

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

ANA ORDAZ DE AMAYA, *Applicant*

vs.

**INTERSTATE MEAT CO., INC.,
dba STERLING PACIFIC MEAT CO.;
COMPWEST INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18267667
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
DISQUALIFICATION**

We have considered the allegations of the Petition for Disqualification and the contents of the report of the workers' compensation administrative law judge (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].)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* (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.”].)

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].

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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 14, 2025

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

**ANA ORDAZ DE AMAYA
LAW OFFICES OF JACK PONCE
SPARA & NAVARRA**

SL/abs

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

**REPORT AND RECOMMENDATION ON DEFENDANT’S PETITION FOR
DISQUALIFICATION OF WORKERS’ COMPENSATION JUDGE**

I.

INTRODUCTION

- | | |
|-------------------------------|--|
| 1. Applicant’s Occupation: | Butcher/Meat Cutter |
| Applicant’s Age: | 58 |
| Date of Injury: | CT 2/1/1998 – 9/21/23 |
| Parts of Body Injured: | Right Shoulder, Thoracic Spine
(Denied Injury) |
| 2. Identity of Petitioner: | Defendant’s Attorney |
| Timeliness: | Yes |
| Verification: | Yes |
| 3. Date of Findings and Award | N/A |
| 4. Defendant’s Contentions: | Albert Andrew Navarra partner at Sapra Navarra
should not have to appear in person for hearing and
Judge Homen should be disqualified. |

II.

STATEMENT OF THE CASE AND FACTS

Defendant by its attorney of record Sapra & Navarra (hereinafter referred to as “Defendant”) filed “Petition to Disqualify Assigned Workers’ Compensation Judge” per Labor Code Sec. 5311 and Workers’ Compensation Appeals Board Rules of Practice and Procedure Section 10960 (hereinafter the “Petition”) on January 23, 2025, and received by the WCJ on January 27, 2025.

DISCUSSION

Applicant’s counsel filed a Declaration of Readiness to Proceed to Priority Conference on June 3, 2024. A hearing was held on July 11, 2024, before Judge Ashton, which was continued due to defendant serving multiple documents and disc on applicant’s counsel. Judge Ashton continued the matter to August 1, 2024. On August 1, 2024, defendant requested a continuance stating a data breach had occurred near the time the Declaration of Readiness was filed however, no mention of a data breach was made at the prior hearing on July 11, 2024, per Judge Ashton’s Minutes of Hearing. Judge Ashton continued the matter to August 29, 2024. On August 29, 2024, Judge Ashton set the matter for Trial before Judge Homen for November 6, 2024. On November 6, 2024, at the trial with Judge Homen the parties discussed the case. The parties agreed to proceed to an additional panel in surgery – general vascular (MSG) to develop the record. The parties were

to “discuss” obtaining a formal job analysis, which the defendant opposed. To move the matter forward, the WCJ issued an Order for Additional Panel in Surgery-General Vascular (MSG), as agreed to by the parties, the defendant initialed for service of the Order as indicated on the bottom left corner. On November 25, 2024, defendant filed a Petition for Removal. On November 27, 2024, the WCJ issued an Order Rescinding the Panel Order and set the matter for hearing. At the conference on January 14, 2025, the WCJ continued the matter to an in person Mandatory Settlement Conference to discuss the issue. The WCJ ordered the appearance of Albert Andrew Navarra a partner at Sapra & Navarra, as a contract attorney had made all the prior appearances.

ANALYSIS

Title 8, California Code of Regulations, Section 10960 allows a party to petition to disqualify a WCJ for cause as set on in Labor Code, Section 5311. Labor Code, Section 5311 provides

“Any party to the proceeding may object to the reference of the proceeding to a particular workers' compensation judge upon any one or more of the grounds specified in Section 641 of the Code of Civil Procedure and the objection shall be heard and disposed of by the appeals board. Affidavits may be read and witnesses examined as to the objections.”

California Code of Civil Procedure, Section 641 provides:

“A party may object to the appointment of any person as referee, on one or more of the following grounds:

- (a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.
- (b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.
- (c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.
- (d) Having served as a juror or been a witness on any trial between the same parties.
- (e) Interest on the part of the person in the event of the action, or in the main question involved in the action.
- (f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.
- (g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.”

Title 8 California Code of Regulations §10960

“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.

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.

A petition for disqualification shall be referred to and determined by a panel of three commissioners of the Appeals Board in the same manner as a petition for reconsideration”

Defendant's Petition sets forth no specific allegations as to why I should be disqualified. Petitioner does not set forth any grounds specified in CCP 641. The Petition fails to specify in detail the alleged bias, but again the Petitioner failed to specify any reason for disqualification. (See *Robbins v. Sharp Healthcare* (2006) 71 CCC 1291, 1306-09)

It appears that the Petitioner wants to litigate its case before the appeals board when the case is not ripe. The matter was taken off calendar to develop the record. The Petitioner appears to have had second thoughts on proceeding to a Panel to develop the record and filed a Petition for Removal. The WCJ rescinded the Order and set for conference so that the parties may discuss the issues raised in the “Removal” including how to proceed. The issue is not as to witnesses or any Offers of Proof, which the court can order. The Petition for Removal is not pending as the Order was rescinded. Within the Declarations' the Petitioner appears to have laid out its case in chief for the appeals board to decide when the Petition is for Disqualification. The Declaration reiterates the Defendant's position as the evidence it wishes to submit for the case in chief, including rehashing its trial briefs, etc.

It would appear that the only real issue is that Albert A. Navarra does not wish to appear in person before the court to discuss the case. As Albert A. Navarra is the partner in the firm, it would be in the best interests of the parties if he were present to represent his client's interests. The hearings and filings in the court have been by a contract attorney. The WCJ is merely presenting the opportunity for Albert A. Navarra to present its case before the WCJ.

I am not biased against Defendant. I have not expressed any opinion or belief in the merits of any issue in contention in this matter. I do not have personal knowledge of disputed evidentiary facts concerning the proceedings.

I leave it to the board to determine if Defendant's tactics are causing unnecessary delay, which warrant sanctions in this matter.

Recommendation

For the foregoing reasons, I recommend that the Petitions for Disqualification filed by Defendant on January 23, 2025, be denied.

Date: January 28, 2025

Tammy Homen
Workers' Compensation Judge