

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

ANA FLORES, *Applicant*

vs.

**KOOS MANUFACTURING, INC.;
SAFETY NATIONAL CASUALTY COMPANY, *Defendants***

**Adjudication Number: ADJ14752542
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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, and for the reasons stated below, we will deny reconsideration.

In addition to the reasons stated by the WCJ in the Report, we note that WCAB Rule 10401 permits non-attorney representatives to represent injured workers in proceedings before the Workers' Compensation Appeals Board. (Cal. Code Regs., tit. 8, § 10401.) Contrary to the statement made by the WCJ, we were able to locate a verification filed on December 12, 2022, in EAMS.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 17, 2023

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

**ANA FLORES
PRUSSAK WELCH & AVIA
NIGEL SCOTT BAKER, ESQ.**

PAG/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 RECONSIDERATION

I.

INTRODUCTION

Date of Injury:	November 20, 2017
Age on DOI:	51
Occupation:	Inspector/Cloth tester group 221
Parts of Body Injured:	Back, hips, upper extremities, shoulders, wrists, arms, elbows, and hands
Identity of Petitioner:	SAFETY NATIONAL CASUALTY COMPANY
Timeliness:	The Petition was timely filed.
Verification:	The Petition was not verified.
Date of the Award:	December 5, 2022
Petitioner's Contentions:	Petitioner contends the WCJ erred by: Acting without or in excess of her powers by awarding deposition attorney's fees to Prusak, Welch, and Avila for services rendered by a hearing representative under the direction of a licensed attorney, and Petitioner further contends that the findings of fact do not support the award.

II.

FACTS

The parties stipulated that the applicant, Ana Flores, sustained injury to her back, hips, upper extremities, shoulders, wrists, arms, elbows, and hands on November 20, 2017.

The applicant's deposition was taken by Defendant's attorney on July 21, 2021. Appearing on behalf of the applicant was Mr. Jesse Lemus, a hearing representative. Following the deposition, a request for fees incurred as a result of representing Ms. Flores was forwarded to Defense counsel for payment. Defendant refused to pay and the matter proceeded to trial on October 18, 2022 on the sole issue of Applicant's attorney's entitlement to fees pursuant to Labor Code §5710. Fees were awarded to Prusak, Welch & Avila at \$300.00 per hour, which the WCJ determined was justified in this matter. Defendant's timely but *unverified* Petition for Reconsideration/Removal followed.

III.

DISCUSSION

Labor Code §5700 allows non-attorneys to represent parties before the Workers' Compensation Appeals Board. An integral part of representing injured workers is the conducting of discovery, including depositions.

In addition, Labor Code §4907(b) states that "for purposes of this section, non[-]attorney representatives shall be held to the same professional standards of conduct as attorneys." The operative portion of Labor Code §5710 pertaining to attorney's fees is subsection (b) (4), not (a) (4) as cited by Petitioner. It states that "A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state." A review of the Labor Code both before and after the revision cited by Petitioner as effective on January 1, 2017 reveals that subsection (b) (4) was the same in 2022 as it was in 2016.

Labor Code §5710 has been interpreted by the California Court of Appeal in *99Cents Only Stores vs. WCAB (Arriaga)*, 65 CCC 456 (2000), where it determined that §5710(b)(4) did not specifically prohibit payment of deposition fees for services rendered by a non-attorney representative as long as they are paid to the law firm representing an injured worker.

In fact, as cited by Petitioner, on page 4 of its petition, lines 13-16, Ms. Flores is in fact represented by an attorney so licensed.

Petitioner then raises Rule 10547 regarding the filing of Petitions for Labor Code §5710 fees. However, it also points out that no such petition was filed in this case until after a Declaration of Readiness to Proceed on the issue resulted in a Status Conference on March 2, 2022. As the DOR specifically raised the issue of payment of deposition fees, no further Petition was necessary. Accordingly, Petitioner's issues with the Petition itself are moot.

Finally, the WCJ rescinded the original order allowing fees at \$400.00 per hour, based upon the valid argument by Defendant that the fees were too high, reducing the amount to \$300.00 per hour, in keeping with *Arriaga*. It should be noted, however, that Mr. Lemus has many years of experience as a hearing representative, properly supervised by attorneys. As such, the fee awarded, while not an inconsequential amount, is not as high as the rate regularly awarded to attorneys at the Anaheim District Office. Further, the additional portion of Labor Code §5710(b) (4) states "The fee shall be discretionary with, and if allowed, shall be set by, the appeals board, but paid by the employer or his or her insurer."

IV.

RECOMMENDATION

It is respectfully recommended that defendant's Petition for Reconsideration be denied in its entirety[.]

DATE: January 3, 2023

ALICE BURDEN
WORKERS' COMPENSATION JUDGE

SERVICE:

ANA FLORES
NIGEL SCOTT BAKER TOLUCA LAKE
PRUSSAK WELCH TUSTIN
SAFETY NATIONAL CASUALTY ST LOUIS
TRISTAR ROSEVILLE

ON: 1/3/2023 BY:C. Diaz