

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

**YOLANDA TATE, *Applicant***

**vs.**

**VERIZON WIRELESS;  
NATIONAL UNION FIRE INSURANCE; SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ8923414; ADJ7681246  
San Bernardino District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
DISQUALIFICATION**

Applicant has filed a letter seeking “removal” of the workers’ compensation administrative law judge (WCJ) that is assigned to her cases. We will treat the letter as a Petition for Disqualification.

We have considered the Petition for Disqualification and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons stated in the WCJ’s Report, which we adopt and incorporate, we will deny the Petition for Disqualification.

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].)<sup>1</sup> 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 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.”])

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<sup>1</sup> 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].

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, as discussed in the WCJ's Report, 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, the petition will be denied.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Disqualification is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 26, 2024**

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

**YOLANDA TATE  
CRUZ & CRUZ PC  
LAW OFFICES OF MICHAEL P. MANSFIELD**

**AS/mc**

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

## **REPORT AND RECOMMENDATION**

### **INTRODUCTION**

The Applicant filed an untimely, verified Petition for Removal. After review of the Applicant's Petition, it appeared the Applicant would like the undersigned WCJ disqualified from her cases. The Petition will be addressed as a Petition to Disqualification.

### **STATEMENT OF FACTS**

The Applicant sustained injury arising out of and in the course of employment to her right hand, psyche, and colonic/rectal disorder as a result of a June 4, 2008 injury, ADJ 8923414. During the period December 15, 2009 through December 15, 2010, ADJ7681246, the Applicant sustained injury arising out of and in the course of employment to her cervical spine, right shoulder, right hand/ wrist, right upper extremity in the form of CRPS, left wrist/hand, psyche, colonic/rectal disorder and sleep disorder.

On October 16, 2013, Dr. Ashley performed right carpal tunnel surgery on the Applicant. Following surgery the Applicant developed CPRS in her right upper extremity. Dr. Mandel had initially evaluated the Applicant in the capacity of Agreed Medical Examiner in orthopedics. There were discrepancies in the medical records and reporting by Dr. Mandel. The undersigned, appointed Dr. Simpkins as a regular physician pursuant to Labor Code section 5701. Dr. Simpkins evaluated the Applicant on one occasion. He issued three reports and was deposed by the parties on one occasion.

PQME Dr. O'Brien evaluated the Applicant for psychiatric complaints. Dr. O'Brien issued two reports and was deposed by the parties on one occasion. PQME Dr. Major evaluated the Applicant for internal complaints. Dr. Major issued three reports and was deposed by the parties once. The Defendant used Diana Pelletier as their vocational expert. She issued two reports. The Applicant used Laura Wilson as their vocational expert. She issued one report. An Amended Findings and Award issued on October 3, 2022 which found permanent disability of sixty-five percent (65%) in ADJ7681246, and permanent disability of thirty nine percent (39%) in ADJ8923414.

The Applicant sought Reconsideration of the Amended Joint Findings, Award, and Order. An Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration

issued on December 6, 2022. The cases were scheduled for a status conference on February 1, 2023. The parties were ordered to develop the medical, and vocational record at the status conference.

On June 4, 2021 Applicant's Attorney petitioned to be relieved as attorney of record. Applicant filed a petition opposing Mr. Levin's dismissal. After discussions with the parties, Mr. Levin agreed to continue representation of the Applicant. On March 9, 2023, Mr. Levin renewed his request to be relieved as attorney of record. Applicant did not file a petition opposing Mr. Levin's dismissal as attorney of record. The undersigned granted Mr. Levin's request to be relieved as attorney of record on March 23, 2023. The pro per Applicant now seeks disqualification of the undersigned as WCJ in her cases.

### CONTENTIONS

#### **CONTENTION 1: THE WCJ VIOLATED THE APPLICANT'S RIGHT TO DUE PROCESS AND DISCRIMINATED AGAINST HER BECAUSE OF HER NATIONALITY**

#### **CONTENTION 2: THE WCJ FAILED TO REVIEW ALL EVIDENCE IN THE CASES**

#### **CONTENTION 3: THE WCJ VIOLATED THE APPLICANT'S FOURTEENTH AMENDMENT AND WAS UNETHICAL**

WCAB rule 10960, states in relevant part,

“Proceedings to disqualify a Workers’ Compensation judge under labor Code section 5311 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 specified in section 641 of the Code of Civil Procedure. The Petition to Disqualify a Workers’ Compensation judge, and any answer shall be verified upon oath in the manner required for verified pleadings in courts of record. ...”

The Court has previously held “The allegations in a statement charging bias and prejudice of a judge must set forth specifically the facts on which the charge is predicated. A statement containing nothing but conclusions and setting forth no facts constituting a ground of disqualification may be ignored”, and “where 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)

The Applicant has alleged she did not receive due process and felt she had been discriminated against because of her nationality. The Applicant has also alleged the undersigned violated her Fourteenth Amendment rights, was unethical during the case, and that the undersigned failed to review all evidence in her case. The Applicant failed to describe any instance related to discrimination due to her nationality; how and when the undersigned violated her Fourteenth Amendment rights, or how and when the undersigned was unethical during any proceedings.

In all proceedings before the undersigned, either on a conference calendar or at trial the Applicant had been represented by counsel. The undersigned can state unequivocally at no time did I discriminate against the Applicant because of her nationality, denied her due process, violate her Fourteenth Amendment rights, demonstrate or engage in any unethical behavior, or fail to review all evidence submitted by the parties during the pendency of her cases.

RECOMMENDATION

Based on the above it is respectfully recommended that the Petition for Removal/Disqualification be denied.

05/30/2023

TRACY L. HUGHES

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE