

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

LORING WILLIAMS, *Applicant*

vs.

**CHINO VALLEY INDEPENDENT FIRE DISTRICT, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendant***

**Adjudication Numbers: ADJ786866 (MON 0293004); ADJ1049807 (MON 0293006)
Pomona District Office**

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

Applicant seeks removal of the Findings of Fact and Order (F&O) issued on December 23, 2024 by the workers' compensation administrative law judge (WCJ), which denied applicant's petition to quash a subpoena for records from Kaiser Permanente. Applicant further seeks disqualification of the WCJ based upon the allegation that the WCJ formed unqualified opinions as to the outcome of his case.

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

We have considered the allegations of the Petition for Disqualification, Petition for Removal, the Answer, and the contents of the WCJ's Reports. Based on our review of the record and based upon the WCJ's analysis of the merits contained in the WCJ's Disqualification Report, we will deny disqualification¹. We will grant applicant's Petition for Removal, and as our Decision After Removal we will rescind the December 23, 2024 F&O and return this matter to the trial level for further proceedings.

DISQUALIFICATION

Labor Code² 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, 316 P.2d 366.)

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.)

¹Chair Zalewski and Deputy Commissioner Schmitz were on the panel that issued a previous decision on September 18, 2020, but were unavailable to participate on this decision. Other panelists were appointed in their places.

² All future references are to the Labor Code unless noted.

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 [100 P.2d 511, 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, 153 P.2d 734 [“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, 155 P. 86; 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, 4 Cal. Rptr. 3d 519 [“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, 119 Cal. Rptr. 2d 341, 45 P.3d 280; *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 Disqualification Report we deny the petition for disqualification.

We would further note that applicant may be misconstruing the scope of a future medical award in workers' compensation. Applicant is permitted future medical care that is reasonably necessary to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600.) An award of future medical treatment may cover treatment of non-industrial conditions related to a body part, but only where such treatment is necessary to cure or relieve from the effects of the industrial injury. (See, *Myers v. Workers' Comp. Appeals Bd.* (1994) 59 Cal. Comp. Cas 1104 (writ den.); see also, *Melynk v. Workers' Comp. Appeals Bd.* (1990) 55 Cal. Comp. Cas 357 (writ den.); see also, *Doke v. Workers' Comp. Appeals Bd.* (2004) 69 Cal. Comp. Cases 1577 (writ den.).)

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, and for the reasons discussed below, the WCJ's denial of applicant's petition to quash is both incorrect and would lead to a violation of applicant's constitutional right to privacy, which constitutes irreparable harm. Accordingly, applicant has met the standard for removal.

Applicant's past medical history is constitutionally protected by his right to privacy. (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 841.) Although applicant waived a certain degree of privacy upon filing a claim, ". . . the scope of such 'waiver' must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities." (*Britt v. Superior Court of San Diego County* (1978) 20 Cal.3d. 844, 859.) The discovery sought must be directly relevant to the claim and disclosure by applicant must be essential to the fair resolution of the claim. (*Id.*)

In this case, defendant has sought all records from Kaiser Permanente for a period of five years. It further appears that the sole dispute is an issue of whether treatment to varicose veins is required to cure or relieve from the effects of applicant's industrial injury. Thus, it would appear that a blanket request for all treatment records may include records that are not directly relevant to the dispute, nor essential to its fair resolution, which would constitute a violation of applicant's right to privacy.

Upon return, we encourage the parties to first engage in good-faith discussion as to how defendant's request for records may be limited in scope to address the disputed issue. For example, the parties may wish to consider limiting the request to only those records related to treatment of varicose veins. If the parties are unable to resolve their dispute amicably, then the issue may be resubmitted and the trial judge should consider issuing appropriate discovery orders that balance applicant's right to privacy with defendant's right to discovery relevant medical records necessary to resolve the disputed issue. (See e.g., *Boyd v. Leaf Filter*, 2024 Cal. Wrk. Comp. P.D. LEXIS 262; see also, *Molina v. Bassett Unified Sch. Dist.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 361.)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification filed on January 7, 2025, is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Findings of Fact and Order issued on December 23, 2024 by the WCJ, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on December 23, 2024 by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2025

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

**LORING WILLIAMS
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

EDL/mc

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