

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

**MICHAEL GARCIA, *Applicant***

**vs.**

**;**

**CTEC, INC. ;CIGA FOR INDUSTRIAL INDEMITY/FREMONT,  
COVER-TECH, INC.; CIGA FOR INDUSTRIAL INDEMITY /FREMONT,  
WANTZ EQUIPMENT CO.; STATE COMPENSATION INSURANCE FUND,  
GERLAD WALBURG; STATE FARM,  
ARCO AM/PM; ZENITH INSURANCE CO., *Defendants***

**Adjudication Numbers: ADJ3006563; ADJ2512405; ADJ7197475; ADJ15625557;  
ADJ1164291; ADJ862254; ADJ2541408; ADJ1046449; ADJ3981124;  
ADJ3034703; ADJ18423850**

**Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
DISQUALIFICATION**

We have considered the allegations of the Petition for Disqualification and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny the Petition for Disqualification.

We note that the Petition for Disqualification contains numerous documents attached in violation of WCAB Rule 10945(c). (Cal. Code Regs., tit. 8, § 10945(c).) These documents have been removed and discarded. (*Id.*) The filing party is admonished to follow the WCAB's Rules in future matters.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 13, 2025**

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

**MICHAEL GARCIA, IN PRO PER  
CHERNOW & PINE  
MULLEN & FILLIPI  
GORDON & REES LLP  
LAUGHLIN FALBO, LEVY & MORESI  
STATE COMPENSATION INSURANCE FUND, LEGAL  
KROGH & DECKER, LLP  
OFFICE OF THE DIRECTOR, LEGAL, SACRAMENTO**

**AS/mc**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR DISQUALIFICATION**

### INTRODUCTION

On February 7, 2025, Michael Garcia, an unrepresented injured worker, filed a Petition for Disqualification of the undersigned in the above referenced cases. The petition included a six-page typed letter, dated February 8, 2025, setting forth Mr. Garcia request that the undersigned be replaced with an "unbiased, non-discriminatory, not continued to commit hate crimes, non-opinionated representative who can preside over the proceeding on February 25, 2025 ... " (Petition for Disqualification, at page 4 of the typed letter). Mr. Garcia argues that all Presiding Workers' Compensation Judge Tempkin *"is proceeding with is to classify me as a vexatious litigant. He refuses to look at my claims of fraud and misconduct at Sacramento Work Comp. He says he has reviewed the files and claims no fraud exists. My ongoing nine (sic) cases are littered with fraud. Everybody has said they have looked. How can they miss so much fraud and deceit?"* (Petition for Disqualification, at page 5 of the typed letter).

In addition to the typed letter, Mr. Garcia attached the following documents to his Petition for Disqualification: 1) Minutes of Hearing and Summary of Evidence, dated April 10, 2024 in ADJ3006563 and ADJ7197475; 2) Rulings on Evidence, Findings of Fact, Orders; Opinion on Decision, dated May 8, 2024 in AD.13006563 and ADJ7197475;3) Report and Recommendation on Petition for Reconsideration, dated May 22, 2024 in ADJ13006563 and ADJ7197475; 4) Order taking off calendar, dated December 14, 2014 in ADJ1164291 and ADJ862254; 5) Michael Garcia's Declaration of Readiness to Proceed in the SIBTF claim, dated May 4, 2015; 6) Stipulation and Award and/or Order dated October 19, 2022 in AD.115625557; and 7) five consultative rating determinations from the Disability Evaluation Unit dated January 30, 2025.

The cases are currently set for trial on February 25, 2025, on the following issues: 1) whether Mr. Garcia is a vexatious litigant in all cases; 2) Mr. Garcia's Petition to Set Aside the SIBTF Compromise and Release in ADJ3006563; and 3) State Fann's petition for costs in ADJ7197475 and ADJ3006563 (see Pre-Trial Conference Statement dated February 5, 2025). All Mr. Garcia failed to set forth any grounds for disqualification specified in section 641 of the Code of Civil Procedure, (Lab. Code, §5311 and 8 Cal. Code Regs., §10960; see also Code Civ. Proc.,

§641 ). However, Mr. Garcia did file the Petition for Disqualification within 10 days of setting the case for trial with the undersigned and. would appear timely. issues in ADJ18423850 were deferred except the vexatious litigant issue (Pre-Trial Conference Statement, dated February 5, 2025, at page 7).

Mr. Garcia failed to set forth any grounds for disqualification specified in section 641 of the Code of Civil Procedure, (Lab. Code, §5311 and 8 Cal. Code Regs., §10960; see also Code Civ. Proc., §641 ). However, Mr. Garcia did file the Petition for Disqualification within 10 days of setting the case for trial with the undersigned and. would appear timely.

### FACTS

On April 10, 2024, the parties appeared in front of Judge Brown for trial on the issues of: 1) Mr. Garcia's July 19, 2023, Petition to Set-aside the Joint Order Approving Compromise and Release of June 4, 2012; 2) defendant's Petition for Sanctions; and 3) defendant's assertion of affirmative defenses of statute of limitations and latches.

On May 8, 2024, Judge Brown issued his Rulings of Evidence, Findings of Fact, Orders and Opinion on Decision. In pertinent part, Judge Brown found that there was no good cause to set aside the Compromise and Release agreement, there was no showing of fraud in relation to the resolution of applicant's claims, there was no showing that applicant was incompetent at the time these claims were resolved, and that applicant's efforts to set aside the settlement and the filing of new applications for the previously resolved injuries constituted bad faith litigation.

On May 16, 2024, Mr. Garcia filed his Petition for Reconsideration of Judge Brown's decision.

On May 20, 2024, Judge Brown continued the case to the Presiding Judge pursuant to Rule 10430 for a determination as to whether Mr. Garcia was a vexatious litigant.

On May 22, 2024, Judge Brown issued his Report and Recommendation on Petition for Reconsideration recommending that it be denied.

On July 15, 2024, the Workers' Compensation Appeals Board denied Mr. Garcia's Petition for Reconsideration.

On September 18, 2024, a status conference was held and the case continued to December 4, 2024. The minutes reflect that Mr. Garcia was to be provided with a copy of Rule 10430 and a Pre-Trial Conference Statement so that he would be prepared to set the issue of vexatious litigant for trial.

At the hearing on December 4, 2024, the cases were ordered off calendar and Mr. Garcia was allotted 20 days to file a written response to the motion requesting that he be found a vexatious litigant as well as to defendant's cost request in the amount of \$21,499.32.

On December 16, 2024, Mr. Garcia filed a Declaration of Readiness to Proceed to an Expedited Hearing as well as a Declaration of Readiness to Proceed in ADJ3006563 and ADJ2512405 claiming on going fraud and deliberate delay and infliction of emotional, physical, spiritual and psychological trauma.

On December 27, 2024, Mr. Garcia filed another Declaration of Readiness to Proceed in ADJ3006563 and ADJ2512405 on all issues noting that he had been trying to get a fair hearing on his cases for 30 years.

On January 3, 2025, the undersigned continued the January 8, 2025 hearing to January 29, 2025 due to OD Legal's unavailability. On the same day, the undersigned issued a Notice of intention to Award Costs in the amount of \$21,499.32 against Michael Garcia for bad faith litigation.

On January 3, 2025, Mr. Garcia filed a Declaration of Readiness to Proceed in ADJ862254, ADJ1046449, ADJ! 164291, ADJ2512405, ADJ2541408, ADJ3006563, ADJ3034703, ADJ3981124, ADJ15625557 and ADJ18423850. Mr. Garcia checked all issues and claimed that he had not been provide[d] a fair hearing in all of his cases and that the adjuster and judges of the workers' compensation system have been denying him his due process and committing fraud in the process.

On January 13, 2025, Mr. Garcia filed another Declaration of Readiness to Proceed to an Expedite Hearing as well as a Declaration of Readiness to Proceed in his cases. Mr. Garcia also filed three separate penalty petitions.

On January 21, 2025, the undersigned issued a Notice of Intention to declare Michael Garcia a vexatious litigant.

On January 21, 2025, Mr. Garcia filed another Declaration of Readiness to Proceed.

On January 29, 2025, the undersigned continued to hearing to February 5, 2025, so that all of the cases could be set for trial.

On February 5, 2025, the parties appeared at hearing and completed the Pre-Trial Conference Statement. The cases were then set for trial with the undersigned for February 25, 2025, on the issues of: 1) whether Mr. Garcia is a vexatious litigant in all cases; 2) Mr. Garcia's Petition to Set Aside the SIBTF Compromise and Release in ADJ3006563; and 3) State Farm's petition for costs in ADJ7197475 and ADJ3006563 (see Pre-Trial Conference Statement dated February 5, 2025)

On February 7, 2025, applicant filed the subject Petition for Disqualification.

### DISCUSSION

In addressing a Petition for Disqualification, the WCAB has noted that:

"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.)"

(Williams v. Home Depot, 2021 Cal. Wrk. Comp. P.D. LEXIS 142, \*1-2)

With regard to the current Petition for Disqualification, applicant failed to set forth any facts that would establish grounds for disqualification specified in section 641 of the Code of Civil Procedure. Nevertheless, Mr. Garcia appears to allege that the undersigned is more concerned about proceeding with finding him a vexatious litigant and defendant's petition for cost than addressing his denied and unresolved injury claim in ADJ18423850. It is noted in the Pre-Trial Conference Statement, that all issues in ADJ18423850 were deferred as the claim was denied and that Dr. Thai, the Panel QME in the case, was working on a supplemental report (Pre-Trial Conference Statement, February 5, 2025, at page 7). It appears that Dr. Thai had only issued one report as of the February 5, 2025, hearing. In this report dated August 23, 2024, Dr. Thai felt that Mr. Garcia's musculoskeletal complaints were non-industrial in nature, but noted he had not reviewed medical records and that if records became available that would tend to indicate some other causation, he would be glad to revisit the issue (Richard Thai, D.O., report dated August 23, 2024, at page 20).

Mr. Garcia was able to complete his portion of the Pre-Trial Conference Statement and will be provided with due process at the upcoming trial. The undersigned is not biased against Mr. Garcia and will review any evidence that Mr. Garcia has to support his claims of fraud.

#### RECOMMENDATION

It is respectfully recommended that applicant's Petition for Disqualification be dismissed and/or denied.

NOAH W. TEMPKIN  
PRESIDING WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

DATE: FEBRUARY 13, 2025