

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

LORRAINE GONSALVES, *Applicant*

vs.

**CAMP FIRE USA SIERRA COUNCIL; STATE COMPENSATION INSURANCE
FUND; FRONTIER MANAGEMENT, LLC; CHURCH MUTUAL INSURANCE
COMPANY administered by CHURCH MUTUAL MERRILL, *Defendants***

**Adjudication Numbers: ADJ3117080 (SAC 0248391);
ADJ11896735; ADJ20667457; ADJ20667459
(Sacramento District Office)**

**OPINION AND ORDERS
DISMISSING PETITION FOR RECONSIDERATION,
DENYING PETITION FOR REMOVAL, AND
DISMISSING PETITIONS FOR DISQUALIFICATION**

On August 5, 2025, a workers' compensation administrative law judge (WCJ) issued an order converting an expedited hearing to a mandatory settlement and continued the matter. The WCJ also approved a stipulation to cancel the qualified medical evaluation (QME) pending determination of whether the panel was appropriate.

On August 21, 2025, applicant, in pro per, filed a Petition for Removal. Applicant attached over 30 pages of documents, and none of those documents were admitted into evidence. We have not considered these documents because our decisions "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corp. (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

On August 25, 2025, applicant filed a Petition for Reconsideration, in which she seems to raise the issue of additional evidence.

We have received an Answer from defendant.

On August 27, 2025, the WCJ issued Reports and Recommendation (Report) in response to each Petition, recommending that each of the Petitions be denied or dismissed.

On September 15, 2025, applicant filed Petitions to Disqualify WCJ Brown and presiding WCJ (PWCJ) Tempkin.

On September 23, 2025, the PWCJ issued a Report and Recommendation on Petition for Disqualification recommending that the Petition be dismissed and/or denied.

On September 24, 2025 the WCJ issued a Report and Recommendation on Petition for Disqualification recommending that the Petition be denied.

On September 15, 2025 and on September 27, 2025, applicant filed supplemental pleadings. Applicant filed the supplemental pleadings without seeking approval from the Appeals Board. Thus, we decline to accept and consider them. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations of the Petition for Removal, the Petition for Reconsideration, the Petition for Disqualification, the Answer and the contents of the Reports of the WCJ and PWCJ with respect thereto. Based on our review of the record, and for the reasons stated in the Reports, we will dismiss the Petition for Reconsideration, deny the Petition for Removal and dismiss the Petitions for Disqualification of the PWCJ and WCJ.

BACKGROUND

We will briefly review the relevant facts from recent events.

At a March 26, 2025 status conference in front of the PWCJ, over defendant's opposition, ADJ3117080 was taken off calendar and ADJ11896735 was continued to a mandatory settlement conference (MSC).

On April 30, 2025, in ADJ11896735, at the applicant's request, the PWCJ continued the matter to a second MSC to allow applicant time to complete the pre-trial conference statement.

On July 16, 2025, in ADJ11896735, from an MSC, denying applicant's request for a continuance, the matter was set for a trial on September 17, 2025 in front of WCJ Brown. There was no peremptory challenge to Judge Brown. At issue for trial: Whether there is good cause to set aside order dismissing case.

In ADJ311780, on July 17, 2025 defendant, State Compensation Insurance Fund (SCIF) filed a declaration of readiness to proceed to expedited hearing because "applicant has obtained QME panel # 3686064 and scheduled an appointment with Dr. Wieseltier for 8/14/25. Defendant has objected to the panel." No objection was filed to the DOR.

At the August 5, 2025 expedited hearing in front of WCJ Brown, the parties jointly requested the matter be continued to an MSC and the continuance was granted.

Also on August 5, 2025 the WCJ ordered the parties' stipulation that stated in pertinent part: "The QME appointment set for 8/14/25 with Dr. Wieseltier will be cancelled pending determination by the WCAB on whether the QME panel is appropriate."

DISCUSSION

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on August 27, 2025, and 60 days from the date of transmission is Sunday, October 26, 2025. The next business day that is 60 days from the date of transmission is Monday, October 27, 2025. (See Cal. Code

¹ All further references are to the Labor Code unless otherwise noted.

Regs., tit. 8, § 10600(b).)² This decision is issued by or on October 27, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on August 27, 2025, and the case was transmitted to the Appeals Board on August 27, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 27, 2025.

II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 (*Rymer*); *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Furthermore, section 5902 requires that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.

(Lab. Code, § 5902.)

Moreover, the Appeals Board Rules provide in relevant part: (1) that “[e]very petition for reconsideration, removal or disqualification shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention shall be separately stated and clearly set forth” (Cal. Code Regs., tit. 8, § 10945 and (2) that “a petition for reconsideration, removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.” (Cal. Code Regs., tit. 8, § 10972.)

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers’ Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers’ Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers’ Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers’ Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers’ Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner’s contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers’ Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.).)

Each of the applicant’s four cases, ADJ3117080, ADJ11896735, ADJ20667457 and ADJ20667459, have been reviewed. The only orders by the WCJ are the orders continuing the August 5, 2025 hearing to a mandatory settlement conference and approving the stipulation, which essentially defers the issue of the QME. Thus, even if we were able to decipher the basis for applicant’s Petition for Reconsideration, there are no final or threshold orders at issue. The Petition

fails to state any grounds upon which reconsideration is sought or to cite with specificity to the record. Therefore, it is skeletal, and we will dismiss it.

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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*.) The petitioner must also 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).)

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, § 10566.)

Here, applicant's Petition for Removal describes itself as an “objection to DOR ADJ3117080 QME Hearing dated August 5, 2025.” Both the Minute Order and the stipulation and Order that issued on August 5, 2025 were at the joint request and/or stipulation of the parties. Applicant does not state what substantial prejudice or irreparable harm will result if either the Minute Order or the Stipulation and Order that she initially agreed to remain undisturbed. Thus, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

IV.

To the extent that applicant contends that the PWCJ and the WCJ should be disqualified, 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].)³ 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.”].)

³ 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].

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).)

Here, as discussed in the WCJ and PWCJ’s reports, to the extent the Petition requests disqualification of the WCJ and PWCJ, it does not set forth facts, declared under penalty of perjury, that are sufficient to establish such disqualification pursuant to section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Accordingly, we will dismiss the Petition for Disqualification of the PWCJ and WCJ.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petitions for Disqualification is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2025

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

**LORRAINE GONSALVES
STATE COMPENSATION INSURANCE FUND
OFFICE OF THE DIRECTOR-LEGAL UNIT (SACRAMENTO)
THOMAS KINSEY LAW
FRONTIER MANAGEMENT
CHURCH MUTUAL INSURANCE COMPANY**

SL/abs

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