

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

MARIA GONZALEZ, *Applicant*

vs.

**BEYOND RESOURCE SOLUTIONS, INC.;
INNOWORKS UNITED WISCONSIN INS. CO., *Defendants***

**Adjudication Number: ADJ16064041
Los Angeles District Office**

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

Applicant seeks disqualification of the workers' compensation administrative law judge (WCJ) based upon the WCJ's alleged conduct at trial. Applicant argues that the WCJ has formed or expressed an unqualified opinion or belief as to the merits of the action and that the WCJ evinced enmity against or bias toward applicant.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Disqualification (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 and for the reasons discussed below, we will grant the Petition for Disqualification, and we will issue an order reassigning this matter to presiding judge Robert Rassp for further proceedings.

FACTS

On April 1, 2022, applicant filed an application for adjudication alleging that applicant sustained a cumulative injury to the right arm, right hand, right fingers, back, waist, right shoulder, and feet. (Application for Adjudication, ADJ16064041, April 1, 2022.)

On September 27, 2022, defendant filed a Declaration of Readiness to Proceed (DOR). Applicant did not object to the DOR. After two continuances, the matter proceeded to a hearing on May 1, 2023, wherein the matter was set for trial on a panel specialty dispute.

The hearing occurred on August 2, 2023. According to the Minutes of Hearing, the issues raised at trial were: “(1) Is the chiropractic panel obtained by the applicant valid? (2) Did the applicant fail to properly request and/or serve the panel? and (3) Is a Chiropractic Specialty appropriate for the case given the body parts and medical issues?” (Minutes of Hearing, August 2, 2023, p. 2; see Report, p. 3.)

Per the Minutes of Hearing, the WCJ issued a notice of intent to impose sanctions as follows:

LET THE RECORD REFLECT that the Board is issuing a Notice of Intention for Sanctions against Applicant's Counsel under Labor Code section 5813 **for bringing an issue to the Court that lacks merit.** Applicant's Counsel is also ordered to file a Trial Brief on the issue of the proper service of known parties. That will be due 20 days from today, August 22, 2023. Defense will have leave to file a response and that will be due 20 days after August 22, 2023, making that September 11, 2023. Defense has also been notified that they may choose to file a Petition for Cost, Sanctions, and attorney's fees.

(Minutes of Hearing and Notice of Intent for Sanctions, ADJ16064041, August 10, 2023, p. 3, lines 9-14, (emphasis added).)

The Minutes of Hearing were served on August 11, 2023 by the WCJ, and by defendant on September 19, 2023. Applicant filed the petition for disqualification on October 6, 2023.

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); see also, Cal. Code Regs., tit. 8, § 10960.)

Labor Code section 5310 states in relevant part that: “The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem

necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim.” (See also Lab. Code, §§ 123.7, 5309.)

At the trial on August 2, 2023, the WCJ deferred submission of the matter to receive post-trial briefing. Notwithstanding the fact that the matter was not yet submitted, so that a decision on the merits had not issued, the WCJ issued a notice of intent to impose sanctions, which contains an **unqualified statement** that applicant’s position “lacks merit.” Because the notice contained no reference to a specific issue, it does not provide applicant with an adequate basis to object. More significantly, the unqualified statement as to the merits creates an appearance that the WCJ has “prejudged” the case and implies that she believes that applicant’s case is without merit.

While we agree with the WCJ that applicant’s Petition may not be timely under WCAB Rule 10960 (Cal. Code Regs., tit. 8, § 10960), Labor Code section 5311 does not include a statutory deadline to object, and under our authority in Labor Code section 5310, we may transfer the proceedings on any case. We conclude that the unqualified statement as to the merits in the notice is not appropriate and is sufficient to warrant disqualification under Code Civil Procedure section 641(f). Thus, we need not address the contentions in applicant’s Petition, and the issue of whether the WCJ actually evinced enmity or bias toward applicant.

To be clear, the Appeals Board has found multiple other sanctionable acts by both representative Lance Garrett and attorney Susan Garrett in other cases. (See e.g., *Alfredo Ledezma et al. v. Kareem Cart Commissary and Mfg. et al.*, 2024 Cal. Wrk. Comp. LEXIS 12 (Appeals Board En Banc) [Notice of Intent]; *Alfredo Ledezma et al. v. Kareem Cart Commissary and Mfg. et al.*, 2024 Cal. Wrk. Comp. LEXIS ___ (Appeals Board En Banc) [Order Imposing Sanctions and Costs].) While patterns of conduct may inform the analysis, they must not bias the analysis.

All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at 158.)

As the WCJ in this case expressed an unqualified opinion on the merits of the case prior to its submission, pursuant to WCAB Rule 10960, disqualification is warranted. (Code Civ. Proc., § 641(g); see also, Cal. Code Regs., tit. 8, § 10960.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Disqualification filed on October 6, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Disqualification that pursuant to Labor Code section 5310, the proceedings in this matter are reassigned to the Presiding Judge Hon. Robert Rapp, of the Los Angeles District Office for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 17, 2024

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

**MARIA GONZALEZ
GARRETT LAW GROUP. P.C.
BERNAL & ROBBINS
DJG LAW GROUP**

EDL/mc

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