

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

PAULETTE JACKSON, *Applicant*

vs.

**LAUSD; Permissibly Self-Insured
Administered By SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ1743470, ADJ10809712, ADJ3408821
Marina del Rey District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
DISQUALIFICATION**

We have considered the allegations of the Petition 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 in the WCJ's report, which we adopt and incorporate, except as noted below, we will dismiss the Petition for Disqualification. Although the WCJ recommends denial of the Petition for Disqualification, we will dismiss it as untimely.

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.)

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).)

Finally, 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 alleged grounds for disqualification occurred on February 2, 2018 and December 2, 2019. Therefore, the Petition for Disqualification is untimely and will be dismissed.

If we were not dismissing the petition as untimely, we would have denied it on the merits for the reasons discussed by the WCJ in the report, which we would have adopted and incorporated.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 2, 2021

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

**PAULETTE JACKSON
KEGEL TOBIN**

PAG:acw

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

**JOINT REPORT AND RECOMMENDATION
ON PETITION FOR DISQUALIFICATION**

**I
INTRODUCTION**

- | | | |
|-----|--|---|
| 1. | Applicant's Occupation: | Teacher |
| 2. | Applicant's Age: | 57 and 54 |
| 3. | Dates of injury: | 8/31/2006 to 8/31/2007; 5/1/2004;
8/27/2007 |
| 4. | Parts of Body Injured: | Multiple |
| 5. | Manner in which injuries
alleged to have occurred | Cumulative Trauma and specific injuries |
| 6. | Identity of Petitioners: | Applicant, in propria persona, Paulette
Jackson |
| 7. | Timeliness: | Untimely |
| 8. | Verification: | A verification is not attached. |
| 9. | Date of alleged acts by WCJ: | 3/26/2019 and 2/1/2018 |
| 10. | Petitioner's contentions: | WCJ failed to admonish Applicant's former
attorney and conspired with her former
attorney to award attorney fees she had not
approved. |

**II
FACTS**

Applicant, in propria persona, initially filed a letter dated 6/11/2021 directed to Presiding Judge Gregory Palmberg of the Marina del Rey WCAB, requesting amongst other things, removal of the undersigned WCJ for bias. This correspondence was sent via regular mail to the Marina del Rey WCAB. Due to the current skeletal staffing here at the Marina del Rey WCAB there was a delay in processing the mail. As a result this letter was not tasked to the undersigned WCJ until 7/20/2021. Although the correspondence does not comply with the formal requirements of a formal Petition for Removal as Applicant has requested removal of this WCJ, the letter will be addressed as if it were a Petition for Disqualification. The trial set before the undersigned WCJ has been continued from 7/28/2021 to 8/26/2021 in order for the WCAB to rule on the Petition/Letter dated 6/11/2021.

The undersigned is very familiar with this Applicant and these cases as they have been set before her for various hearings dating back to 2012. These cases were first set before the undersigned WCJ for an MSC on 8/27/2012. In addition to several conferences, this case has been set for trial eleven times before the undersigned WCJ. The first trial setting was on 3/2/2017. The

most recent trial setting was on 6/22/2021. Despite the number of trials set this matter never proceeded on the record. On 2/1/2018 after several lengthy discussion with all the parties, the parties all signed and submitted three separate Stipulations with Request for Award on case numbers ADJ3408821 at 47%, ADJ1743470 at 27% and ADJ10809712 at 12% for approval. The WCJ determined that all three Stipulations with Request for Awards were adequate and approved all three Stipulations with Request for Award on 2/1/2018 and the trial was ordered off calendar.

On 3/26/2019 Applicant filed a Notice of Dismissal of Attorney. On 12/2/2019 the undersigned WCJ signed the Order dismissing Applicant's Attorney as Attorney of Record. On 1/15 2021, Defendant filed a DOR regarding the 132(a) petition filed by Applicant. The matter was set for telephonic MSC on 3/15/2021 and the parties agreed to set the 132(a) Petition for trial and circulate the pretrial conference statement. At the 4/22/2021 telephonic trial the parties again jointly requested a continuance to complete the joint pretrial conference statement. The matter was continued to 6/22/2021 for telephonic trial. On that date the Applicant requested additional time to fill out the pretrial conference statement which was granted. At no time did the Applicant mention that she was requesting that the WCJ be removed as the WCJ on her case.

At the Applicant's request special arrangements were made to coordinate with the Information and Assistance Officer, the applicant and the defense attorney for an informal meeting in Judge Rose's Life size courtroom on 6/30/2021 for the Applicant to receive assistance in filling out the pretrial conference statement. The Defense counsel, the Information and Assistance Officer and the Applicant were to utilize Judge Rose's virtual courtroom at 1:30 pm on 6/30/2021 to fill out the pretrial conference statement. The notes placed in EAMS written by Information and Assistance Officer, Akosua Bates, indicate that that virtual meeting took place on 6/30/2021. According to the note by Ms. Bates, the informal meeting lasted approximately two hours. At the conclusion of the meeting, Applicant was to add exhibits and copy the defense attorney for the trial date then scheduled for 7/28/2021 which has subsequently been moved to 8/26/2021.

On 6/11/2021, Applicant filed the letter now being treated as a Petition for Disqualification requesting among other things that the undersigned WCJ be removed from her case for bias arising from her actions on 12/2/2019 and 2/1/2018. For the reasons set forth below, the Applicant's letter dated 6/11/2021 requesting disqualification based on bias should be denied.

III DISCUSSION

Grounds to object to a particular WCJ amongst others include, a blood relationship between the WCJ and a party, a fiduciary or employment relationship between the WCJ and a party, and the WCJ having formed or expressed an unqualified opinion or belief as to the merits of the case. Section 10960 of the Appeals Board 's Rules of Practice and Procedure requires that proceedings to disqualify a WCJ shall be initiated by filing a petition for disqualification, supported by an affidavit or declaration under penalty of perjury, that provides a detailed statement establishing the basis for the request.

The instant letter dated 6/11/2021 or Petition for Disqualification as it is being treated, does not comply with the technical requirements of Section 10960 and was not filed in a timely manner

but will be addressed on the merits nevertheless. Applicant states the following. “Judge Rose has systematically demonstrated a bias for LAUSD which has a long political reach throughout the community with impunity.” The letter fails to identify how that bias was demonstrated by the undersigned WCJ except in the context of the WCJ asking Applicant’s former attorney why he did not file a 132(a) Petition on 12/2/2019. The WCJ does not have an exact recollection of what she said to the parties on 12/2/2019 but assuming for the sake of argument that the WCJ did in fact ask this question of her former attorney in the presence of the Applicant, this does not support that the undersigned WCJ “systematically demonstrated a bias for LAUSD...”

The second incident cited by Applicant allegedly took place on 2/2/2018. It is not exactly clear from the letter but it appears that Applicant is making some sort of allegation that her attorney switched out an award page giving himself attorney fees in a higher amount than Applicant had approved. However EAMS reflects that this WCJ approved three separate Stipulations with Request for Award involving the Applicant on that date. Applicant admits she was aware of the attorney fees for ADJ10809712 at 12% in the amount of \$1,473.21. However, filenet reflects that the WCJ also approved two additional fully executed Stipulations with Request for Award at 47% less attorney fees of \$9,874.39 for ADJ3408821 and Stipulations with Request for Award at 27% in the amount of zero attorney fees for ADJ1743470.

Based on the above, Applicant has failed to set forth any specific facts documenting prejudice or bias on the part of the undersigned WCJ. The matter is currently set for trial before the undersigned on 8/28/2021. This WCJ has no substantial doubt of her ability to be impartial or believe that a reasonable person aware of the facts might entertain a doubt that the judge would be able to be impartial and the current letter/ Petition for Disqualification should be denied.

**IV
RECOMMENDATION**

It is recommended that the 6/11/2021 letter/Petition for Disqualification be denied for the reasons set forth above.

Dated: 7/22/2021

Respectfully submitted,

CIRINA A. ROSE
WORKERS' COMPENSATION JUDGE