

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311250

DONNA L. HAMAKER,
EMPLOYEE

CLAIMANT

BAPTIST HEALTH,
SELF-INSURED EMPLOYER

RESPONDENT

REBSAMEN INSURANCE INC.,
D/B/A CROCKETT ADJUSTMENT, TPA

RESPONDENT

OPINION FILED AUGUST 30, 2004

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant appears pro se.

Respondents represented by the HONORABLE GAIL PONDER GAINES,
Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on the claimant's motion for recusal of Commissioner McKinney. After considering the claimant's motion, the respondents' response thereto and all other matters properly before the Commission, we find that the claimant's motion should be denied.

In her motion, the claimant seeks to have Commissioner McKinney recuse because she once was a lawyer at the law firm representing the respondents in this case. The

decision to recuse is one that is made by the Commissioner alleged to be biased. This Commission cannot order Commissioner McKinney to recuse as that decision is a personal one. See, Massongill v. County of Scott, 337 Ark. 281, 991 S.W.2d 105 (1999). Such a decision would be reviewable on appeal. Sturgis v. Skokos, 335 Ark. 41, 977 S.W.2d 217 (1998); Carmical v. McAfee, 68 Ark. App. 313, 7 S.W.3d 350 (1999).

Accordingly, we find that the claimant's motion should be and hereby is denied.

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs.

CONCURRING OPINION

I concur in the majority's finding that the claimant's motion for my recusal should be denied. However, I write separately to address the specific allegations of the claimant which led to the motion for recusal.

The decision to recuse is a personal decision. A judge is not required to recuse because of his or her life experiences. There is a presumption of impartiality on the part of judges. Kimbrough vs. Kimbrough, 83 Ark. App. 179, 119 S.W.3d. 66 (2003).

The party seeking recusal must demonstrate bias. Whether a judge has become bias to the point that he or she should disqualify himself or herself is confined to the conscience of the judge. See also, Kimbrough. Ford Motor Co. v. Arkansas Motor Vehicle Commission, 03-496 (Ark. 4-29-2004). An adjudicator is presumed to be unbiased, and in order to overcome that presumption, a litigant must show a conflict of interest or some other specific reason for disqualification. See Withrow v. Larkin, 421 U.S. 35 (1975). In order to establish bias, the party making the allegation must show that the decision maker "has a direct, personal, substantial, pecuniary interest in reaching a conclusion" against one of the parties of the dispute. Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 822 (1986).

The claimant, in her motion, argues that my previous employment with the law firm representing the

respondent prior to becoming a member of the Workers' Compensation Commission casts a shadow of the independence of my judgment. The fact that I worked for the law firm of Barber, McCaskill, Jones & Hale, P.A., from approximately 1992 to 1996, over eight years ago, is of no consequence to the facts of the case presently before us. For the past eight years, I have been employed by the Workers' Compensation Commission as a law clerk, Administrative Law Judge, and now, Commissioner. I have heard numerous cases involving the Barber Law Firm since becoming an Administrative Law Judge and a Commissioner. I have decided some cases in favor of the Barber Law Firm and other cases against. Furthermore, while an employee of the Barber Law Firm I never represented Baptist Health on any matter. Accordingly, I assure the parties that I have thoroughly and thoughtfully considered claimant's motion, and I am confident that I will fairly and impartially adjudicate the facts of this claim. Therefore, I concur in the denial of the claimant's motion.

KAREN H. McKINNEY, Commissioner