

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

GERONIMO VELASCO, *Applicant*

vs.

PENTAGON TECHNOLOGIES GROUP, INC.;
TRAVELERS WALNUT CREEK/THIRD PARTY ADMINISTRATOR, *Defendants*

**Adjudication Numbers: ADJ16200503; ADJ16166671
San Francisco District Office**

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

Applicant, in pro per, filed a Petition for Removal on December 5, 2022, contending:

“Applicant herein On [*sic*] November 9, 2022, requested an expedite [*sic*] hearing (DOR for Expedited Hearing) pursuant to Labor Code §5502(b)(4) on the sole issue of entitlement to temporary disability indemnity payments.”

Applicant further contends:

“Defendant On November 9, 2022 filed a Declaration of Readiness to proceed (DOR) for status conference and select hearing date 2022/12/28-13:30:00 with principal issue are [*sic*] QME checking boxes (others). . . .and that “. . . INTERNAL QME UNREASONABLE DISTANCE. WCAB NEED ASSISTANCE.”

We have considered the allegations of the Petition for Removal 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 upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will dismiss applicant's Petition for Removal.

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].) A Petition for Removal requires that an interim or non-final order has

been issued by a WCJ. 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).)

Per applicant's Petition, "applicant is told that he will first need to finish the status conference scheduled for December 28, 2022 [and] 'Cannot schedule a hearing for a case when there is already a scheduled hearing.'" Applicant's Petition alludes to the fact that the WCJ is biased because applicant's Declaration of Readiness (DOR) for an expedited hearing was not filed.

On November 9, 2022, applicant attempted to file a DOR for an expedited hearing, in person at the San Francisco district office. Applicant's DOR was not accepted, because earlier that day, defendant had electronically filed a DOR requesting a status conference regarding the following issue: "internal QME unreasonable distance. WCAB assistance needed." Defendant's requested status conference was set for December 28, 2022. Applicant was not able to file his DOR because Electronic Adjudication Management System (EAMS) does not allow more than one hearing to be scheduled at a time. This was explained to applicant, and he was informed that once a hearing is scheduled he has to wait until it is completed before requesting another hearing.

Here, applicant's Petition for Removal is based on his inability to file a DOR for an expedited hearing, which is neither an interim nor non-final order. Thus, the Petition will be dismissed to the extent that it seeks removal.

Also, applicant seeks to have the WCJ removed from his case due to an alleged perception of judicial bias. Labor Code section 5311¹ 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).)

Here, as the WCJ's report states: "As a judicial officer, I have no control over the EAMS mandate that only one hearing be set at a time. Therefore, I am not in a position to grant applicant's request at this time." (Report at p. 2.)

¹ All statutory references not otherwise identified are to the Labor Code.

Further, 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, § 10960, 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.)

Here, applicant alleged that the WCJ failed to set an expedited hearing for applicant, but has not alleged any facts to show that the WCJ was biased. The facts alleged merely illustrate the constraints of EAMS, which are that only one hearing may be scheduled at a time. That is, applicant’s DOR could not be filed and entered into the system because defendant had already scheduled a hearing earlier that day, thus locking out or preventing applicant from scheduling a hearing until the previously scheduled hearing was completed.

Here, applicant did not follow the procedure required by WCAB Rule 10960 for requesting disqualification of the WCJ. Moreover, as pointed out by the WCJ, she has no control over how EAMS functions, and since the WCJ could not have acted, the fact that she did not do so cannot demonstrate bias. Thus, we will dismiss the Petition as one for disqualification as well.

Accordingly, we dismiss the Petition as one for removal and as one for disqualification.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 10, 2024

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

**GERONIMO VELASCO
ALVANDI LAW
HANNA LEUNG
LAURA CHAPMAN**

DLM/oo

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