

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

GAIL WIGGAN, *Applicant*

vs.

**LOS ANGELES COUNTY OFFICE OF EDUCATION, permissibly self-insured,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ10254909, ADJ14103578, ADJ17355533
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITIONS
FOR DISQUALIFICATION AND
GRANTING PETITION
FOR REMOVAL AND
DECISION AFTER REMOVAL**

Applicant has filed multiple petitions. Applicant has filed two petitions to disqualify the WCJ in this matter based upon various allegations of bias.

Following the filing of applicant's petitions for disqualification on October 25, 2023, in case numbers¹ ADJ10254909, ADJ14103578, and for reasons wholly unrelated to the petitions, the WCJ in this matter has been reassigned. Accordingly, the October 25, 2023 Petition for Disqualification is dismissed as that issue is now moot.

On May 14, 2024, applicant filed a petition for disqualification in ADJ17355533², alleging that the WCJ is biased. In that petition, applicant also seeks removal on multiple issues including an order compelling applicant's attendance at an evaluation issued on March 27, 2024, by the workers' compensation administrative law judge (WCJ). Applicant alleges that the qualified medical evaluator "has racist tendencies and treats her poorly".

¹ Applicant's petition included case number ADJ14742387 apparently in error, as that case number does not involve applicant's claim.

² It appears that EAMS has created two entries for applicant. Upon return to the trial level, the EAMS entries for applicant should be merged into a single entity.

Defendant filed a petition to have applicant declared a vexatious litigant, which we have accepted as defendant's answer. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny disqualification.

We have considered the allegations of the May 14, 2024 Petitions for Removal and Disqualification, the Answer, and the contents of the WCJ's Report. Based on our review of the record we will dismiss the May 14, 2024 Petition for Disqualification as applicant failed to provide any substantive affidavit or declaration under penalty of perjury, nor detail any grounds for disqualification under the rule. We will grant applicant's Petition for Removal from the March 27, 2024 order compelling applicant's attendance at evaluation and as our Decision After Removal, we will rescind the March 27, 2024 order and return this matter to the trial level to create a record.

1. Disqualification

To the extent that the May 14, 2024 petition seeks disqualification, Labor Code³ 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. (§ 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, § 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.)

Next, petitions for disqualification must be timely filed: "If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for

³ All future references are to the Labor Code unless noted.

disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.” (Cal. Code Regs., tit. 8, § 10960.)

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].) 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 (emphasis added).) 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 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, and based upon the analysis contained in the WCJ's Report we dismiss the Petition for Disqualification. Applicant has not provided any substantive affidavit or declaration under penalty of perjury, nor has applicant detailed any grounds for disqualification under the rule.

2. 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].) 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, the WCJ ordered applicant to appear at an evaluation. The trial judge issued this order without creating a record or explaining the need for the order and thus, the order violates the parties' right to due process, which constitutes irreparable harm. Thus, removal is proper in this case.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

Applicant has requested a replacement QME due to allegations of bias. Applicant has a multitude of other petitions that are pending as well. These issues should proceed to a hearing. We do not address the merits of applicant's petitions at this time as there is no record from which we can decide the issue.

Applicant is admonished that pursuant to WCAB Rule 10430 a person may be declared a vexatious litigant where the person: "repeatedly files unmeritorious motions, pleadings or other

papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay[.]” (Cal. Code Regs., tit. 8, § 10430.) If applicant’s conduct in this matter persists, vexatious litigant proceedings may be instituted.

Accordingly, we dismiss the October 25, 2023 Petition for Disqualification as moot. We dismiss the May 14, 2024 Petition for Disqualification as applicant failed to provide any substantive affidavit or declaration under penalty of perjury, nor detail any grounds for disqualification under the rule. Finally, we grant applicant’s Petition for Removal from the March 27, 2024 order compelling applicant’s attendance at evaluation and as our Decision After Removal, we rescind the March 27, 2024 order and return this matter to the trial level to create a record.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petitions for Disqualification filed on October 25, 2023, and May 14, 2024, are **DISMISSED**.

IT IS FURTHER ORDERED that applicant’s Petition for Removal from the order compelling applicant’s attendance at evaluation, issued on March 27, 2024 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers’ Compensation Appeals Board that the order compelling applicant’s attendance at evaluation, issued on March 27, 2024 by the WCJ is **RESCINDED**.

IT IS FURTHER ORDERED that these matters are **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 21, 2025

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

**GAIL WIGGAN
PEETZ LAW
FELLMAN AND ASSOCIATES**

EDL/mt

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