

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

ARMANDO LINAN, *Applicant*

vs.

**SHERMAN OAKS HOSPITAL (PRIME HEALTHCARE), SAFETY NATIONAL
CASUALTY CORPORATION, administered by AMERICAN CLAIMS MANAGEMENT,
*Defendants***

**Adjudication Numbers: ADJ16699711; ADJ16699722
Van Nuys District Office**

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

Applicant seeks disqualification of the workers' compensation administrative law judge (WCJ) assigned for trial in this matter, pursuant to WCAB Rule 10960 (Cal. Code Regs., tit. 8 § 10960), alleging that both the relationship of the WCJ's spouse with defendant, as well as statements made by the WCJ at the hearing demonstrate that disqualification will further the interests of justice due to a substantial doubt as to the WCJ's capacity to be impartial.

We received a Report and Recommendation (Report) from the WCJ, which recommends that the Petition be denied.

Thereafter, both applicant and defendant filed written responses to the WCJ's Report.

We remind the parties that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (WCAB Rule 10964(b)(Cal. Code Regs., tit. 8, § 10964(b).) While the parties did not file such petitions, we exercise our discretion to approve their filing.

We have considered the allegations of the Petition for Disqualification (Petition) filed by the Applicant, the contents of the report of the workers' compensation administrative law judge (WCJ), and the supplemental pleadings of the parties with respect thereto. Based on

our review of the record, we will grant applicant's petition for disqualification of the assigned trial judge, order the assigned trial judge disqualified, and return this matter to the Presiding Judge for reassignment of the case to a new WCJ.

While the WCJ may not have "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or demonstrated "[t]he existence of a state of mind ... evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)), we find there is an appearance of bias sufficient to warrant disqualification.

BACKGROUND

Applicant filed an Application for Adjudication (Application) on September 16, 2022, alleging he sustained an industrial injury to his upper extremities as a result of continuous trauma during the period March 26, 2017 through March 26, 2020, arising out of and in the course of employment with defendant (ADJ16699722). An Application was also filed alleging a specific industrial injury to the right shoulder occurring on September 9, 2022 as a result of a slip and fall (ADJ16699711). On December 9, 2022, a Petition for Increased benefits pursuant to Labor Code section 132(a) was filed alleging discriminatory conduct by defendant as a result of the September 9, 2022 incident.

Applicant was evaluated for both claims by Panel Qualified Medical Evaluator (QME) Clive Segil, M.D., who issued a report dated January 19, 2023. Supplemental reporting issued by Dr. Segil on April 3, 2023 and on June 15, 2023. On August 28, 2023, defendant filed a Declaration of Readiness to Proceed (DOR) to trial, and a Mandatory Settlement Conference (MSC) was held on February 22, 2024, at which time the matter was set for trial on May 9, 2024.

On May 9, 2024, the WCJ issued an Order taking the matter off calendar (OTOC). The Minutes of Hearing (MOH) indicate that both parties and the applicant were present at the trial setting, and the Order indicates it was issued in response to a joint request of the parties to go off calendar for further discovery. (MOH, 5/9/24.)

On May 13, 2024, applicant filed a verified petition for disqualification of the trial judge, alleging that the WCJ's actions at the May 9, 2024 hearing demonstrated bias against the applicant as well as expressing an opinion as to the likely outcome of the trial such that he would be deprived of a fair hearing. In the petition, applicant asserts that the WCJ: 1) disclosed that his wife works at Prime Healthcare, of which defendant Sherman Oaks Hospital is a member, thereby disqualifying

him as a WCJ in the case per AD Rule 9721.12(a)(7)¹, 2) advised the parties that he was soon to be a patient of Prime Healthcare, and 3) told the parties he may be more likely to side with Prime Healthcare in this case. Petitioner also alleges that the trial did not go forward because the WCJ stated he was sick and would be going home, and that the Minutes do not accurately reflect what actually transpired. Petitioner disputes that the parties jointly requested an order taking the matter off calendar, and that they were prepared to proceed to trial.

The WCJ issued a Report in response to the Petition, refuting the facts as set forth therein, and made several statements relating to the events occurring at the hearing, including that applicant was not available for trial, the medical reports were not filed according to regulation, and that a review of the records indicated they were not properly obtained, handled or served. The WCJ indicated further discovery was needed, and that was why the matter was taken off calendar. Further, the WCJ recited a different version as to what disclosures were made to the parties with respect to Prime Healthcare.

In response to the Report, both applicant and defendant filed verified responses contesting some of the statements made by the WCJ. Petitioner asserted there were inaccuracies in the Report as to both the applicant's availability for trial, the records relating to applicant's prior claims, the inability to be permitted the opportunity by the WCJ to clarify his stated concerns, as well as the substance of the discussion with the parties relating to Prime Healthcare. Defendant's verified response indicated that they could "confirm that all issues raised by Applicant's counsel in the Petition for Disqualification of Workers' Compensation Judge, dated May 13, 2024 are 100% accurate." (Defendant's Answer to Report, 6/7/25, pp. 1, 3.)

I.

In his Report, the WCJ discusses the reasoning for his decision to take the matter off calendar for further medical supplementation, and further indicates the basis for determining same. Unfortunately, no testimony or evidence was offered or admitted at the hearing in order to document same.

¹ Section 9721.12(a)(7) provides: (a) A judge is disqualified in a worker' compensation case if any of the following is true:...(7) The Judge, the judge's spouse, or minor child of the judge, personally or as a fiduciary, has a financial interest in the subject matter in a proceeding or in a party to the proceeding, or has a relationship of director, advisor, or active participant to a party in the proceeding. (Cal. Code Regs., tit. 8 § 9721.12.(a)(7).)

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).)

As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at p. 476 citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

It appears that the WCJ advises he based his decision to take the matter off calendar solely on a determination that the medical evidence was stale and needed updating and/or clarification, but did not make a record upon which to base these findings. Thus, as we are unable to determine if good cause exists at this juncture due to a lack of an adequate record, we would normally return the matter back to the trial level for further proceedings.

Here, however, the issue is not just one of further discovery, as that would necessitate development of the record as stated above. The petition for determination is a petition for disqualification of the WCJ, and as such, we turn to the factors to be analyzed.

We are guided by Labor Code section 5311, which 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 demonstrated "[t]he existence of a state of mind . . . evincing enmity against or bias toward either party." (Code Civ. Proc., § 641(g).) "Due Process is violated where there is even an appearance of bias or unfairness in administrative hearings.

(citations).” (*Robbins v. Sharp Healthcare, et al.* (2006) 71 Cal.Comp.Cases 1291, 1302 (*Robbins*).) The appearance of bias may be sufficient to require disqualification. As to the appearance of bias, the objective test to be applied is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with impartiality. (*Id.* at p. 1307.) Bias against a party’s attorney may be a ground for disqualification. (*Id.* at p. 1306.) Pursuant to the rationale in *Robbins, supra*, “[d]ue process is violated where there is even an appearance of bias or unfairness in administrative hearings.” (*Id.* at p. 1302.)

Additionally, petitioner has raised AD Rule 9721.12(a)(7) as automatic grounds for disqualification. Without a record, we are unable to determine whether such grounds for disqualification have been met. However, we need not reach that determination.

Instead, we conclude that the actions of WCJ Carbone on May 9, 2024 as alleged by applicant and affirmed by defendant, could reasonably raise concerns as to the appearance of unfairness or bias to a “reasonable person with knowledge of the facts of this case.” Thus, we return the matter to the PWCJ for assignment to a different WCJ. (Cal. Code Regs., tit. 8, § 10346(a).)

Therefore, we grant applicant’s Petition for Disqualification, and return the matter to the PWCJ for reassignment to a new WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Disqualification is **GRANTED**.

IT IS FUTHER ORDERED as the Decision After Disqualification of the Workers' Compensation Appeals Board that the assigned Workers' Compensation Administrative Law Judge is **DISQUALIFIED** and this case is **RETURNED** to the Presiding WCJ for reassignment to a new Workers' Compensation Administrative Law Judge.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 9, 2025

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

**ARMANDO LINAN
KOSZIN, FIELDS & SHERRY LAW OFFICES
WCD LAW GROUP**

LAS/kl

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