

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

NEAL NEWTON, *Applicant*

vs.

**RUDGEAR LOGISTICS, LLC.; FALLS LAKE FIRE & CASUALTY,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ15136580
Lodi District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
DISQUALIFICATION AND DECISION
AFTER DISQUALIFICATION**

We have considered the allegations of the Petition for Disqualification filed by the applicant and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will grant applicant's petition for disqualification of the assigned trial judge, order the assigned trial judge disqualified, and return this matter to the Presiding Judge for reassignment of the case to a new WCJ.

While the WCJ may not have "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or has demonstrated "[t]he existence of a state of mind ... evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)), we find there is an appearance of bias sufficient to warrant disqualification.

BACKGROUND

Applicant alleges an industrial injury arising out of and during the course of employment during the period December 11, 2020 through August 13, 2021 to his hands, fingers, arm, wrist, shoulders, neck and back. Per the pre-trial conference statement (PTCS), defendant has admitted injury to the applicant's shoulders. (PTCS, 9/18/24, p.2.)

On August 9, 2024, applicant filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference (MSC) listing the issue as relating to the evidence to send to the panel qualified medical evaluator (PQME). The Declaration on the DOR states as follows:

Applicant had a rheumatology PQME Med-Legal Evaluation on 7/17/2024. Applicant requested to send 31 pieces of evidence to the PQME (24 medical records/evidence, and 7 non-medical records/evidence), all evidence was/is relevant to Applicant's CT injury. Defense objected to all of the evidence prior to the evaluation. Now, after the evaluation, Defense still objects to all evidence or has failed to specify which items exactly they object to. Applicant requests MSC so this dispute can be resolved and so the evidence can be sent to the PQME before he completes his initial Med-Legal report. The index list of all evidence Applicant proposed to send to the PQME is attached, which consists mostly of pictures, videos, and documents, all relevant to the CT injury Applicant sustained. Applicant demands the MSC be slotted within 7 days so this dispute can be resolved and evidence can be sent to the PQME BEFORE he completes his initial report. Applicant has waited over 18 months for this Med-Legal evaluation, and PQME had virtually zero evidence or records at the evaluation; and because of Applicant's unusual injury (where symptoms can come and go), it is critical PQME gets said evidence so PQME can make a proper and fair evaluation.

(DOR, 8/9/24.)

At the MSC of September 18, 2024, the WCJ set the matter for trial on notice, and a jointly executed PTSC was filed, listing the issue as “[e]vidence to be provided to the pqme Dr. Levine. All other issues deferred. Defendant objects to applicants video evidence and text message based on authenticity, identification, time frame, and relevance. Defendant objects to Dr. Haliburton report dated 9/10/24 as it was not authorized by defendant and is outside of defendant’s MPN.” (PTCS, 9/18/24, p. 3.)

On November 13, 2024, the trial judge continued the matter to a Mandatory Settlement Conference on one of the WCJ’s expedited hearing days, and noted on the Minutes of Hearing (MOH) that the parties were to have all exhibits completed with a cover letter. (MOH, 11/13/24.)

On November 26, 2024, applicant filed a verified petition for disqualification of the trial judge, alleging that the WCJ’s actions at the November 13, 2024 hearing demonstrated bias against the applicant as well as expressing an unqualified opinion as to the merits of applicant’s claim such that he would be deprived of a fair hearing. In the petition, applicant asserts that the WCJ: 1) belittled the applicant’s personal physician who rendered an opinion as to his condition, including stating that since he was a naturopathic doctor (ND), his reporting would qualify more as non-medical evidence, 2) made statements that the applicant would not “get” or would not have

disputed body parts “included” in his claim, 3) opined that the applicant’s “sniffles” were from COVID versus his injury, 4) questioned applicant’s intelligence relative to a lawsuit applicant filed against the MPN doctors and QME, 5) demonstrated bias as to the veracity of the video evidence applicant was seeking to introduce without yet viewing same, 6) opined that the “QME is probably not going to change his mind” after having an opportunity to view the additional evidence, 7) advised applicant that he needed to get a “girlfriend” and a “job”, and 8) intimidated applicant with stories of other injured workers to the point that he went along with the WCJ when discussing settlement. Applicant asserts that he does not want to settle, and that the actions of the WCJ intimidated him to the point he felt unable to argue his claim in court. (Petition, pp. 2-6.)

The WCJ issued a Report and Recommendation on Disqualification (Report) who denied that any bias existed as to the applicant and recommended that the petition be denied based upon a lack of factual support.

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.)

Here, applicant's verified petition indicated that the WCJ asserted a number of opinions as to his claim, including opinions regarding the medical reporting of applicant's treating physician, the efficacy of applicant's proposed evidence, and the ultimate determination of the QME after potential review of same. Further alleged are that the WCJ turned the conference into a settlement conference, became somewhat upset with applicant, and made statements similar to "you want to get the most money, right?... and settle and move on with your life, right?" which intimidated him as he does not want to settle his claim but simply wants a proper medical evaluation that addresses his injuries. (Petition, p. 5:14, 21-26).

The WCJ states in her report that there is no factual support that she has actual bias against or in favor of an attorney for a party, however fails to specifically address the allegations made in the petition. While we have no reason to doubt the honesty or integrity of the WCJ's representations, our inquiry cannot end there because actual bias is not the only grounds for disqualification.

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).

Further, we note that the applicant contends in his DOR that he would like to "send 31 pieces of evidence to the PQME (24 medical records/evidence, and 7 non-medical records/evidence) for review...." however, the WCJ has indicated in her Report that "the sole issue for trial was that of the 34 (approx.) non-medical items that the applicant wanted to present to the rheumatologist PQME as evidence for assessment." (Report, p. 2.), thus appearing to have characterized the nature of applicant's documents without creating a record with a full review, analysis, and finding.

Thus, for the reasons set forth above, we determine that the facts as presented in this case give rise to an appearance of bias and thus merit disqualification.

While we appreciate the frustration that may be experienced by a WCJ under a number of different situations, and while a judge's mere frustration or irritation does not suggest bias or prejudice (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 303; *Scott v. Family Ministries* (1976) 65 Cal.App.3d 492, 502 & 509; see also, *Offutt v. United States* (1954) 348 U.S. 11, 17 [75 S.Ct. 11, 99 L.Ed. 11] ("a modicum of quick temper ... must be allowed even judges").)

it is helpful to remember that: “A judge shall avoid impropriety and the appearance of impropriety in all of the Judges’ activities” (Code of Judicial Ethics, Canon 2).

For the foregoing reasons,

IT IS ORDERED that the Petition for Disqualification is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Disqualification that the assigned Workers’ Compensation Administrative Law trial judge is **DISQUALIFIED** and this case is **RETURNED** to the Presiding Workers’ Compensation Administrative Law Judge for reassignment to a new Workers’ Compensation Administrative Law Judge.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2025

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

**NEAL NEWTON (PRO PER)
PARK GUENTHART LAW FIRM**

LAS/kl

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