

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

CARTER STEPHENS, *Applicant*

vs.

**CITY OF PASADENA, permissibly self-insured,
administered by AIMS, *Defendants***

**Adjudication Numbers: ADJ972712(LAO0861202) ; ADJ2355210 (LAO0774168)
ADJ3049891(PAS0026410); ADJ1419044 (PAS0041392); ADJ2466887(LAO0833290);
ADJ3729955(PAS0041393); ADJ1877860 (PAS0041394); ADJ3680948 (MON0195882)
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION AND
PETITION FOR
DISQUALIFICATION**

Applicant, in pro per, filed a Petition for Reconsideration on January 12, 2023 regarding the December 5, 2023 First Amended Findings and Award issued by the workers' compensation administrative law judge (WCJ). We will treat applicant's petition as a Petition for Reconsideration and Petition for Disqualification. Applicant also filed supplemental pleading on January 23, 2024 which we accept pursuant to our authority. (Cal. Code Regs., tit. 8, § 10964.) We have considered the allegations of applicant's petitions and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss applicant's Petition for Reconsideration and Petition for Disqualification.

There are 25 days allowed within which to file a petition for reconsideration 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, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

In this case, the WCJ issued the First Amended Findings and Award on December 5, 2023. Based on the authority cited above, applicant had until Tuesday, January 2, 2024 to file a timely Petition for Reconsideration. Therefore, the Petition for Reconsideration filed on January 12, 2024 is untimely and will be dismissed.

Next, we address the apparent request 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.)

WCAB Rule 10960 provides that when the WCJ and “the grounds for disqualification” are known, a petition for disqualification “shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.”

Here, the petition for disqualification does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311,

WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Moreover, the petition is untimely pursuant to WCAB Rule 10960. Accordingly, the request for disqualification is also dismissed.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration and Petition for Disqualification are **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 12, 2024

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

**CARTER STEPHENS
ZGRABLICH & MONTGOMERY**

PAG/abs

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