurisdictional time limit for the filing of a petition for determination of non-IBR medical legal dispute. (See Lab. Code, § 4622; Cal. Code Regs., tit. 8, former § 10451.1, now § 10786 (eff. Jan. 1, 2020).) Absent a statutory or regulatory limitation period, we are left with general due process, i.e., notice and opportunity to be heard. In this case, defendant has received sufficient notice and opportunity to be heard regarding Citywide’s claim for reimbursement of medical-legal expenses. Therefore, the WCJ should have allowed Citywide to file the correct petition when this issue came to light during the January 31, 2020 trial. Citywide has now filed the correct petition in this case allowing trial to proceed on the merits in light of our holding in *Colamonico* as indicated in our November 25, 2019 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration.

Finally, we address the February 12, 2020 NIT and March 10, 2020 Order Imposing Sanctions. As stated above, due process requires notice and an opportunity to be heard before sanctions may be imposed. (See, *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158, [65 Cal.Comp.Cases 805].) Here, Citywide was not given sufficient notice in the NIT of the allegations against it. In addition, based on statements made by the WCJ in the February 12, 2021 Opinion on Decision, it appears that part of the basis for the imposition of sanctions was the WCJ's belief that there was no jurisdiction in this case due to the incorrectly filed pleading. As discussed above, that belief is not correct. We further note that the WCJ ultimately imposed \$3,750.00 in sanctions, an amount greater than that to which petitioners received notice and \$5,000.00 in fees and costs of which petitioners did not receive any notice. Therefore, we find due process lacking and will rescind the March 10, 2020 Order Imposing Sanctions.

Accordingly, for the reasons discussed herein, we will rescind the February 12, 2020 Findings, Order and the March 10, 2020 Order Imposing Sanctions and return this matter to the trial level for further proceedings and a new decision by the WCJ consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 12, 2020 Findings, Order and the March 10, 2020 Order Imposing Sanctions are **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

IT IS FURTHER ORDERED that our grant of reconsideration in Case No. ADJ9838134 is **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2021

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

**CITYWIDE SCANNING SERVICE
COSTFIRST CORP**

PAG/abs

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