

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

**ATEFA SAMADI, *Applicant***

**vs.**

**AMAZON, *Defendants***

**Adjudication Number: ADJ15605011 ADJ16563992  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
DISQUALIFICATION**

Applicant, in pro per, filed a Petition for Disqualification on May 3, 2023 following an Expedited Hearing on April 29, 2025. We have considered the allegations of the Petition for Disqualification and the contents of the Report and Recommendation on Petition for Disqualification issued by 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 on the merits. If we were not denying applicant's petition on the merits, we would have dismissed it on procedural grounds as discussed below.

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, former § 10452, now § 10960 (eff. Jan. 1, 2020), *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

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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].

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; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310-1311 (Significant Panel Decision).)

Here, the petition for disqualification does not set forth facts 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).

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSE H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**SEPTEMBER 2, 2025**

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

**ATEFA SAMADI  
HANNA BROPHY**

**PAG/bp**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR DISQUALIFICATION**  
**AND NOTICE OF TRANSMISSION**

**DATED May 14, 2025**

Applicant filed a Petition for Disqualification of the undersigned dated May 6, 2025 and received on May 8, 2025. Defendant has not filed a response to the petition.

Facts

Atefa Samadi, hereinafter Applicant, filed an application for adjudication for a date of injury of December 8, 2021 to her left elbow, left wrist, and left shoulder (ADJ16563992). Applicant also filed an application for adjudication for the date of injury of October 27, 2021 to her right shoulder, right elbow and right wrist.

Applicant's cases were set for expedited hearing on June 25, 2024 in front of me in which applicant's reimbursement of costs associated with a trip from Canada to Elk Grove was at issue as well as treatment. At the hearing, applicant repeatedly said inflammatory remarks about the adjuster and defense attorney. Applicant was warned about appropriate courtroom decorum.

At the September 3, 2024 hearing, applicant failed to appear so the matter was taken off calendar.

Applicant filed another expedited hearing for temporary disability which took place on November 19, 2024. At that hearing, defendant agreed to pay temporary disability for a period of time. The period in which defendant would issue the check was discussed and the parties agreed to expedited the issuance of the payment in exchange for waiving of penalties and interest for that period. All other penalties and interest were deferred. At that point, applicant did not agree to the rate but it was deferred pending additional information and applicant was told she needed to exchange any additional documentation with defendant so they could investigate and have an opportunity to correct the issue.

On February 25, 2025, another expedited hearing was set and applicant appeared with previously undisclosed W9s for real estate transaction that overlapped with a period that she previously obtained temporary disability. The hearing was taken off calendar since this was new information.

At the April 29, 2025 expedited hearing, applicant wanted the issue of temporary disability, medical treatment, and discovery heard. I attempted to discuss that while the issue of temporary disability is subject to an expedited hearing the matter, it had overlapping issues that may result in a temporary disability overpayment and credit to defendant. Due to the complexity of the issues, and the fact that defendant claimed the entire case was ready to be heard I asked the parties if they agreed to convert the expedited to a MSC to prevent further delays and set the matter for trial on all issues which I could develop the record if needed. Applicant objected. Therefore, the matter was continued to a MSC on July 7, 2025.

## **DISCUSSION**

Due process requires a fair hearing before a neutral, unbiased decision maker (Haas v. County of San Bernardino (2002) 27 Cal.4th 1017, 1024-1027; e.g. Withrow v. Larkin ((1975) 421 U.S. 35, 41-47 [95 S.Ct. 1456, 43 L.Ed.2d 712].) Due process is violated where there is even an appearance of bias or unfairness in administrative proceedings. (Haas v. County of San Bernardino, supra, 27 Cal.4th at page 1034; Quintero v. City of Santa Ana (2003) 114 Cal.App.4th 810, 812; Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 90; see also, Yaqub v. Salinas Valley Memorial Healthcare System (2004) 122 Cal.App.4th 474, 483-486.)

Labor Code Section 123.6(a) requires WCJs to abide by both the Code of Judicial Ethics and the commentary to that Code. “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.” Canon 1 of the Code of Judicial Ethics.

“A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities” Canon 2 of the Code of Judicial Ethics. A judge shall “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2(A). Cal.App.4th 836, 841, disapproved on another ground in Casa Herrera, Inc. v. Beydoun (2004) 32 Cal.4th 336, 346, 349.)

The appearance of impropriety test is an objective one. (Yaqub v. Salinas Valley Memorial Healthcare System, supra, 122 Cal.App.4th at p.486; Hall v. Harker (1999) 69Cal.App.4th 836, 841, disapproved on another ground in Casa Herrera, Inc. v. Beydoun (2004) 32 Cal.4th 336, 346, 349.)

Here, throughout all the hearings, applicant has spoken over the undersigned and has not observed courtroom decorum. The undersigned warned applicant that hearings could be terminated or that I would have to leave if she did not correct her behavior. There were a number of instances that happened. However, I have tried to provide due process to both parties. The undersigned has attempted to move this case to a position in which I can determine whether further development of the record is necessary, what the correct rate of temporary disability is, and ensure applicant obtain medical treatment. The undersigned is unable to determine these issues immediately at a hearing.

One of applicant’s repeated issues at the hearings is the drive to Oakland from where she is currently residing in Sacramento county and where the injury occurred. The undersigned has advised applicant several times that she could petition to change venue to a location that is closer to where she lives.

The undersigned does not have any inclination as to how I would determine the issues of temporary disability, permanent disability, or ongoing discovery issues. I continue to feel that I can be impartial in determining the issues.

## **RECOMMENDATION**

I recommend the petition for disqualification filed by applicant be Denied. The matter is transmitted as of May 14, 2025.

**NOTICE OF TRANSMISSION TO THE APPEALS BOARD**

On May 14, 2025, this matter is transmitted to the Reconsideration unit of the Appeals Board.

DATE: May 14, 2025

**Erin Bodner**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE