

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

LAURIE FIELDS, *Applicant*

vs.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
permissibly self-insured, administered by SEDGWICK, *Defendants***

Adjudication Number: ADJ14660179

Oakland District Office

**OPINION AND ORDER
DISMISSING PETITION
FOR DISQUALIFICATION**

Applicant, in pro per, seeks to disqualify the workers' compensation administrative law judge (WCJ). Applicant generally alleges that the WCJ has evidenced bias in previously issuing a finding against applicant, which was thereafter rescinded on reconsideration.

We have not received an Answer from defendant. We have received a supplemental petition from applicant, which we have considered. 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, the supplemental petition, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below we will dismiss the petition for disqualification as it was untimely filed.

FACTS

As noted by the WCJ in her report:

Applicant, Laurie Fields, while represented, filed an Application for Adjudication dated May 19, 2021 to her respiratory system, skin dermatitis, excretory system, and other body systems. The matter went to trial on March 20, 2024.

Ms. Fields' case went to trial. The undersigned found the injury to be non-industrial based on the QME reports. Applicant timely filed a petition for reconsideration. The appeals board reversed the finding of non-industrial

causation and appointed an independent medical examiner, Dr. Richard Levy and admitted applicant's treating report.

(Report, p. 1.)

The Appeals Board issued its Opinion and Order Granting Reconsideration and Decision After Reconsideration on July 15, 2024.

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, 316 P.2d 366.)

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 [100 P.2d 511, 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, 153 P.2d 734 [“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.”].)

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, 155 P. 86; 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, 4 Cal. Rptr. 3d 519 [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, 119 Cal. Rptr. 2d 341, 45 P.3d 280; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310–1311 (Significant Panel Decision).)

Applicant should proceed with her case and if another trial is necessary, she may create a record and submit the matter before the current WCJ. If applicant is aggrieved by any final decision of the WCJ, as she is well aware, she is entitled to seek reconsideration, and the Appeals Board will review the evidence submitted accordingly. Applicant will be given a fair hearing, and she

will be given a fair appeal if any adverse decision issues. If applicant requires assistance in the future, she should contact the Information and Assistance Office with any questions or concerns.

Here, the petition for disqualification was filed on December 19, 2024. All of the conduct described in the petition relates back to the trial proceedings, which occurred months before. The petition for disqualification was not timely filed and good cause is not presented to accept a late filed petition.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for disqualification filed on December 19, 2024, is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 27, 2025

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

**LAURIE FIELDS, IN PRO PER
LAUGHLIN, FALBO, LEVY & MORESI**

EDL/mc

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