

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

LORI WILLIAMS, *Applicant*

vs.

WEBCOR BUILDERS; ZURICH NORTH AMERICA, *Defendants*

**Adjudication Numbers: ADJ7981413; ADJ2876358
San Francisco District Office**

**OPINION AND ORDER
DENYING 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, 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, § 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.)

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 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.”].)

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].

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, 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 3, 2025

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

LORI WILLIAMS

GALINE FRYE

WAI, CONNER & HAMIDZADEH, LLP

LAUGHLIN, FALBO, LEVY & MORESI, LLP

DUSTIN COLLIER, ESQ.

EMPLOYMENT DEVELOPMENT DEPARTMENT, STATE DISABILITY INSURANCE

DURARD, MCKENNA & BORG

AS/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR DISQUALIFICATION

Applicant Lori Williams has filed an unverified petition for disqualification dated June 21, 2024. Applicant contends that I am biased against her.

Facts

Applicant has filed a claim for a specific injury of January 23, 2006 while employed a carpenter apprentice (occupational group 380) in San Francisco by Webcor Builders. This date of injury has been assigned case number ADJ2876358. Defendant has admitted injury to the knees, cervical spine, lumbar spine, internal organs and psyche, and has denied injury to the shoulders and teeth. She also filed a second claim of injury to the neck, back, and musculo[sic] skeletal as a result of a cumulative trauma injury through May 9, 2006 while employed by Webcor Builders. This case has been assigned case number ADJ7981413.

The matter proceeded to trial in front of WCJ Gogerman. At the first day of trial on December 19, 2019, the minutes of hearing reflect that the claim of cumulative trauma through May 9, 2006 (ADJ7981413) was dismissed without prejudice. It does not appear that applicant refiled that claim. An Amended Application was filed on April 19, 2023 in both ADJ numbers, however, the date of injury listed on that amended application was only the specific injury of January 23, 2006. (EAMS ID 76675108) The parties continue to file pleadings in both ADJ numbers.

WCJ Gogerman issued a Finding of Fact and Order Vacating Submission on January 6, 2021 in ADJ2876358 in which he found the record lacked substantial medical evidence to make findings on the issue of alleged injury to the teeth and shoulders, the date the injury became permanent and stationary and the permanent partial disability. Further development of the record was ordered.

Both cases were set for a status conference in front of the undersigned on May 9, 2024.

The matter was taken off calendar for further discovery.

On June 11, 2024, applicant filed a declaration of readiness to proceed in ADJ7981413 and ADJ2876358 for both a mandatory settlement conference and status conference on the issue of “no medical treatment, no doctors” along with three petitions for penalties as well as a letter to the undersigned. The case was set for a status conference for August 14, 2024 in front of the undersigned.

Applicant's contentions

On June 24, 2024, Ms. Williams filed a petition for disqualification dated June 21, 2024. In her petition, she references "9721.12(3)(A)" and alleges that I am inexperienced in her case, ignored her request for medical treatment and that I saw no penalties.

Analysis

It is difficult to determine the specific reasons that the applicant believes the undersigned should be disqualified. The petition for disqualification does not contain an affidavit or declaration under penalty of perjury stating in detail the facts supporting the claim as required by Title 8, California Code of Regulations section 10960. Applicant is apparently contending that I should be disqualified as I exhibited bias. By reference to 9732.12(3)(A), the applicant is presumably referring to Title 8, Cal. Code of Regulations section 9721.12(a)(3), which states that a judge is disqualified in a workers' compensation case if "[t]he 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."

This matter was set for a status conference in front of the undersigned on May 9, 2024. My recollection of the status conference was that the parties advised that they still did not have a final report from the dental QME, so the matter was not yet ready to be returned to trial. I recall that applicant expressed difficulty in finding an appropriate treating physicians within defendant's Medical Provider Network who would accept her case, so I advised her that defendant's Medical Access Assistant's job was to assist injured workers in locating a new treating physician. The minutes reflect that the defendant was to provide her with the information about the Medical Access Assistant (MAA) within 10 days of the hearing. (EAMS Document ID 77942402). As the matter was set before me for a status conference, not an expedited hearing or trial, no rulings were made on applicant's entitlement to medical treatment.

I do not recall any specifics discussions about claims of penalties, nor do I recall any discussions about the merits of any claims for penalties, and I certainly did not make any rulings on penalties. The minutes do reflect that all claims for penalties were deferred. The matter was taken off calendar for further discovery.

There has been no demonstration of bias towards or against either party in this matter. I remain impartial and without bias towards either party in these cases.

Recommendation

I recommend that the applicant's June 21, 2024 Petition for Disqualification be denied.

DATE: July 1, 2024

Elizabeth Dehn

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE