

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

JOSE IRIZARRY, *Applicant*

vs.

**AT AND T MOBILITY SERVICE, permissibly self-insured, administered by
SEDGWICK, *Defendants***

**Adjudication Number: ADJ11109593
Long Beach District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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 based upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report as quoted below, we will deny the Petition for Disqualification.

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].)¹ 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

¹ 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].

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).)

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.”

As stated by the WCJ in the Report:

The statements complained of in Mr. Kwan’s declaration took place October 10, 2024, before the case was set for trial. Even taken literally, the grounds for disqualification were known before the case was set for trial. Petitioner not only waived the pre-emptory challenge, but also failed to file the disqualification petition within ten (10) days after the cause for the petition was known. The efforts to include the comments made at the time of trial, that allegedly triggered the petition were a completely benign discussion that the court has with the parties before going on the record. Counsel takes issue with the statement, “We do not do ethics here” which is a true, unbiased, and simply the court expressing a legal opinion in an effort to focus on the issue, which is the Notice of Intention to Sanction. There was no appearance of bias in offering to accept declarations from the witnesses in lieu of testimony. I believe I also instructed the petitioners to combine issues 1 and 2 on their pre-trial as they were one issue and advised them to properly describe their exhibits and date them. They had to take issue with the discussion at the time of trial because otherwise the petition to disqualify would have been untimely. “We will see” or “We will see about that,” depending on whether it is in the petition or the declaration, in response to Counsel’s assertion that there is no authority on the issue of deposition fees under these facts, is hardly a showing of bias. These issues were raised because otherwise the petition would have been untimely when filed on November 21, 2024, when the allegedly improper remarks were made forty-two (42) days before.

Petitioner never specifically cites authority for their petition, but it appears they are alleging disqualification of the judge is appropriate pursuant to California Code of Civil Procedure Section 641(f) and (g) which require disqualification on the following grounds:

- (f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.
- (g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

Labor Code § 123.6(a) mandates that workers' compensation administrative law judges adhere to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article IV of the California Constitution for the conduct of judges. Canon 2 of the Code of Judicial Ethics states, "a judge shall avoid impropriety and the appearance of impropriety in all of the Judges' activities". This "appearance of impropriety" test is an objective one which employs a reasonable person standard, i.e., "would a reasonable person with knowledge of the facts entertain doubts concerning the WCJ's impartiality". (*Robbins v Sharp Healthcare* 71 CCC 1291 (Significant Panel Decision)).

Disqualification is not warranted when a judge expresses an opinion regarding a legal or factual issue, but the petitioner fails to show that the opinion is fixed and could not be changed by producing evidence or presenting argument at a hearing (*Pacific Rim Assurance Company v. WCAB* (1996) 61 CCC 1315 (Writ Denied)). Clearly, Petitioner has a difference of opinion with the Judge regarding when deposition fees are appropriate pursuant Labor Code Section 5710. This is a legal issue. We also have a difference of opinion regarding compliance with statutory law and the California Code of Regulations. No evidence offered shows that any opinion expressed by the court in this case is fixed or could not be changed by producing evidence or presenting argument at a hearing. Adverse interactions between a judge and an attorney, disagreements about the state of the facts, law, evidence or credibility of witnesses does not establish bias (*Robbins v Sharp Healthcare* (2006) *Supra.* 1303). Furthermore, a judge's frustration or irritation with a party does not suggest bias or prejudice (*Robbins v Sharp Healthcare, supra.*).

(Report, pp. 8-10.)

Here, 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).

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/ CRAIG SNELLINGS, COMMISSIONER

JOSE H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2025

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

**JOSE IRIZARRY
DEFENDERS LAW FIRM
JOHN GUTIERREZ
THE LAW OFFICES OF RUDY LOPEZ
WORKERS COMP SOLUTIONS, INC**

LAS/kl

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