

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

**MICHAEL STONEBARGER (Deceased), *Applicant***

**vs.**

**SIERRA PACIFIC INDUSTRIES,  
permissibly self-insured, *Defendants***

**Adjudication Number: ADJ16243827  
Redding District Office**

**OPINION AND ORDER  
DENYING PETITION FOR REMOVAL AND  
DISMISSING PETITION FOR DISQUALIFICATION**

Applicant seeks removal of the Order Denying Petition for Change of Venue issued on January 8, 2025<sup>1</sup>, by a presiding workers' compensation administrative law judge (PWCJ).

Applicant contends that workers' compensation administrative law judge (WCJ) exhibited bias against applicant and applicant's attorney of record in favor of defendant at an October 17, 2024, status conference, and that as a result, the applicant cannot receive a fair and impartial hearing at the Redding district office.

Defendant did not file an answer to the petition. The PWCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that the petition be denied.

On February 11, 2025, petitioner filed a supplemental pleading entitled applicant's addendum to petition for removal. The supplemental pleading asserts that the Order denying removal was not properly served upon applicant's counsel, and that "something is not right" in the matter. We note that applicant filed their petition for removal on February 3, 2025, referencing and citing to the Order denying venue served by the PWCJ on January 8, 2025, and thus applicant's

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<sup>1</sup> While the Order of the PWCJ was executed on January 2, 2025, it was issued and served on January 8, 2025.

petition was timely filed.<sup>2</sup>

While we utilize our discretion to accept the supplemental pleading pursuant to our authority under WCAB Rule 10964, we remind applicant that WCAB Rule 10964 requires that supplemental pleadings or responses other than the Answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Our Rules further require that a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. (Cal. Code Regs., tit. 8, § 10964(b).) Applicant did not seek the permission of the WCAB to file supplemental pleading, nor set forth good cause for doing so. Supplemental pleadings filed in the future that fail to adhere to such requirements may be disregarded nor deemed filed for any purpose. (Cal. Code Regs., tit. 8 § 10964(c).)

We have considered the allegations of the Petition for Removal, the supplemental pleading, and the contents of the report of the PWCJ with respect thereto. Based on our review of the record, and for the reasons stated in the PWCJ's report, we will deny the petition for removal, and dismiss the petition to the extent that it requests disqualification.

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, for the reasons stated in the WCJ's report, 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. Accordingly, we will deny the petition to the extent it seeks removal.

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<sup>2</sup> 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.

To the extent the petition contends that the WCJ should be disqualified, 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>3</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.”].)

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<sup>3</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].

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 PW CJ’s report, to the extent the petition requests disqualification of a WCJ, it does not set forth facts, declared under penalty of perjury, that are sufficient to establish such disqualification pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Further, petitioner fails to document irreparable harm as there are alternative methods upon which to seek another judge in the Redding district office at the time this matter is set for trial. Accordingly, we will dismiss the petition to the extent it seeks to disqualify the WCJ.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal is **DENIED**.

**IT IS FURTHER ORDERED** that the Petition, to the extent it requests Disqualification, is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**April 14, 2025**

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

**KELLY STONEBARGER  
WILLIAM RAY STONEBARGER  
LAW OFFICES OF CRAIG MORRISON  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**SL/abs**

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