

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

IRMA LOYOLA, *Applicant*

vs.

**STORYTELLER CHILDREN'S CENTER INC.;
ILLINOIS MIDWEST INSURANCE AGENCY, LLC on behalf of PROCENTURY
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11832412
Santa Barbara 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 and Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

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/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 15, 2023

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

**IRMA LOYOLA
LAW OFFICES OF ALAN H. FENTON
LAW OFFICES OF BRADFORD & BARTHEL**

JMR/ara

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

- | | | |
|----|--|--|
| 1. | Applicant's Occupation:
Age of Applicant:
Date(s) of Injury:
Parts of Body Injured:
Manner in Which Injury Occurred: | Teacher assistant / housekeeper
52
June 29, 2017
Not in dispute
Not in dispute |
| 2. | Identity of Petitioner:
Timeliness:
Verification:
Services: | Defendant
The petition is timely
The petition is verified
The petition was served on all parties |
| 3. | Date of Issuance of Order: | May 22, 2023 |
| 4. | Petitioner's Contention: | WCJ erred in finding the WCJ had jurisdiction to act on a Labor Code §5811 order issued by the WCJ, Cost Petitioner Interpreter failed to prove she interpreted for more than 1 service and Interpreter failed to establish her market rate. |

II.
FACTS

The issue presented in this case is a dispute over an interpreter's fee.

Cost Petitioner, Mina Thorlaksson Interpreting & Translating, provided interpreting services on two (2) separate dates of service; a Mandatory Settlement Conference on June 15, 2021, and at trial both in the morning and afternoon on August 19, 2021. There were four (4) separate charges of \$300.00 on these two (2) dates of service. Three (3) of the charges were incurred for services rendered on one day (morning and afternoon trial and interpretation of a C&R after 5:00 p.m.) and one for the second date of service.

On June 15, 2021, Cost Petitioner provided interpreting services for a scheduled MSC. An invoice in the amount of \$300.00 was submitted for this date of service. Defendant paid the amount of \$165.00 towards the \$300.00 invoice.

On August 19, 2021, trial was held in the underlying case in both the A.M. and P.M. sessions. An invoice in the amount of \$600.00 was submitted by Mina Thorlaksson Interpreting & Translating. Defendant paid nothing towards this invoice.

Following trial, Mina Thorlaksson Interpreting & Translating provided interpreting services at the Law Offices of Alan Fenton in the late afternoon – early evening hours for the translation of a Compromise & Release. An invoice in the amount of \$300.00 was submitted for this date of service. Defendant paid the amount of \$165.00 towards the \$300.00 invoice.

On October 14, 2021, an order issued in the amount of \$270.00 for the outstanding balance of the interpreting services provided for the MSC of June 15, 2021, and the translation of the Stipulated Findings & Award on August 19, 2021.

III. **DISCUSSION**

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures those defects.

In its Petition for Reconsideration Defendant first avers the WCJ had no jurisdiction to act because the Interpreter did not submit her bill for a second bill review. Defendant relies on the case of *Meadowbrook v Workers' Comp. Appeals Bd. (Vazquez) (2019) [42] Cal. App. 5th 432, 255 Cal. Rptr. 3rd 325, 84 CCC1033*.

However, the courts have made a distinction between interpreting services for medical evaluations or treatment and those for interpreting at legal proceedings, e.g., court hearings, depositions, settlement documents, etc. There is a higher and different certification required for interpreting at legal proceedings than interpreting elsewhere.

The WCAB has recognized this difference as decided in *Emilia Ramirez Robles v. Barbara F. Rausch; SCIF, ADJ11023915*. As such no second bill review was required on behalf of Cost Petitioner.

The WCJ having issued an order allowing Labor Code §5811 costs to which Defendant objected and Cost Petitioner having filed a non-IBR Petition and a Declaration of Readiness provides the jurisdictional basis for the WCJ to act.

Defendant next contends Cost Petitioner failed to provide more than one service pursuant to Labor Code §5811. The Cost Petitioner testified credibly and un-refuted that she provided interpreting services at the June 15, 2021, MSC, the morning and afternoon sessions of the trial held on August 19, 2021, and that she interpreted a CC&R post-trial after 5:00 p.m. at the applicant attorney's office.

Applicant's inability to remember when she appeared for a court proceeding does not invalidate Cost Petitioner's testimony and heretofore Defendant has not questioned whether interpreting services were provided at these hearings.

There was sufficient evidence including the testimonial evidence of Cost Petitioner and even the defense witness, (adjuster) Michelle Cripe, who acknowledged services were provided and paid a portion of the amounts requested upon submission to her. Further the documentary evidence also supported that interpreter services were provided on the four occasions.

Lastly, Defendant argues the Cost Petitioner's market rate analysis is flawed. The defense witness Ms. Cripe testified she did not pay the full amount requested because she did not feel there was sufficient documentation, and the services were "cherry picked" by Cost Petitioner.

However, exhibits 6 and 7 reflects numerous occasions where she was paid at the rate of \$300.00 and no evidence was presented by Defendant to show that these were "cherry picked" or did not reflect an appropriate sample for a market rate document.

Lastly, this same Defendant previously paid and was one of the payers listed to establish her market rate analysis.

The documentation was found by the WCJ to support a finding that Cost Petitioner met her burden of proof in establishing her market rate of \$300.00 for these services.

IV.
RECOMMENDATION

For the reasons stated, it is respectfully recommended that Defendant's Petition for Reconsideration be denied based on the arguments and merits addressed herein.

DATE: June 28, 2023

Scott J. Seiden
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

STIPULATIONS

The stipulations of the parties as set forth in the Minutes of hearing are accepted as fact.

FACTS

Cost Petitioner, Mina Thorlaksson Interpreting & Translating, provided interpreting services on two (2) separate dates of service; June 15, 2021, and August 19, 2021. There were four (4) separate charges of \$300.00 on these two (2) dates of service. Three (3) of the charges were incurred for services rendered on one day and one for the second date of service.

On June 15, 2021, Cost Petitioner provided interpreting services for a scheduled MSC. An invoice in the amount of \$300.00 was submitted for this date of service. Defendant paid the amount of \$165.00 towards the \$300.00 invoice.

On August 19, 2021, trial was held in the underlying case in both the A.M. and P.M. sessions. An invoice in the amount of \$600.00 was submitted by Mina Thorlaksson Interpreting & Translating. Defendant paid nothing towards this invoice.

Following trial, Mina Thorlaksson Interpreting & Translating provided interpreting services at the Law Offices of Alan Fenton in the late afternoon – early evening hours for the translation of a Compromise & Release. An invoice in the amount of \$300.00 was submitted for this date of service. Defendant paid the amount of \$165.00 towards the \$300.00 invoice.

On October 14, 2021, an order issued in the amount of \$270.00 for the outstanding balance of the interpreting services provided for the MSC of June 15, 2021, and the translation of the Compromise & Release on August 19, 2021.

On December 28, 2021, an order issued in the amount of \$660.00 for the interpreting services provided for the trial of August 19, 2021.

Cost Petitioner is claiming there is an outstanding balance in the amount of \$930.00, including interest.

JURISIDCTION

Defendant raises jurisdiction, but jurisdiction was established by the Cost Petitioner filing its petition for costs pursuant to Labor Code §5811.

ATTORNEY FEES

Reserved and deferred pending bill of particulars.

UNPAID DATE OF SERVICE AUGUST 19, 2021

Based on the credible testimony of Mina Thorlaksson with due regard for her demeanor as a witness, together with the documentary evidence submitted, Cost Petitioner is entitled to an additional \$135.00 for the translation of the Compromise & Release.

UNPAID DATE OF SERVICE AUGUST 19, 2021

Based on the credible testimony of Mina Thorlaksson with due regard for her demeanor as a witness, together with the documentary evidence submitted, Cost Petitioner is entitled to \$600.00 for interpreting services provided for the morning and afternoon trial sessions.

UNPAID DATE OF SERVICE JUNE 15, 2021

Based on the credible testimony of Mina Thorlaksson with due regard for her demeanor as a witness, together with the documentary evidence submitted, Cost Petitioner is entitled to an additional \$135.00 for the MSC hearing that was held.

PENALTIES & INTEREST

Based on the credible testimony of Mina Thorlaksson with due regard for her demeanor as a witness, together with the documentary evidence submitted, Cost Petitioner is entitled to penalties and interest per the Labor Code in an amount to be adjusted by the parties.

SECOND BILL REVIEW

Defendant's reliance on *Meadowbrook Ins. v. WCAB*, (2019) 42 Cal.App.5th 432 is misplaced. That case involved an interpretation involving a medical situation; not a legal interpretation. *Meadowbrook* involved a lien for services rendered not a Labor Code §5811 Cost Petition.

Rather the case of *Emilia Ramirez Robles v. Barbara F. Rausch*; SCIF, ADJ11023915 as decided by the WCAB provides a better rationale for the WCJ to follow. In that case the WCAB wrote,

“Although we are not making a ruling as to the issues submitted by the parties, it is important to note that the provisions of the Labor Code and the Administrative Director (AD) rules regarding interpreter services needed for medical treatment are different from the provisions as to interpreter services provided in other settings. Labor Code section 4600 states in part that: (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. ... ¶ ... (g) If the injured employee cannot effectively communicate with the employee's treating physician because the employee cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f) but shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. The administrative director shall adopt a fee schedule for qualified interpreter fees in accordance with this section. (Lab. Code, § 4600.)¹ Also, the billing/payment requirements in section 4603.2 are in regard to “A provider of services provided pursuant to Section 4600, including but not limited to ... interpreters ...” (Lab. Code, § 4603.2(b)(1)(A).) Further, section 5811 states: ... Interpreter fees that are

reasonably, actually, and necessarily incurred shall be paid by the employer under this section, provided they are in accordance with the fee schedule adopted by the administrative director. ¶ A qualified interpreter may render services during the following: ... (D) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who does not proficiently speak or understand the English language. (Lab. Code, § 5811(b)(2).)

As to the actual amount to be paid for interpreter services, the provisions of AD rule 9795.3 relevant to the issues herein, are: (a) Fees for services performed by a certified or provisionally certified interpreter, upon request of an employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events: ... (6) A conference held by an information and assistance officer ... to assist in resolving a dispute between an injured employee and a claims administrator. (7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee. (b) The following fees for interpreter services provided by a certified or provisionally certified interpreter shall be presumed to be reasonable: (1) For an appeals board hearing, arbitration, or deposition: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. ... (2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of \$11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. ... (Cal. Code Regs., tit. 8, § 9795.3.)”

In this case, it is not a dispute as to whether Mina Thorlaksson Interpreting and Translating is entitled to payment for the services provided to Applicant. The issue is the amount of the payment.

Cost Petitioner is not required to pursue a second bill review of her invoice for interpreting services for a court hearing or legal translation event.

MARKET RATE

Cost Petitioner testified credibly with due regard for her demeanor as a witness her market rate analysis reflects what she was paid. The market rate analysis reflects payments received in 2020 and she was not paid less in 2021 or 2022. She only updates her market rate analysis periodically because her rates don't change.

Cost Petitioner submitted her market rate analysis herein as Exhibit 7. It is a one-page list of providers who paid for interpreting services during the period March 11, 2020, through January 10, 2022. Of the 44 providers listed ten (10) of these items were for services performed at other than a court hearing or interpretation of a Compromise & Release.

The thirty-four (34) dates of service were for the exact same services as provided in the instant case. The charge was \$300.00 for every thirty-four (34) dates of services listed.

What is most interesting to note, as reflected in Cost Petitioner's Exhibit 2, is a date of service for this Defendant for services performed who paid her the claimed \$300.00 market rate for a February 20, 2020, date of service.

Cost Petitioner has met her burden and her market rate analysis is valid.

COSTS & SANCTIONS

Reserved by Defense.

CONFLICT OF INTEREST BY APPLICANT ATTORNEY REPRESENTING COST PETITIONER

Defendant has failed to demonstrate any objection (other than by Defendant) or any statutory or case authority to disqualify Applicant's attorney from acting as Cost Petitioner's attorney.

DATE: May 22, 2023

Scott J. Seiden
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE