

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

MARCO MONTEIRO, *Applicant*

vs.

**APPLE, INC.; SAFETY NATIONAL CASUALTY CORP.,
as administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ18956084
San Jose District Office**

**OPINION AND ORDERS
DENYING PETITION
FOR DISQUALIFICATION
GRANTING PETITION
FOR REMOVAL AND
DECISION AFTER
REMOVAL**

Applicant seeks disqualification of the workers' compensation administrative law judge (WCJ) based upon the allegation that the WCJ ordered applicant's matter off calendar in error and failed to set various issues for hearing.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Disqualification (Report) recommending that we deny disqualification.

We have received a request from applicant to file a supplemental petition, which we grant. (Cal. Code. Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Disqualification and the contents of the WCJ's Report. Based on our review of the record and based upon the WCJ's analysis of the merits contained in the WCJ's Report, we will deny disqualification. However, we will treat applicant's petition as seeking removal of the May 14, 2026, order taking the matter off calendar. We will grant the petition for removal and as our Decision After Removal we will rescind the May 14, 2026 order taking the matter off calendar and order that this matter be set for mandatory settlement conference so that the WCJ may conduct a hearing upon the parties' various discovery petitions.

Petition for Disqualification

Labor Code¹ 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. (§ 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.)

Next, petitions for disqualification must be timely filed: “If the workers' compensation judge assigned to hear the matter and the grounds for disqualification are known, the petition for disqualification shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.” (Cal. Code Regs., tit. 8, § 10960.)

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].) 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

¹ All future references are to the Labor Code unless noted.

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.”].)

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 (emphasis added).) 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, and based upon the analysis contained in the WCJ’s Report we deny the Petition for Disqualification.

Petition for Removal

FACTS

This matter has not proceeded to a formal hearing; however, pursuant to the amended application for adjudication, applicant claims a cumulative physical injury via stress that allegedly exacerbated an endocrine disorder. The amended application expressly states: “NO PSYCH INJURY IS CLAIMED UNDER LC § 3208.3.” (Amended Application for Adjudication, ADJ18956084, April 21, 2025.)

On May 5, 2025, a WCJ ordered the Medical Unit to issue a panel in endocrinology. According to the parties' pleadings, the DWC Medical Unit issued correspondence, dated August 29, 2025, stating "they were unable to assign a panel of three QMEs because of a lack of sufficient QMEs in California in the DWC Medical Unit to Endocrinology specialty." (Defendant's Answer to Petition for Disqualification, June 8, 2026, p. 2, lines 14-17.) Thereafter, applicant requested that Dr. Darius A. Schneider, M.D., be appointed as a QME pursuant to section 139.2(h). It does not appear that defendant has set up a QME appointment with Dr. Schneider.

The matter proceeded to hearing on October 13, 2025 with the prior WCJ.² According to the minutes, the matter was continued to another mandatory settlement conference, and defendant was to provide applicant their completed copy of the pre-trial conference statement. However, it does not appear that the matter was ever set for the continued hearing, and it remained off calendar.

On March 4, 2026, applicant filed a declaration of readiness to proceed, which essentially requested that the matter be reset for hearing on the same issues, including the endocrinology panel, a neurology panel, medical treatment authorization, temporary disability, mileage reimbursement, and a medical records dispute.

On April 15, 2026, defendant filed two petitions. First, defendant sought an additional panel in neurology pursuant to the reporting of the current orthopedic QME. Second, defendant sought an additional panel in psychiatry pursuant to defendant's argument that applicant has sustained a psychological injury and that his physical injuries are compensable consequences of a psychological injury. Defendant further requested an order compelling applicant to execute a psychological record release.

On April 17, 2026, the WCJ issued all three orders requested by defendant. The WCJ did not issue any notice of intent prior to issuing the orders. The WCJ did not serve the orders on all parties, but instead designated defendant to serve the orders. Finally, the WCJ stamped that the orders shall be of no force or effect if written objection is received within 10 days.

Applicant filed objections to all three orders on April 24, 2026.

The matter proceeded to a hearing on May 14, 2026, wherein the WCJ ordered the matter off calendar over applicant's objection. The comments in the minutes state, in pertinent part:

² It appears that the prior WCJ may have retired shortly after the hearing was completed.

“Partes are to confer and submit agreed orders for additional QME evals including endocrinology.” (Minutes of Hearing, ADJ18956084, May 14, 2026.)

DISCUSSION

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, the WCJ ordered the matter off calendar for further development of the record. The WCJ issued this order without creating a record or explaining the need for further development of the record and thus, the order violates the parties right to due process, which constitutes irreparable harm. Thus, removal is proper in this case.

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, § 10761.)

All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.)

A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. I.A.C. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].)

Here, the WCJ ordered the matter off calendar even though the parties have substantive threshold discovery disputes that require resolution before the case may proceed. The WCJ justified the order taking the matter off calendar based upon defendant's objection to the DOR, however, defendant's objection was only a partial objection. In its objection, defendant noted that multiple discovery disputes require resolution of the court. Defendant's objection did not provide good cause to take the matter off calendar. Instead, the WCJ should have worked with the parties to complete a pre-trial conference statement framing the issues for trial and set the matter for an evidentiary hearing.

We would note the following observations that may assist the parties in furthering this matter.

Applicant argues that the WCJ failed to appoint Dr. Darius A. Schneider, M.D., as a QME in endocrinology. It appears that a prior WCJ ordered an additional panel in endocrinology and it further appears that the Medical Unit could not issue the panel because insufficient QMEs existed. Applicant is correct that when the Medical Unit fails to issue a panel within 20 days, an unrepresented applicant "shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice within a reasonable geographic area." (§ 139.2(h)(1).) Given the dearth of QMEs available in this specialty, it would further appear that Dr. Schneider may be within a reasonable geographic area under such circumstances. (See § 139.2(h)(4).) It would appear that the WCJ may have overlooked applicant's argument in error; however, that does not form a basis to show bias or prejudice.

As to the issue of a psychiatric panel, and whether applicant must disclose psychiatric records, it appears that applicant has not claimed psychiatric injury and that this issue is being raised solely by defendant. This requires a balancing of applicant's right to privacy with

defendant's right to discovery. (*Britt v. Superior Court of San Diego County* (1978) 20 Cal.3d. 844, 859.)

When compelled disclosure intrudes on constitutionally protected areas, it cannot be justified solely on the ground that it may lead to relevant information. And even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a careful balancing of the compelling public need for discovery against the fundamental right of privacy.

(*Mendez v. Superior Court* (1988) 206 Cal.App.3d 557, 567 (internal citations and quotations omitted).)

The WCJ must create a record supporting any order that issues as to psychological discovery, but we note that if applicant has not filed a claim of injury to psyche and has not waived his right of privacy, *defendant's burden to show that it is entitled to such discovery is quite high.*

Accordingly, we deny the petition for disqualification, grant the petition for removal and as our Decision After Removal, we rescind the May 14, 2026 order taking the matter off calendar and order that this matter be set for mandatory settlement conference. As appropriate, the WCJ may conduct a hearing upon the parties' various discovery petitions, and as appropriate create an evidentiary record. (See Cal. Code Regs., tit. 8, §§ 10761, 10787.)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ filed on May 28, 2026, is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the May 14, 2026 order taking the matter off calendar is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the May 14, 2026 order taking the matter off calendar is **RESCINDED** and this matter is **RETURNED** to the trial level to reset the matter for a mandatory settlement conference.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 25, 2026

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

**MARCO MONTEIRO
PUREMD GROUP
RTGR LAW**

EDL/mt

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