

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

**MICHAEL KREZA (Deceased),
SHANNA KREZA (Guardian ad Litem), *Applicant***

vs.

CITY OF COSTA MESA FIRE DEPARTMENT; ADMINISURE, *Defendants*

**Adjudication Number: ADJ12674446
Anaheim District Office**

**OPINION AND ORDERS
DISMISSING PETITION
FOR RECONSIDERATION
GRANTING PETITIONS
FOR REMOVAL AND
DISQUALIFICATION
AND DECISIONS AFTER
REMOVAL AND DISQUALIFICATION**

Applicant seeks reconsideration or in the alternative removal of the “Order Suspending Action” (Order) issued on May 12, 2025, by the workers’ compensation administrative law judge (WCJ). Applicant further seeks disqualification of the WCJ.

The Order issued by the WCJ stated, in pertinent part, that: “The attorney fees requested are considered excessive for a death claim.” The WCJ opined that “While applicant’s counsel was able to obtain benefits after appeal, 5% through 9% would be deemed reasonable as often in death cases three percent (3%) is awarded.” The WCJ further noted that one of applicant’s dependents reached the age of majority and thus, was no longer under conservatorship and would need to sign the settlement.

Applicant argues, in pertinent part, that the WCJ presumptively determined in the Order what fee amount is reasonable, which is an unqualified opinion that creates an appearance of bias warranting disqualification. Applicant further argues that the WCJ failed to follow WCAB Rule 10844 (Cal. Code Regs., tit. 8, § 10844) in determining an appropriate fee.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation (Report) recommending that we deny removal and disqualification.

We have considered the allegations of the Petition and the contents of the WCJ's Report. Based on our review of the record, we will dismiss the Petition as one for reconsideration as the Order Suspending Action was not a final order. We will grant the Petition as one for removal and disqualification, rescind the WCJ's May 12, 2025 Order, disqualify the current WCJ, and return this matter to the Presiding WCJ for reassignment.

FACTS

Decedent applicant (hereinafter "applicant") worked as a firefighter for the City of Costa Mesa Fire Department for 24 years. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 18, 2021, p. 3, lines 6-8.)

On November 3, 2018, applicant was riding a bicycle when he was struck by a car resulting in multiple injuries, eventually leading to death on November 5, 2018. (Joint Exhibit 1, Report of QME M. Michael Mahdad, M.D., November 2, 2020, p. 1.) The sole issue for trial was injury arising out of and occurring in the course of employment. (MOH/SOE, *supra* at p. 2, lines 13-14.) Applicant was off-duty at the time of the accident and the facts of this case involved a significant dispute as to whether applicant's off-duty exercise was contemplated by his employment.

Initially, the trial judge ruled in favor of defendant and ordered that applicant take nothing on this claim. (Findings and Order, September 9, 2021.) Thereafter, applicant sought reconsideration, which was granted. A Decision After Reconsideration issued on August 16, 2024. The Appeals Board reversed the WCJ and found that applicant's injury was compensable and returned the matter to the trial level for adjustment of any benefits due. (Opinion and Decision After Reconsideration, August 16, 2024.)

Defendant sought writ of review, to which applicant filed an answer. Review was denied on December 12, 2024. Thereafter, applicant sought penalties.

On May 2, 2025, the parties filed proposed stipulations with a request for an award. On May 12, 2025, the WCJ issued an Order Suspending Action, which stated in pertinent part:

Action has been suspended for the following reason(s): Kaylie Kreza is no longer a minor. A separate retainer agreement should be signed by her and some provisions made in the stipulation for payment to her as a dependent. The attorney fees requested are considered excessive for a death claim. Although the parties requested a commutation to calculate fees, there was no indication that the same would be appropriate at fifteen percent (15%) fees. While applicant's counsel was able to obtain benefits after appeal, 5% through 9% would be deemed reasonable as often in death cases three percent (3%) is awarded.

(Order Suspending Action, May 12, 2025.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

(§ 5909.)

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 May 28, 2025, and 60 days from the date of transmission is Sunday, July 27, 2025, which by operation of law means this decision is due by Monday, July 28, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on July 28, 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

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on May 28, 2025, and the case was transmitted to the Appeals Board on May 28, 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 May 28, 2025.

II.

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; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (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].) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment (AOE/COE), jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, 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 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.

Here, the WCJ’s decision did not include any “final” findings. It was an order that suspended action on a settlement, which is an interlocutory procedural decision to request

additional information or action from the parties. Thus, and to the extent that the petition seeks reconsideration, the petition will be dismissed.

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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*.) A 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).)

Here petitioner alleges that the WCJ's Order Suspending Action contains unqualified opinions as to the adequacy of attorney's fees, which creates the appearance of bias warranting disqualification of the WCJ. For the reasons discussed below, we agree with this allegation and thus petitioner has established irreparable harm and substantial prejudice warranting removal.

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.)

The appearance of bias may be sufficient to require disqualification. As to the appearance of bias, the objective test to be applied is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with impartiality (*Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1307).

Here, applicant notes that multiple statements were made in the May 12, 2025 Order, which indicate that the WCJ has prejudged the issue of attorney's fees. The WCJ bluntly stated that the attorney's fee request in this case is excessive. While it is acceptable to note the *appearance* of things that *may* be, here the WCJ used fixed language indicating that the attorney's fees request is excessive, prior to reviewing any of the evidence, prior to conducting any hearing, and prior to allowing either party to be heard on the issue. While the WCJ's use of language may have simply been inartful, under these facts, disqualification is warranted as the WCJ has created the appearance of bias.

Applicant further argues that a reduction in attorney's fee would not be warranted where applicant conducted significant discovery, represented his client at trial, filed a successful appeal of the trial level decision, and defended that ruling before the District Court of Appeal. However, and notwithstanding that applicant's attorney *appears* to have a meritorious argument that a 15% fee *may* be warranted, we do not reach the merits of the attorney's fee request as that issue is not presently before us. Furthermore, it has long been held that: "Erroneous 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 v. Dyer* (1957) 154 Cal.App.2d 395, 400.)

Accordingly, we dismiss the Petition as one for reconsideration and we grant it as one for removal and disqualification. We rescind the WCJ's May 12, 2025 Order and order that the current WCJ is disqualified, and return this matter to the Presiding WCJ for reassignment.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 12, 2025 Order Suspending Action issued by the Workers' Compensation Administrative Law Judge is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Disqualification and Petition for Removal of the May 12, 2025 Order Suspending Action issued by the Workers' Compensation Administrative Law Judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that May 12, 2025 Order Suspending Action issued by the Workers' Compensation Administrative Law Judge is **RESCINDED**.

IT IS FUTHER ORDERED as the Decision After Disqualification of the Workers' Compensation Appeals Board that the assigned Workers' Compensation Administrative Law Judge is **DISQUALIFIED** and this case is **RETURNED** to the Presiding WCJ for reassignment to a new Workers' Compensation Administrative Law Judge.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 25, 2025

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

**SHANNA KREZA
FERRONE LAW GROUP
KARLIN, HIURA & LASOTA
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

EDL/mc

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