WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MISAEL RENTERIA, ***Applicant***

vs.

JUAN CARLOS RIVERA VAZQUEZ;
DOG HOLDINGS, et al., ***Defendants***

Adjudication Number: ADJ10715642
San Jose District Office

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

Defendant, Shimin Xu, has filed multiple petitions seeking both removal and disqualification. Defendant seeks disqualification of the workers' compensation administrative law judge (WCJ) based upon various allegations that the WCJ is biased.[1]

Defendant seeks removal from a June 18, 2025 notice of hearing. Defendant argues that a WCJ may not place items on calendar sua sponte and that its petition to dismiss this matter should be summarily granted without a hearing.

We have not received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Disqualification/Removal (Report) recommending that we deny disqualification and removal.

We have considered the allegations of the Petitions for Removal and Disqualification 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 Report, we will dismiss the petition for disqualification and deny the petition for removal.

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[1] Defendant has filed various supplemental pleadings, none of which comply with the Rules of Practice and Procedure, and thus, they have not been considered. (Cal. Code Regs., tit. 8, § 10964.)

1. Disqualification

Labor Code[2] 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 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

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

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. Defendant has not provided any substantive affidavit or declaration under penalty of perjury, nor has defendant 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, based upon the WCJ's analysis of the merits of petitioner's arguments, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

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.)

The WCJ set this matter for a hearing on her own motion, which is entirely appropriate. To the extent that defendant argues that its petition for dismissal should be summarily granted, we would remind defendant that: "Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." (Cal. Code Regs., tit. 8, § 10515.) When all parties are ready to proceed, or when the parties have been provided a reasonable time to complete discovery, the WCJ may set the issue of defendant's motion to dismiss for a hearing, after which a record may be created, and a decision issued.

We admonish defendant, Shimin Xu, that petitions for removal may only be filed where there is a good faith and/or non-frivolous basis to allege irreparable harm or substantial prejudice. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10945.)

Furthermore, defendant 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 defendant's conduct in this matter persists, vexatious litigant proceedings may be instituted.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the June 18, 2025 notice of hearing, is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Disqualification of the WCJ filed on June 20, 2025, is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, 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.

MISAEL RENTERIA
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAKLAND)
RATTO LAW

EDL/mt

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