

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

SHANNON MURPHY, *Applicant*

vs.

**OAKLAND UNIFIED SCHOOL DISTRICT;
Permissibly Self-Injured, administered by TRISTAR (FIRST TWO CASES); DAD'S BBQ,
THE HARTFORD (THIRD CASE); SELECT STAFFING, BROADSPIRE (FOURTH
CASE), *Defendants***

**Adjudication Number: ADJ19042851; ADJ9478722; ADJ3370297; ADJ794315
Oakland District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR
RECONSIDERATION AND DENYING PETITION
FOR DISQUALIFICATION**

Applicant, in pro per, filed a Petition for Disqualification on November 25, 2024 and a Petition for Reconsideration on December 6, 2025. We have reviewed the Petitions and the WCJ's Reports and Recommendation. Based on our review of the record and for the reasons stated below, we will dismiss the Petition for Reconsideration and we deny the Petition for Disqualification.

I.

Preliminarily, we note that 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.

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

(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 January 17, 2025, and 60 days from the date of transmission is March 14, 2025. This decision is issued by or on March 18, 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on January 17, 2025, and the case was transmitted to the Appeals Board on January 17, 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 January 17, 2025.

II.

The WCJ stated the following in his Report:

DISCUSSION

As noted the Report and Recommendation with respect to Applicant’s Petition for Reconsideration in ADJ3370297 and ADJ794315 filed simultaneously with this Report and Recommendation, the unrepresented Applicant has two old claims in those cases involving the Oakland Unified School District. The claim

in ADJ3370297 dating from September 8, 2000 was previously settled by a now final Order Approving C&R (OACR) dating from April 16, 2004, and the claim in ADJ794315, for a April 1, 1999 DOI, may have also been settled by C&R, although since the case is so old, there is no copy of a OACR/C&R in EAMS/Filenet in that case. The Applicant has a third claim in ADJ9478722, for what appears to be a cumulative injury alleged through February 5, 2013, to the skin and respiratory system based on claimed exposure to toxic cleaning materials including bleach, against Dad's BBQ, where he worked as a janitor/helper. That claim where The Hartford is the defendant, is pending but seemingly has never been formally resolved. However, an order suspending benefits in that case issued on April 16, 2015, by Presiding Judge Gene Lam, which suspended all benefits until the Applicant attends a dermatology QME examination with Ann Weilepp, M.D., which he apparently refused to do, despite a prior order from Judge Deborah Ross dated December 4, 2014, that he was ordered to attend. Applicant filed a Petition for Removal of that Order to attend the QME evaluation, which was denied by the WCAB in an Opinion and Order dated June 8, 2015. It does not appear that the Applicant sought removal from Judge Lam's order suspending benefits in that case, which remains in effect. Finally, the Applicant's fourth claim in ADJ19042851, involves what appears to be an alleged cumulative injury starting January 3, 2022, but with no ending date listed, to the respiratory system and psyche, against Select Staffing who employed him as a warehouse worker, and its TPA Broadspire, which was filed on March 5, 2024. That case is still pending and has not settled. There has been no appearance and/or notice of representation filed on behalf of the defendant in that case to date.

* * *

Defense counsel for defendant in the two Oakland USD cases filed a Petition to Find Applicant to be a vexatious litigant in ADJ3370297 on October 15, 2024, and that Petition was/is currently pending before Presiding Judge Gene Lam. I suspect he will take action once the WCAB acts on the pending Petition to Disqualify and on the successive Petition for Reconsideration pending in the two Oakland USD cases, and which addressed in a companion R&R.

As to the merits of Applicant's request for disqualification of the judge in these four cases, the Petition does not provide any evidence, explanation, or argument as to how or why I am prejudiced against him, and/or how I denied him due process. It also fails to include an affidavit or declaration under penalty stating in detail facts establishing one or more of the grounds for disqualification specified in section 641 of the Code of Civil Procedure, as required by WCAB Rule 10960. It was also evidently not filed within 10 days after grounds for the requested disqualification were known, as also required by that Rule, rendering it untimely.

On the two occasions when Mr. Murphy called in on the phone for status conferences on April 24, 2024, and again on December 11, 2024, the Applicant became agitated, became argumentative with raised voice, and he eventually hung up, with the Court and all the other parties still on the line and before the conference was concluded. I note that I am the assigned trial judge in only one of these three cases, ADJ3370297, which was set for expedited hearing before me on November 5, 2024, on Applicant's DOR. I ordered that hearing taken off calendar on November 4, 2024, based on the then recently filed Petition to Disqualify me as WCJ, as reflected in the related Minutes of Hearing of the same date, which were emailed to defense counsel for the Oakland USD, Karlo Nebres, to serve. Accordingly, although the scheduling of that expedited hearing had the effect of making me the trial judge in that case, I have never issued any substantive order in that case beyond an order taking it off calendar (OTOC). The same is true with respect to the other 3 cases listed in the Petition for Disqualification, where I am only the conference judge. Finally, I note that the Petition for Disqualification, which was dated September 10, 2024, appears to pre-date my assignment as the trial judge in the Notice of Expedited Hearing on October 18, 2024, although I concede the Petition itself was not actually filed until October 25, 2024. To the extent that the substance of the Petition refers to the events of the status conference on April 24, 2024, there is no explanation as to why it took until October 25, 2024, to file a Petition to Disqualify the WCJ related to the hearing on April 24, 2024.

In sum, in my opinion, the Applicant's Petition for Disqualification of me as the WCJ in these cases, fails to meet the requirements of WCAB Rule 10960 and the Code of Civil Procedure section 641. It also lacks the required affidavit or declaration under penalty of perjury stating in detail the facts the grounds that warrant disqualification of the WCJ. Furthermore, it is not verified as required by Rule 10960. To the extent that the setting of 3 cases for hearing at one time bothered the Applicant, I have since directed my assistant to unlink the Applicant's cases in EAMS, with the exception of the two old Oakland USD cases in ADJ3370297, and ADJ794315, as they all involve different dates of injury, with different employers and different carriers. Accordingly, going forward, I would expect any of these cases to be set together aside from the two Oakland USD claims.

RECOMMENDATION

In sum, for the reasons explained above, I recommend that Applicant's Petition for Disqualification be **DISMISSED** as untimely and/or for failure to meet the requirements of Rule 10960 or that it is untimely, and/or that it be **DENIED** on the merits.

(Report, at pp. 2-6, emphasis in original.)

III.

It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 IAC 221]). As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299:

“The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.”

It is improper for applicant to file multiple petitions that attempt to relitigated issues that have already determined against applicant. Accordingly, the Petition for Reconsideration is dismissed.

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, former § 10452, now § 10960 (eff. Jan. 1, 2020), 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.)

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.”

Here, the petition 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). Accordingly, the request for disqualification is denied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Disqualification is **DENIED**.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 18, 2025

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

**SHANNON MURPHY
COHEN AND ASSOCIATES**

PAG/kl

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