

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

MARCOS DELGADO, *Applicant*

vs.

**TADEMA CATTLE COMPANY;
NATIONWIDE AGRIBUSINESS, *Defendants***

**Adjudication Numbers: ADJ13810218, ADJ13810219
Riverside District Office**

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

Lien claimant, Susan Garrett, seeks disqualification of the WCJ and argues that the WCJ has expressed unqualified opinions on the merits of the lien claim and engaged in improper ex-parte communication with applicant while attempting to reach a resolution of this claim.

We have not received an answer from any party. The WCJ filed a Report and Recommendation (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 grant the Petition for Disqualification, however we do so on grounds not raised in the petition. As the issue raised is the division of an attorney's fee award, the decision on such award initially rests with the WCJ who issued the award. We will return this matter to the Presiding WCJ for reassignment. If the WCJ who issued the order approving attorney's fees is not available to decide the division of attorney's fees, the Presiding WCJ may exercise their discretion and reassign the case to another WCJ.

FACTS

Per the WCJ's Report:

The applicant was injured while at work cutting grass on August 31, 2020. Garrett Law Glendale filed the Application for Adjudication on or about November 2, 2020. There were three hearings before Garrett Law Glendale petitioned to be

relieved as attorney of record on August 1, 2024. WCALJ Wilson signed Order relieving Garrett Law Group as being attorney of record for Marcos Delgado on August 23, 2024.

The Pro Per applicant settled by Compromise and Release, approved on 02/28/2025, \$8,550.00 was ordered withheld by defendant and to be held in trust by WCALJ Wilson.

The applicant filed a Declaration of Readiness (DOR) regarding attorney fees held in trust on April 14, 2025 (EAMS DOC ID 79069137). In the DOR by Marcos Delgado, it was noted that Mr. Delgado needed an interpreter for hearing, to be provided by defense. It appears that there were three hearings before trial date: A lien conference on 05/07/2025, a status conference on 06/04/2025, and a mandatory settlement conference on 07/30/2025. The case was scheduled for trial on September 17, 2025. Garrett Law Glendale is a lien claimant and filed a lien on 10/24/2024. There is also a lien of Sidhu Chiropractic and Joyce Altman Interpreters.

A regular trial was set with the undersigned and mostly all events took place on 09/17/2025 (see MOH EAMS DOC ID 79580486). There were also supplemental minutes completed and attached to one-page MOH. The MOH, Supplemental MOH, and one page exhibit list by applicant were copied and personally served on hearing representative for Garrett Law Group, Francisco Barbosa. There was no interpreter at any of the hearings after the Declaration of Readiness by the applicant. A Petition for Disqualification (hereinafter Petition) was filed by Garrett Law Glendale on September 29, 2025 (EAMS DOC ID 60290016). The Petition was authored by Lance Garrett, hearing representative for lien claimant. Attached was an unsigned declaration of Francisco Barbosa, and a signed verification of Petition for Disqualification from Susan Garrett, Esq.

(WCJ's Report, pp. 2-3.)

DISCUSSION

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.)

Here, we need not discuss the issues raised in applicant’s petition as it appears that this matter was not properly set before the current WCJ.

Labor Code section 5700 requires that where a hearing is adjourned it, “shall be continued to be heard by and *shall* be concluded and the decision made *by the workers’ compensation judge who previously heard it.*” (Lab. Code, § 5700, emphasis added.) WCAB Rule 10346(c), which interprets or makes specific Labor Code section 5700 provides, “To the extent practicable and fair, supplemental proceedings *shall* be assigned to the workers’ compensation judge who heard the original proceedings.” (Cal. Code Regs., tit. 8, § 10346 (c), emphasis added.)

It is a principle of statutory construction that the word “shall,” as used in the Labor Code, ordinarily connotes a mandatory duty. (Lab. Code, § 15 [“‘[s]hall’ is mandatory and ‘may’ is permissive”]; see also, *Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 109; *Morris v. County of Marin* (1977) 18 Cal.3d 901, 907.) Applying this principle to Labor Code section 5700, it is clear that there is a mandatory duty for the same WCJ to hear subsequent matters related to issues previously heard by them.

Labor Code sections 5001 and 5002 require that all settlements of workers’ compensation cases be approved by a WCJ or the Appeals Board. Thus, a WCJ must individually consider the adequacy of each settlement before approval. If the WCJ determines that the settlement should not be approved for any reason, they may set a hearing, have the parties personally appear, and create an evidentiary record. (Cal. Code Regs., tit. 8, § 10700.) Furthermore, Labor Code section 4061(h)(2) requires the WCAB to determine if a settlement agreement is in the best interest of the employee.

In this case, WCJ Wilson considered the adequacy of the C&R, and approved it by way of the OACR. Accordingly, any issues related to the OACR should remain with WCJ Wilson for adjudication, consistent with Labor Code section 5700. Specifically, WCJ Wilson has already made the initial decision regarding attorney’s fees, and the pending issue of division of attorney’s fees involves interpretation of the C&R approved by him. Thus, the associated trial is properly assigned to WCJ Wilson.

Because our opinion rests on other grounds, we do not reach a determination as to whether the specific requirements of WCAB Rule 10788 were met here.

Accordingly, we grant the Petition for Disqualification, on other grounds, and return this matter to the Presiding WCJ for reassignment to WCJ Wilson. If WCJ Wilson is not available to hear the matter the Presiding WCJ may exercise their discretion and reassign the matter.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Disqualification of the Workers' Compensation Appeals Board that this matter is **RETURNED** to the Presiding WCJ to reassign the matter to WCJ Wilson. If WCJ Wilson is not available to hear the matter the Presiding WCJ may exercise their discretion and reassign the matter.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 20, 2026

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

**MARCOS DELGADO
LAW OFFICES OF MULLEN & FILIPPI
GARRETT LAW**

EDL/mt

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