WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

FRANCISCO DE SANTIAGO CARRILLO, ***Applicant***

vs.

NEAL TRUCKING INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,
administered by CBCS, INC., ***Defendants***

Adjudication Number: ADJ18395672
Long Beach District Office

OPINION AND ORDERS
DENYING PETITION
FOR REMOVAL AND
DENYING PETITION
FOR DISQUALIFICATION

Defendant seeks removal from the order taking this matter off calendar issued on May 15, 2025, by the workers' compensation administrative law judge (WCJ). Defendant argues that a WCJ loses discretion to manage their calendar when a party fails to object to a declaration of readiness to proceed (DOR).

Defendant has filed a supplemental petition, which we have accepted as a petition seeking disqualification of the WCJ on the grounds that she has exhibited bias. (Cal. Code Regs., tit. 8, § 10964.)

We have not received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petitions for Removal and Disqualification and the contents of the WCJ's Report. Based on our review of the record and based upon the WCJ's analysis of the merits contained in the WCJ's Report, we will deny the petition for removal as defendant has failed to establish irreparable harm or that reconsideration would be an inadequate remedy.

For the reasons discussed below, we will also deny the petition for disqualification.

1. Disqualification

Labor Code[1] 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. (§ 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.)

Next, petitions for disqualification must be timely filed: "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." (Cal. Code Regs., tit. 8, § 10960.)

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].) 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*

[1] All future references are to the Labor Code unless noted.

(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 (emphasis added).) 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."].)

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, we deny the Petition for Disqualification. Defendant has not provided any affidavit or declaration under penalty of perjury, nor has defendant provided sufficient grounds for disqualification under the rule.

Based upon the facts alleged in defendant's petition, it appears that applicant was a truck driver who was involved in an automobile accident. It further appears that applicant has claimed both orthopedic injury, and injury to other body parts including to the brain. It further appears that defendant unilaterally cancelled an evaluation in neurology and it wishes to proceed to trial without evaluations on any of the other alleged body parts. It does not appear that the WCJ's raising the issue of sanctions is indicative of bias. Instead, this appears to be a reasonable response based upon

the apparent facts of this case. However, we do not take up the issue of sanctions. Instead, we would remind defendant of AD Rule 10109, which states, in pertinent part:

> (a) To comply with the time requirements of the Labor Code and the Administrative Director's regulations, a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.
>
> (b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
>
> (1) **The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment.** The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. **The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.**
>
> (2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.

(Cal. Code Regs, tit. 8, § 10109.)

2. Removal

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of the merits of petitioner's arguments, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, 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, § 10761.)

Here, defendant argues that the WCJ violated Labor Code section 5502(d)(3), which states:

> If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

What defendant fails to recognize is that the above Labor Code provision only applies where a WCJ determines that a matter is ready to proceed to trial. Nowhere within the Labor Code can we find authority that a party has the unilateral right to proceed to trial upon the filing of a declaration of readiness (DOR). To the contrary, the Labor Code is quite clear that the WCJ and the Appeals Board have *discretion* when setting a matter for trial: "The hearing on the application may be adjourned from time to time and from place to place **in the discretion of the appeals board or the workers' compensation judge holding the hearing**." (Lab. Code, § 5700.)

Next, defendant argues that WCAB Rule 10744 requires a WCJ to set a matter for trial when a party fails to object to a DOR. (Cal. Code Regs., tit. 8, § 10744(d).) The rule states: "If a party has received a copy of the Declaration of Readiness to Proceed and has not filed an objection under this rule, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances." (*Ibid*.) WCAB Rule 10744 can only be construed as the parties waiving objection to *the WCJ* setting the matter for trial. Per Labor Code section 5700, both the WCJ and the Appeals Board retain the discretion to determine whether a matter should be set for trial or whether a continuance is warranted.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the May 15, 2025 order taking the matter off calendar, is **DENIED**.

IT IS FURTHER ORDERED that defendant's Petition for Disqualification of the WCJ filed on June 23, 2025, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 13, 2025

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

FRANCISCO DE SANTIAGO CARRILLO
PERONA, LANGER, BECK, & HARRISON
MICHAEL SULLIVAN & ASSOCIATES

EDL/mc

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