

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

ANNA HONG, *Applicant*

vs.

**SBC INTERNET SERVICES/PACIFIC BELL; AMERICAN HOME ASSURANCE,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ2419734 (SFO 0504906);
ADJ2647713 (SFO 0504908); ADJ292246 (SFO 0505632)
San Francisco District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR DISQUALIFICATION**

Applicant in pro per seeks disqualification of presiding administrative law judge (PWCJ) Eugene Gogerman from this case.

Applicant argues that the PWCJ expressed an unqualified opinion as to the merits of her claim or demonstrated bias or enmity against her by recommending that her Petition for Reconsideration of the August 30, 2022 Joint Finding of Facts be denied.

We did not receive an Answer.

The PWCJ filed a Joint Report and Recommendation on Petition for Disqualification (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and as discussed below, we will dismiss the Petition.

FACTUAL BACKGROUND

In the Report, the PWCJ states:

The Appeals Board's continuing jurisdiction in this matter stems from a 2010 joint award of further medical care to the upper extremities. Applicant has been without attorney representation since approximately 2013. In 2022, she requested an expedited hearing regarding defendant's alleged failure to provide her with treatment including transcutaneous electrical nerve stimulation ("TENS") supplies. Having considered the evidence introduced by both parties at the resulting trial, I issued a decision finding, inter alia, that applicant had not made a sufficient showing under *Patterson v. The Oaks Farm* (2014) 79 Cal. Comp. Cases 910.

Applicant sought reconsideration, which was granted. In its eventual Opinion and Decision, the Appeals Board remanded with instructions for me to make a number of additional findings relating to the TENS supplies. In furtherance of this decision, I set the cases for a hearing on July 22, 2024. Regrettably, as set forth in detail in the resulting minutes,[fn] defendant failed to appear at that time and the hearing was continued.[fn] I did inform applicant, on the record, that “my expectation is that at the conclusion of these conferences, the parties will have identified the evidence that they respectively intend to rely on, and we will then set another trial date so that I can make findings on those four issues specified by the Appeals Board panel in its decision.”

...

The contentions raised in applicant’s petition appear to boil down to her disagreement with the findings made in my last trial decision. She was undoubtedly aggrieved by that decision and appropriately sought reconsideration, the result of which was an order vacating the decisions and instructions to make additional findings. Applicant has not provided any specific support for the allegations regarding my conduct toward her and I deny that either bias or enmity has been exhibited. Indeed, as noted above, the entirety of the most recent hearing was conducted on the record (with the exception of a telephone call placed to the office of defense counsel in applicant’s presence) and is therefore reflected in the minutes of hearing. Likewise, the earlier minutes from this case will reflect that applicant has been accommodated at various stages of litigation in ways that a represented litigant likely would not have been.

Turning to the substance of the currently pending dispute over TENS supplies, it is axiomatic that a trial judge’s ruling against one of the parties is not a basis for disqualification for cause. Any future decision in the case will be subject to reconsideration if sought.

...

It must also be noted that applicant’s petition was filed long after I was assigned as the trial judge and some two years after I issued the decision regarding the disputed TENS supplies. Due to the absence of specific allegations or bias or enmity in the petition, it is unclear when the alleged basis for disqualification became known to the petitioner, but there is nothing documented in the minutes of the July 22, 2024, hearing to suggest that applicant gained the requisite knowledge that day. Thus, the petition does not appear to be timely.

...

I recommend that applicant’s petition for disqualification, filed herein on July 30, 2024, be denied.
(Report, pp. 1-3.)

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.) 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 of 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 . . . [and] shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known." (Cal. Code Regs., Tit. 8, § 10960.)

In this case, the pleadings record shows that (1) PWCJ Gogerman filed a Report and Recommendation on Petition for Reconsideration recommending that reconsideration of the August 30, 2022 Joint Finding of Facts be denied; and (2) the Petition for Disqualification herein was filed on July 30, 2024. Based upon applicant's own pleadings, applicant knew of the alleged grounds to disqualify PWCJ Gogerman twenty-three months before filing her Petition.

Additionally, as stated in the Report, applicant could not have been made aware of other alleged grounds for disqualification at the July 22, 2024 conference because the minutes of that proceeding contain no opinion expressed by PWCJ Gogerman as to the merits of applicant's claim. (Report, p. 2.)

Hence we conclude that the Petition is untimely.

Accordingly, we will dismiss the Petition.

Having concluded that the Petition is untimely, we nevertheless address applicant's contention that the PWCJ expressed an unqualified opinion as to the merits of her claim or demonstrated enmity or bias against her by recommending that her Petition for Reconsideration of the August 30, 2022 Joint Finding of Facts be denied.

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, 316 P.2d 366, 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 [100 P. 2d 511, 5 Cal.Comp.Cases 61].) 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, 153 P.2d 734 ["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, 155 P. 86; 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, 4 Cal. Rptr. 3d 519 ["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, 119 Cal. Rptr. 2d 341, 45 P.3d 280; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310-1311 (Significant Panel Decision).)

Here, applicant alleges that PWCJ Gogerman expressed bias and enmity against her on the grounds that he “clearly indicated his position to the WCAB and his order on the August 30, 2022, trial that the TENS equipment is not subject to the Patterson case.” (Petition, p. 3.)

This alleged expression of opinion does not exhibit any bias or enmity on the part of PWCJ Gogerman but merely indicates how he may have considered the evidence produced before him.

Accordingly, we are unable to discern grounds to disqualify PWCJ Gogerman.

Accordingly, we conclude that had the Petition not been subject to dismissal as untimely, we would deny it on the merits.

Accordingly, we will dismiss the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Disqualification of PWCJ Eugene Gogerman is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 7, 2025

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

**ANNA HONG
COLEMAN CHAVEZ & ASSOCIATES**

SRO/cs

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