

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

APRIL PREMO WILLIAMS, *Applicant*

vs.

**THE HOME DEPOT; Permissibly Self-Insured, Administered by HELMSMAN
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ2875706 (STK 0185271)
Stockton District Office**

**OPINION AND ORDER
DENYING PETITION FOR
DISQUALIFICATION**

Applicant, in pro per, has filed a document dated August 30, 2020 addressed to the Commission on Judicial Performance which applicant termed a “complaint.” We address applicant’s allegations only to the extent of our jurisdiction which, as pertains to the issues alleged, is limited to her request to remove workers’ compensation administrative law judge (WCJ) Wilkins and Presiding Judge Crawford from her case. We treat this portion of applicant’s allegations as a Petition for Disqualification. We have considered the allegations of the Petition for Disqualification and the contents of the WCJ’s report with respect thereto. Based on our review of the record and for the reasons stated in the WCJ’s report, which we adopt and incorporate, we will deny the 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. (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.)

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].)¹ 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.) 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

¹ Overruled on other grounds in *Lumbermen’s Mut. Cas. Co. v. Industrial Acc. Com. (Cacozza)* (1946) 29 Cal.2d 492, 499 [11 Cal.Comp.Cases 289].

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, as discussed in the WCJ’s report, 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). Accordingly, the petition will be denied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Disqualification is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 22, 2021

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

**APRIL PREMO WILLIAMS
ALBERT & MACKENZIE**

PAG/ara

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**

INTRODUCTION

Manner of Injury:	Admitted Injury
Date(s) of Injury:	April 15, 2003
Body Parts Injured:	Low Back, Left Shoulder, Left Knee and Neck
Age on Date of Injury:	54
Date of Decision:	N/A
Petitioner:	Applicant-In Pro Per
Timeliness of Petition for Disqualification:	Timely
Verification of Petition for Disqualification:	Unable to locate verification

ISSUE

Applicant sent a letter to the Commission on Judicial Performance on or about August 30, 2020. A copy was provided to the undersigned. Among the various requests, the letter asked that the undersigned and PWCJ Crawford be removed from Applicant's case. As such the letter is being treated as a Petition for Disqualification. Although the undersigned is the trial judge, PWCJ Crawford may have to address Defendant's petition to have applicant declared a vexatious litigant.

PETITIONER'S CONTENTIONS

It appears that the disqualification request by Ms. Williams is based on the following allegations:

Peter Wilkens Violated

1. 1973 Rehabilitation Act; State of California gets Federal Money for the Program.
2. Public Law 101-336 (ADA)
3. ADA Amendments Act of 2008
4. California Court Rule 1.100
5. Labor Code, Section 794e Protection and Advocacy of Individual Rights
6. Numerous State and Federal Civil Rights Acts
7. Violation of the Fourteenth Amendment used to pass ADA: Section 5 of Fourteenth Amendment to enact appropriate legislation to enforce the rights protected in section 1 of the Fourteenth Amendment University of Alabama v Garrett 121 S.C.T. 955.
8. Due Process of Law and Equity guaranteed by the United States Constitution
9. Hate crime: Conspiracy Against Rights 18 U.S.C. 241
10. Violation of Contract
11. Intentional Discrimination

12. Judge Wilkins caused me physical, mental and psychical harm not to mention a waste of time and financial loss.
I WANT PETER WILKINS FIRED AS A JUDGE, FIRED FROM THE STATE OF CALIFORNIA AND PROSECUTED FOR A HATE CRIME.

In addition, the letter indicates that Applicant “would like to file a complaint against

1. Judge Crawford, Presiding Workers’ Compensation Appeals Court Judge Stockton CA. in Case STK085271 (ADJ2875706) and I would like Judge Crawford removed from my case and
2. Judge Wilkens, Workers’ Compensation Appeals Court Judge for Stockton in Case STK085271 (ADJ2875706) and I would like Judge Wilkins removed from my case and
3. State of California for violation of my United States Constitutional Rights.”

FACTUALBACKGROUND

It is difficult to ascertain the specifics of Petitioner’s various contentions. However, it appears Petitioner is referring to a December 9, 2019 trial in this matter and subsequent decision issued on December 11, 2019. Petitioner filed for reconsideration of that decision and the WCAB issued its opinion and order denying petition for reconsideration on March 2, 2020. Defendant then filed a petition to have Petitioner declared a vexatious litigant. A hearing was set for September 23, 2020. Petitioner filed a “request that the hearing be postponed until we can meet in a live appearance”.

On August 26, 2020, the undersigned issued an order re-designating the mandatory settlement conference (MSC) to a status conference on November 18, 2020 at 8:30 a.m. It was further ordered that that in order to address the issue(s) raised by Applicant the parties may appear at the hearing via video by utilizing the following URL: <https://call.lifesizecloud.com/4719356>.

On August 30, 2020, four days after the above-referenced order, Applicant filed her complaint with the Commission on Judicial Performance.

DISCUSSION

PWCJ Crawford is not the trial judge in this matter. PWCJ Crawford has had no direct involvement in this matter since 2019. As such the request to disqualify PWCJ Crawford has no legal basis and is moot.

The Petition for Disqualification has no validity and contains no factual support. Title 8, California Code of Regulations, Section 10788 entitles a party to one automatic reassignment of a trial judge without having to give a reason. No such request was made in this matter.

In addition, Title 8, California Code of Regulations, Section 10960 allows a party to petition to disqualify a WCJ for cause as set on in Labor Code, Section 5311. Labor Code, Section 5311 provides

Any party to the proceeding may object to the reference of the proceeding to a particular workers' compensation judge upon any one or more of the grounds specified in Section 641 of the Code of Civil Procedure and the objection shall be heard and disposed of by the appeals board. Affidavits may be read and witnesses examined as to the objections.

California Code of Civil Procedure, Section 641 provides:

A party may object to the appointment of any person as referee, on one or more of the following grounds:

- (a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.
- (b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.
- (c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.
- (d) Having served as a juror or been a witness on any trial between the same parties.
- (e) Interest on the part of the person in the event of the action, or in the main question involved in the action.
- (f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.
- (g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

The Petition for Disqualification fails to allege or provide any factual support for disqualification under California Code of Civil Procedure Section 641.

In addition to the foregoing, Title 8, California Code of Regulations, Section 9721.12 provides additional grounds for which the Appeals Board may disqualify a judge from hearing a particular case. Specifically, Title 8, California Code of Regulations, Section 9721.12 provides:

- (a) A judge is disqualified in a workers' compensation case if any of the following is true:
 - (1) The judge has personal knowledge of disputed evidentiary facts.

(2) The judge served as lawyer for a party in the past two years.

(3) The judge has actual bias in favor of or against any party and the judge has substantial doubt as to his or her capacity to be impartial.

(4) Because of physical impairment, the judge is unable to perceive evidence or properly conduct proceedings.

(5) Within the past two years, the judge served as a lawyer for an officer, director, trustee of a party.

(6) Within the past two years, the judge was associated in private practice, as an employee or on a contract basis, with a lawyer in the proceedings.

(7) The judge, the judge's spouse, or minor child of the judge, personally or as a fiduciary, has a financial interest in the subject matter in a proceeding or in a party to the proceeding, or has a relationship of director, advisor, or active participant to a party to the proceeding.

(8) The judge, the judge's spouse, a relative of either within the third degree of relationship, or spouse of such relative, is likely to be a material witness.

(9) A party to the action before the judge, or the party's spouse, is related within the third degree of relationship to either the judge or to the judge's spouse.

(10) The judge believes that recusal would further the interests of justice or believes there is a substantial doubt as to his or her capacity to be impartial.

(11) The judge has actual bias against or in favor of an attorney for a party and the judge has a substantial doubt as to his or her capacity to be impartial. A judge is not disqualified as to other members or associates in a law firm, or as to the law firm itself, solely because of actual bias against or in favor of individual attorneys in or associated with the firm. Actual bias in favor of or against an attorney does not in itself create the appearance of bias as to a law firm of which the attorney is a member or associate. A doubt of a person aware of the facts that a judge could be impartial towards a law firm or other members or associates of a law firm, based only on knowledge of a judge's bias in favor of or against an individual attorney or attorneys, is not a doubt which is reasonably entertained. If the workers' compensation appeals board, on a petition for disqualification alleging bias against or in favor of an attorney, determines that a judge is disqualified because of the appearance of bias or because a person aware of the facts might reasonably entertain a doubt that the judge could be impartial, it shall not be presumed, as to a law firm of which the attorney is a member or associate, or as to other members or associates of the law firm:

A. that there is the appearance of bias; or

B. that a person aware of the facts might reasonably entertain a doubt that the judge could be impartial.

(b) The parties may waive the disqualification of a judge after written

disclosure of the facts constituting a ground of disqualification. A judge who believes he or she is disqualified shall recuse or shall state in writing the basis of disqualification. All waivers shall be in writing and shall be made part of the file, or shall be made on the record. The judge may ask the parties and their attorneys whether they wish to waive the disqualification. The judge may not request the parties or attorneys to waive the disqualification. The parties and any attorney for the employee shall execute any waiver. An attorney for a party other than the employee may execute the waiver on behalf of the attorney's clients. Such a waiver shall state that the attorney has advised the client of the disqualification information, and that the client has agreed to waive the disqualification.

(c) Disqualification for the following circumstances cannot be waived:

(1) The judge, the judge's spouse, a relative of either within the third degree of relationship, or spouse of such relative, is likely to be a material witness

(2) The judge served as a lawyer in the case.

The Petition for Disqualification fails to allege or provide any factual basis to support a violation of the foregoing as it relates to PWCJ Crawford or the undersigned. Specifically, the petition failed to allege, or provide a factual basis, that the undersigned or PWCJ Crawford, have personal knowledge:

- of disputed evidentiary facts;
- served as a lawyer for a party in the past two years;
- have actual bias in favor of or against any party and the judge has substantial doubt as to his or her capacity to be impartial;
- have a physical impairment making it impossible perceive evidence or properly conduct proceedings;
- served as a lawyer for an officer, director or trustee of a party;
- within the past two years, were associated in private practice, as an employee or on a contract basis, with a lawyer in the proceedings;
- have a spouse of minor child, personally or as a fiduciary, with a financial interest in the subject matter in a proceeding or in a party to the proceeding, or has a relationship of director, adviser or active participant to a party to the proceeding;
- have a relative of either within the third degree of relationship or spouse of such relative is likely to be a material witness;

- that a party to the action before the undersigned or PWCJ Crawford related within the third degree of relationship to either the judge or to the judge's spouse.

In addition, there is no allegation or factual support that the undersigned or PWCJ Crawford believes that recusal would further the interests of justice or that either believes that there is a substantial doubt as to his or her capacity to be impartial.

Finally, there is no factual support that either the undersigned or PWCJ Crawford has actual bias against or in favor of an attorney for a party and the judge has a substantial doubt as to his or her capacity to be impartial. It appears that the only allegation of potential bias for or against an attorney is contained on 20 of the Petition for Disqualification where Petitioner states: "Because Judge Wilkens would not let Ray Stanek speak, Judge Wilkens violated Ray Stanek's right to cross examine, right to be heard and due process." Based on that statement, Petitioner concludes that Mr. Stanek's failure to file a complaint supports the theory that there was a conspiracy between Mr. Stanek and the undersigned to insure that he would not be removed from the case. Petitioner's position has no support. Contrary to Petitioner's argument, instructing an attorney to stop making objections so that a pro per litigant can testify uninterrupted, does not equate to a conspiracy.

RECOMMENDATION

It is respectfully recommended that the Petition for Disqualification be denied.

Dated: 10/16/2020

Peter M. Wilkens
WORKERS' COMPENSATION JUDGE