

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

KRISTAN WILSON, *Applicant*

vs.

**HOLLINS MANAGEMENT GROUP, INC.; OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ17142839
San Bernardino District Office**

**OPINION AND ORDER
DENYING PETITION
FOR DISQUALIFICATION
GRANTING PETITION
FOR REMOVAL
AND DECISION
AFTER REMOVAL**

Applicant seeks disqualification of the workers' compensation administrative law judge (WCJ) based upon the allegation that the WCJ handed applicant's attorney a dismissal form and instructed the attorney to obtain applicant's signature on the document and later issued a notice of intent to dismiss this case. Applicant further alleges that the WCJ has made inappropriate comments indicative of bias.

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Disqualification (Report) recommending that we deny disqualification.

We have considered the allegations of the Petition for Disqualification and the contents of the WCJ's Report. Based on our review of the record we will deny disqualification at this time and instead, we construe applicant's petition as requesting a hearing on her petition for a protective order. We will grant applicant's petition for removal and as our Decision After Removal, we will rescind the July 7, 2025 minutes of hearing and return this matter to the trial level so that a hearing can proceed upon applicant's request for a protective order. After a record is created and after the

WCJ has decided the issue of whether to issue a protective order, any aggrieved party may seek appropriate relief.

1. Disqualification

Labor Code¹ 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 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

¹ All future references are to the Labor Code unless noted.

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, applicant has, in substance, sought a protective order to exclude defendant’s employer witness from a deposition. According to the minutes of hearing, applicant alleges that a protective order is necessary because defendant’s preferred witness put a gun in applicant’s mouth and physically assaulted her in front of her three-year-old child. (Minutes of Hearing, July 7, 2025.) On the July 7, 2025 Minutes of Hearing, the WCJ wrote that “This has already been addressed multiple times in multiple documents, orders and transcripts of proceedings.” However, we are unable to find anywhere in the record where the WCJ has conducted an evidentiary hearing on the request for protective order. No evidence is in the record. No order has issued.

The statements by the WCJ could give the appearance of having prejudged the matter and so it gives an appearance of bias. However, in reading the record as a whole, it appears that these statements are simply inartful references to prior status conferences. While we don't take the step of disqualification at this time, upon return this issue should be set for a hearing and if the events at trial or the WCJ's decision demonstrate an appearance of bias, applicant may again seek to disqualify the WCJ.

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 the trial off calendar for further development of the record. The trial judge issued this order without creating a record or explaining the need for further development of the record 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.)

Here, applicant filed a petition for a protective order on December 16, 2024. Thereafter, the WCJ proceeded as if the petition was denied, without conducting any hearing upon the petition, which was improper. However again, as noted above, legal error alone is not an adequate basis for disqualification.

Before *any* further proceedings commence, including whether applicant's case should be dismissed, applicant's petition for a protective order should proceed to trial. To that extent, we construe applicant's petition as seeking removal from the July 7, 2025 Minutes of Hearing. Although it appears that the minutes intended to set this issue for trial, we see no pre-trial conference statement in the record, which again is error. (Cal. Code Regs., tit. 8, § 10759 ["[T]he parties shall complete a joint Pre-Trial Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits by the close of the mandatory settlement conference."].)

We make no judgment at this time whether a protective order is warranted since without a formal record available to review, we have no ability to make this determination.

Accordingly, we deny disqualification at this time, we grant removal and as our Decision After Removal, we rescind the July 7, 2025 Minutes of Hearing and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ filed on July 25, 2025, is **DENIED**.

IT IS ORDERED that applicant's Petition for Removal from the Minutes of Hearing issued on July 7, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Minutes of Hearing issued on July 7, 2025, by the WCJ are **RESCINDED**.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, 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.**

**KRISTAN WILSON
ALBERT AND MACKENZIE
SOLIMON RODGERS**

EDL/mt

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