

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

**JOAN LEOPOLD, *Applicant***

**vs.**

**LAW OFFICES OF MARVYN GORDON;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ3660859, ADJ4106950, ADJ876448  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
DISQUALIFICATION**

Applicant, in pro per, has filed a petition to disqualify the workers' compensation administrative law judge (WCJ) in this matter. Applicant generally alleges that the WCJ has evidenced bias during a telephonic hearing on March 3, 2022, and at a May 9, 2022 hearing, by 1) demonstrating he had a personal relationship with her former attorney and 2) excusing defendant's counsel from appearing at the trial concerning issues relating to reasonable attorney fees that may be owed to such attorney as a lien claimant.

We have received an Answer from applicant's former attorney. The WCJ filed a Report and Recommendation on Petition for Disqualification (Report) recommending that we deny 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, we will deny the Petition for Disqualification.

**FACTS**

In the report, the WCJ states:

My "relationship" with Mr. Duffy [former attorney/lien claimant] is simply professional. He is an attorney who has appeared regularly at the VN Office for decades. In addition, as a private Defense practitioner, I had numerous

opportunities to “oppose” Mr. Duffy as defense counsel as well. I have no personal relationship, nor have I ever socialized with Mr. Duffy.

(Report, p. 3.)

The sole issue for the upcoming trial is the entitlement to the attorney’s fee to Goodchild and Duffy, pursuant to the Order Approving Compromise and Release, dated April 16, 2021. (MOH, 7/21/2022, p.2.)

With respect to the WCJ excusing defendant’s counsel from appearing at the trial, the WCJ notes in his report that defendant is a “stakeholder” because it will ultimately distribute any attorney fees awarded, we note that defendant has no real interest in the issue. Applicant does not state why she wants defendant present at trial; there is no indication that defendant will be a witness.

### **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; 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].)<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 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).)

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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].

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, the petition for disqualification was dated July 11, 2022 and uploaded to EAMS on October 14, 2022. All of the conduct described in the petition relates back to the trial proceedings, which occurred on March 10, 2022 and May 9, 2022. The petition for disqualification was not timely filed and good cause is not presented to accept a late filed petition.

Applicant should proceed with her case, she may create a record and submit the matter before the current WCJ. If applicant is aggrieved by any final decision of the WCJ, she is entitled to seek reconsideration, and the Appeals Board will review the evidence submitted accordingly. Applicant will be given a fair hearing, and she will be given a fair appeal if any adverse decision issues. If applicant requires assistance in the future, she should contact the Information and Assistance Office with any questions or concerns.

Hence, 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**June 30, 2025**

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

**JOAN LEOPOLD  
LAW OFFICES OF GOODCHILD & DUFFY  
STATE COMPENSATION INSURANCE FUND**

**SL/abs**

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