

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

YANCY RIVAS, *Applicant*

vs.

**REAL TIME STAFFING SERVICES LLC.;
XL INSURANCE AMERICA, INC., administered by BROADSPIRE, *Defendants***

**Adjudication Numbers: ADJ20154934; ADJ20154935
Los Angeles District Office**

**OPINION AND ORDERS
DENYING PETITION
FOR DISQUALIFICATION
AND 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 was considering sanctions due to applicant's failure to attend depositions and due to applicant's counsel's filing a petition for removal, which appeared frivolous.

Since filing the Petition for Disqualification, applicant has substituted new counsel.

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

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 the Petition as seeking removal of the January 21, 2026 Order to Show Cause. We will grant removal and as our Decision After Removal, we will rescind the January 21, 2026 Order to Show Cause.

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. We remind the WCJ that a WCJ must avoid even the appearance of bias in all proceedings.

We treat the petition as seeking removal of the January 21, 2026 Order to Show Cause. (See § 5310; Cal. Code Regs., tit. 8, § 10945(a) [a petition for removal may be filed after “the occurrence of the action in issue”].)

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 issued an order to show cause why sanctions should not issue, in part, due to applicant's previously filing a petition for removal. Other than WCAB Rule 10955(d), which allows a WCJ to rescind an order or "take action to resolve the issue raised in the petition," the merits of a petition for removal may only be addressed by the Appeals Board in the first instance. (Cal. Code Regs., tit. 8, § 10955(d).) Even if we assumed the petition for removal was frivolously filed, an issue we do not decide, that would be an issue of sanctions before the Appeals Board, and not sanctions at the trial level. In the future, if the WCJ believes that a petition for removal may constitute a frivolous filing, the WCJ may note this in the Report and recommend that the Appeals Board consider the issue of sanctions.

As it was not proper to include the issue of removal in the Order to Show Cause, we grant the petition as one for removal and we rescind that Order. We make no judgment as to whether other trial level conduct of applicant's former attorney may constitute frivolous or bad faith conduct as that issue is not before us.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ filed on November 5, 2024, is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Order to Show Cause, issued on January 21, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order to Show Cause, issued on January 21, 2026, by the WCJ is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 10, 2026

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

**YANCY RIVAS
THE LAW OFFICES OF TELLERIA, TELLERIA & LEVY, LLP
MORGAN & LEAHY, LLP**

EDL/mt

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