

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

EDWARD ZAFFINA, *Applicant*

vs.

**NBC UNIVERSAL, INC.; HELSMAN MANAGEMENT SERVICES;
TWENTIETH CENTURY FOX FILM CORPORATION;
TRAVELERS INSURANCE; PARAMOUNT PICTURES CORPORATION;
ACE AMERICAN INSURANCE; CAST & CREW PRODUCTION PAYROLL, LLC;
ENTERTAINMENT PARTNERS ENTERPRISES, LLC;
ABC SIGNATURE, LLC, *Defendants***

**Adjudication Numbers: ADJ15911190; ADJ15911191; ADJ15911697;
ADJ15911698; ADJ15915542; ADJ15915543; ADJ17731638
Van Nuys District Office**

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

Applicant has filed a timely, unverified objection, which appears to be a petition for removal of the February 14, 2024 orders of a workers' compensation administrative law judge (WCJ) continuing his cases to another trial date of May 29, 2024 after applicant failed to appear at trial, as well as ordering his seventh case consolidated with six others previously ordered consolidated by the presiding workers' compensation administrative law judge (PWJC). The objection also requests disqualification of several WCJs in the Van Nuys district office (VNO) and requests removal of his cases from the VNO venue. The WCJ, treating the objection as a petition for removal and disqualification, issued a joint report and recommendation (Report) to deny applicant's petition.

Thereafter, on May 28, 2024, applicant filed a supplemental pleading entitled petition for disqualification and removal of all cases to a board in a distant county. (Cal. Code Regs., tit. 8, § 10964.) The petition reiterates his prior request for disqualification of the aforementioned WCJs in the Van Nuys district office, and removal of all of his cases from that venue. The WCJ issued a supplemental Report recommending denial of the petition.

We have considered the allegations of the initial objections of the applicant as well as the supplemental petition for disqualification and removal filed by the applicant, and the contents of the reports of the WCJ with respect thereto. To the extent that applicant's May 28, 2024 petition raises the same issues as set forth in his initial objection to the February 14, 2024 orders of the WCJ as opposed to any new or supplemental order issued in this matter, we will treat the petition filed on May 28, 2024 as a supplemental pleading to applicant's initial objection requesting removal and disqualification. Based on our review of the record and for the reasons set forth in the reports of the WCJ, we will deny applicant's Petition for Removal and Disqualification.

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).)

A review of the existing record documents that the Presiding WCJ consolidated six of applicant's cases without objection on February 16, 2023. Thereafter, the issue of consolidation of the seventh case was left to the trial judge per the Minutes of Hearing of November 28, 2023, and consolidation of the seventh claim was found appropriate by the trial judge at the February 14, 2024 hearing. The matter was ordered consolidated and continued to May 29, 2024, due to applicant's failure to appear at trial.

On February 14, 2024, applicant thereafter filed his objection and intent to seek disqualification and removal of the orders issued on that date by the WCJ.

On May 28, 2024, petitioner filed an additional pleading entitled petition for disqualification and removal, and did not appear at the trial set for May 29, 2024. A notice of intention to dismiss (NIT) applicant's case issued at that hearing, and an objection to the NIT was filed by applicant on June 13, 2024. No hearing as to the objection nor order of dismissal has occurred at this time.

Thus, after a review of the existing record, 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. Accordingly, we will deny the petition to the extent it seeks removal.

Applicant also contends that several WCJs should be disqualified from further proceedings on his case, and, insofar as the entire VNO office has a conflict of interest, all of its WCJs must be disqualified. To the extent the petition contends that the WCJs should be disqualified, 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*

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].

(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.”].)

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, 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, we will deny the petition to the extent it seeks to disqualify the WCJs.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for removal and disqualification in response to the WCJ's orders of February 14, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2024

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

**EDWARD ZAFFINA
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN
PEARLMAN, BROWN & WAX
MICHAEL SULLIVAN & ASSOCIATES
LAW OFFICE OF CARRIE O'CONNOR
GURVITZ & MARLOWE
MISA, STEFEN, KOLLER AND WARD
LISTER, MARTIN & THOMPSON
PARKER AND IRWIN**

LAS/abs

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