WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WYMAN OSBORN, ***Applicant***

vs.

OSBORN CONCRETE CONSTRUCTION INC; STATE COMPENSATION INSURANCE FUND; SUBSEQUENT INJURIES BENEFITS TRUST FUND, ***Defendants***

Adjudication Number: ADJ18236958
Lodi District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION DENYING PETITION FOR REMOVAL AND DENYING PETITION FOR DISQUALIFICATION

We have considered the allegations in the "Petition for Reconsideration and/or Removal of the April 8, 2026, Minutes of Hearing setting trial and Notice of Intent to Impose Sanctions, and for Disqualification" (Petition), and the contents of the Report and Recommendation on Petition for Reconsideration (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto.

We did not receive an answer from any party.

The WCJ's Report recommends the Petition be denied.

After our review of the record and for the reasons discussed below, we will dismiss the Petition for Reconsideration, deny the Petition for Removal, and deny the Petition as one for Disqualification.

I.

Former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(Lab. Code, § 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events the case was transmitted to the Appeals Board on April 23, 2026, and 60 days from the date of transmission is Monday, June 22, 2026. This decision issued by or on June 22, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on April 23, 2026, and the case was transmitted to the Appeals Board on April 23, 2026. Service of the Report and transmission

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 23, 2026.

II.

On November 25, 2025, the WCJ issued an Award, based on stipulations resolving applicant's Subsequent Injuries Benefits Trust Fund (SIBTF) claim. The Award approved a 15% attorney fee. In the stipulations, applicant's attorney requested a 25% fee.

After receiving communication from applicant's attorney, the WCJ rescinded the Award by order dated November 26, 2025, and set the case for further proceedings. An amended order rescinding was dated December 15, 2025.

On December 30, 2025, applicant's attorney filed a Petition for Reconsideration seeking to have the Award reinstated with the requested 25% attorney fee. No exhibits were identified nor testimony taken prior to applicant seeking reconsideration.

In our March 6, 2026, Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Decision) we vacated "the Order Rescinding and the Amended Order Rescinding, and affirm[ed] the Award, except that we amend[ed] it to defer the issue of attorney's fees and payment by the SIBTF until the amount of the attorney fees is set." We also stated that we "express no opinion on the ultimate resolution of any remaining issues." (Decision, p. 9.)

Thereafter, Minutes of Hearing issued dated April 8, 2026, which include under comments handwriting that states:

> def is excused from further appearances. Matter continued to trial date for evidentiary hearing on the issues of increased attorney fee and Notice of Intent to Impose Sanctions dated 3 Dec 2025. AA to address notice of intent to impose sanctions for altering mandatory form DWC-3 resulting in misrepresentations to the public and the court dated 8 April 2026. AA to provide bill of particulars related to request for increased fee.

The minutes reflect the case will be set for a four-hour trial on notice.

Also dated April 8, 2026, the WCJ issued a Notice of Intent to Impose Sanctions: "for misrepresentations to the court and to the public regarding the regular range of fees identified by the State of California in the DWC 3 mandatory fee disclosure statement."

On April 17, 2026, applicant filed the Petition.

In the Petition, applicant alleges in part that the WCJ stated she "has never awarded a fee above 15% on a SIBTF case." (Petition, p. 19, lns 17-19.)[2] It is further alleged that the WCJ "disclosed to Applicant's attorneys that she is unable to be impartial" and told counsel "outright that she has never issued an order for attorneys' fees for more than 15% and insinuated she can make a decision here on said personal bias because attorneys' fees are decided on a case-by-case basis." (Petition, p. 23, lns 14-19.)

In the April 23, 2026, Report the WCJ recommends the Petition be denied while noting: "*If a hearing is allowed to go forward and Orders and/or Awards issued . . . the merits will be discussed at that time.*" (Report, p. 3, emphasis in original.) The WCJ states in part, "I have no issue making a determination that a higher fee is warranted." The WCJ also states: "There is no bar or appearance of bias by having a discussion regarding the issues." (Report, p. 4.)

III.

A.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id.* at p. 1075.) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

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[2] The Petition appears to indicate that at least some statements included in it are hearsay. (See e.g. "*As was relayed to me* following the MSC on 04/08/2026." (Petition, p. 17, lns 1-3, emphasis added).) Curiously, the likely source of these statements appeared at conference and apparently signed the Petition.

Here, the April 8, 2026, minutes of hearing and NOI do not determine a substantive right or liability and do not determine a threshold issue but rather are interlocutory. Accordingly, they are not "final" decisions and applicant's petition for reconsideration will be dismissed.

B.

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).)

Here, based on our review of the record as well as for the reasons stated in the WCJ's report, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner. The minutes of hearing setting trial and the NOI to impose sanctions do not create substantial prejudice or irreparable harm as the applicant will be allowed to present a case at trial. Accordingly, we will also deny the Petition to the extent it seeks removal.

IV.

Section 5813 permits the Workers' Compensation Appeals Board to issue sanctions of up to $2,500.00, for acts which result from ". . . bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code § 5813(a).)

WCAB Rule 10421(b) states in relevant part that bad faith actions includes "failure to comply with a statutory or regulatory obligation" or actions that "are indisputably without merit."

Business and Professions Code section 6068 provides in part that an attorney must respect the courts of justice and judicial officers and be truthful at all times, including never to mislead a judge or judicial officer by false statement of fact or law. (Business and Professions Code section 6068(b), (d).) Rule 3.3 of the California Rules of Professional Conduct provides in part that a lawyer shall not: "(1) knowingly make a false statement of fact or law to a tribunal or fail to correct

a false statement of material fact or law previously made to the tribunal by the lawyer; (2) . . . . knowingly misquote to a tribunal the language of a book, statute, decision or other authority."

Petitions for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Cal. Code Regs., tit. 8, § 10945(a).) Failure to cite the record and failure to fully and accurately set forth the facts and evidence are grounds to deny a petition. (Lab. Code § 5902; Cal. Code. Regs., tit. 8, § 10972.)

1.

The Petition before us indicates the presentation of a direct quote from the minutes of hearing signed April 8, 2026, by stating:

> Rather than allowing Applicant's attorneys to present evidence & witnesses at trial via the PTCS as is the correct procedure for setting a matter for trial, [the WCJ] *ordered* "*AA to provide bill of particulars related to request for increased fee. 24 hrs* (sic)," which failed to provide Applicant's attorneys adequate opportunity to present evidence on the issue of attorneys' fees.

(Petition, p. 8, lns 2-6, emphasis added.) Allaying any ambiguity in the meaning of the quote, the Petition argues:

> It would be impossible to expect Applicant's attorneys to go through all 59 pages & 582 entries on the AA Case Activity List and 56 pages of approximately 800 documents in the AA Case File Document List, to assign an appropriate value for both time spent & billing rate for each individual entry on each of the case file documents generated or reviewed, almost 1400 total entries! *24 hours is not nearly enough time,* especially when considering Applicant's attorneys had other appearances on other matters.

(Petition, p. 9, lns 2-7, emphasis added.)

As reviewed in the case history above, the April 8, 2026, minutes includes comments ending with the sentence: "AA to provide bill of particulars related to request for increased fee." This sentence clearly ends with a period as the punctuation mark. Below this sentence is a line of pre-printed boxes and words used for setting further hearings. The box for "Trial/Expedited Hearing" is marked and is followed by what appears to be a scribbled through handwritten number 2, and then thereafter is written by hand "4hrs".

It is difficult to understand how petitioner could interpret these minutes as ordering a bill of particulars within twenty-four hours. This is especially concerning considering there is a period after the order to provide the bill of particulars, the number two appears scribbled out, and it is

common for the form to show an estimated time for a trial setting for calendaring purposes at the district offices.

We admonish the attorneys who signed the Petition, and their law firm, that in the future, misrepresentation of the record may lead to the consideration of sanctions.

2.

The Petition includes multiple references to a panel decision in *Purcell*, presumably for the case's persuasive reasoning.[3] (Petition, p. 14, lns 11-12, 15-16, 21-22; p. 15, lns 1-2.) (*Purcell v. Proctor & Gamble*, June 7, 2024, ADJ15987800.) In fact, the Petition asserts "the instant case is directly analogous to *Purcell*". (Petition, p. 14, lns 21-22.)

We need not revisit the facts of *Purcell*, as there the panel issued an Opinion and Order Granting Petition for Reconsideration that "is not a final decision on the merits of the Petition for Reconsideration" and further noting that "we will order that issuance of the final decision after reconsideration is deferred." (*Purcell*, supra, p. 10.)

That *Purcell* is not a final decision is an important fact that was not disclosed in the Petition. This fact is important because it means there are no final findings upon which an analogy may be made.

That the Petition did not disclose the non-final nature of the decision is also important because "[a]sserting a position that misstates or substantially misstates the law" may be sanctionable. (WCAB Rule 10421(b)(8).)

We again admonish the attorneys who signed the Petition, and their law firm, that in the future, the failure to clearly identify that a reference was to a non-final decision may lead to the consideration of sanctions.

3.

The Petition also appears to improperly characterize parts of our prior March 6, 2026, Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Decision) in this case.

As noted above, in the Decision we vacated the November 26, 2025, and December 19, 2025, orders rescinding and affirmed the December 1, 2025, Award, but amended the Award to defer issues of attorney's fees. In the Decision we clearly state: "We express no opinion on the ultimate resolution of any remaining issues." (Decision, March 6, 2026, pp. 8-10.) The Decision

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[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1424 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority, and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board En Banc).)

is of limited scope and provides no opinion on the ultimate resolution of any of the remaining issues.

The Petition, however, appears to reference the Decision as having reached holdings beyond those stated in the Decision.

The Petition references the December 3, 2025, Notice of Intent (NOI) by stating "*it has already been vacated by the WCAB's Opinion & Order on Reconsideration*". (Petition, p. 11, lns 5-8, emphasis added.) This is incorrect. The only orders vacated were the two orders rescinding: one dated November 26, 2025, and one dated December 19, 2025.

We also highlight the statements that "the WCAB made no indication whatsoever that Applicant attorney had failed to make a proper fee disclosure in the instant case. Consequently, the Notice of Intent to Impose Sanctions dated 04/08/2026 is without merit." (Petition, p. 16, lns 13-15.) To the extent the Petition implies that in our Decision we found the fee disclosure proper or that the April 8, 2026, NOI was without merit, both implications are incorrect. As noted, in our Decision "we express[ed] no opinion on the ultimate resolution of any remaining issues."

As in the prior Decision, we continue to express no opinion on the ultimate resolution of any remaining issues.

Once again, however, we admonish the attorneys who signed the Petition, and their law firm, that a misleading reference to a non-final decision may lead to the consideration of sanctions.

V.

As to the petition contending the WCJ should be disqualified, 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)).

A party's unilateral and subjective perception of bias may not be the 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, the Petition's allegation of bias includes that the WCJ stated she "has never awarded a fee above 15% on a SIBTF case." (Petition, p. 19, lns 17-19.) That the WCJ "disclosed to Applicant's attorneys that she is unable to be impartial" and told counsel "outright that she has never issued an order for attorneys' fees for more than 15% and insinuated she can make a decision here on said personal bias because attorneys' fees are decided on a case-by-case basis." (Petition, p. 23, lns 14-19.)

The WCJ generally denies bias stating: "There is no bar or appearance of bias by having a discussion regarding the issues." The WCJ also specifically states, "I have no issue making a determination that a higher fee is warranted." (Petition, p. 4.)

Applicant has provided only unilateral and subjective perception of bias which further appears may be based on hearsay. We also note the requirement that petition for disqualification shall be "supported by an affidavit or declaration under penalty of perjury *stating in detail facts* establishing one or more of the grounds for disqualification specified." (Cal. Code Reg., tit. 8, § 10960, emphasis added.)

Here the WCJ clearly stated in the report: "I have no issue making a determination that a higher fee is warranted."

On this record, and in the absence of detailed facts establishing disqualification we are unable to find that the WCJ expressed an "unqualified opinion or belief as to the merits" nor that the WCJ has shown "enmity against or bias toward either party." (Code Civ. Proc., § 641((f), (g)).

Thus, we deny disqualification.

Therefore, and as discussed above, we dismiss applicant's Petition for Reconsideration, deny applicant's Petition for Removal, and deny applicant's Petition to Disqualify.

VI.

We wish to emphasize that there is generally no pre-ordained attorney fee in a workers' compensation claim. As we stated in our prior decision:

> Although we agree applicant's attorney is entitled to an opportunity to present evidence on the issue of reasonable attorney fees, we also encourage the presentation of concise, clear, argument and evidence in any further proceedings. We know of no authority that shifts the burden to establish a reasonable attorney's fee from an applicant's attorney to the WCAB or to any of the parties. (Lab. Code, §§ 5705, 3202.5.) We further note that an attorney's fee inquiry is specific to each individual case, each case may result in a different fee, and there is no broad

> consensus when setting fees that is binding on the trier of fact that results in a specific outcome.

(Decision After Reconsideration, March 6, 2026, p. 8.)

We further observe that "[i]t is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).)

As part of creating a record in this matter, we encourage the parties and WCJ to proceed with the professionalism, restraint, and comity that is a hallmark of the workers' compensation community.

For the foregoing reasons,

IT IS ORDERED that the applicant's Petition for Reconsideration is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Disqualification is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 22, 2026

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

WYMAN OSBORN
NYMAN TURKISH
OD LEGAL
SUBSEQUENT INJURIES BENEFITS TRUST FUND

PS/oo

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