

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

**MARIA LUISA BAUTISTA, *Applicant***

**vs.**

**KOHL'S DEPARTMENT STORE; SAFETY NATIONAL CASUALTY CORPORATION,  
administered by SEDGWICK CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ11137960  
Oxnard District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR RECONSIDERATION  
AND DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of the September 7, 2021 Findings and Award wherein the workers' compensation administrative law judge (WCJ) found that Santana Lopez & Associates (Cost Petitioner) is entitled to a fee of \$250.00 at the market rate for interpreter services provided at a June 20, 2018 Mandatory Settlement Conference. The WCJ also found that Cost Petitioner is entitled to costs under WCAB Rule 10545(h) of \$850.00.

Defendant contends that Cost Petitioner is not entitled to additional payment because Cost Petitioner was paid pursuant to the fee schedule and failed to request a second review. Defendant further contends, that interpreter fees for interpreting at a WCAB Hearing are medical-legal expenses subject to a fee schedule.

We have received an answer from Cost Petitioner. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that defendant's petition be denied. For the reasons set forth below, we will rescind the Findings and Award and issue a new decision affirming the award of an interpreter fee and rescinding the award of 5813 costs and sanctions and deferring the remaining issues with jurisdiction reserved at the trial level.

With respect to WCJ's decision to award Cost Petitioner an interpreter fee at the market rate, pursuant to Labor Code § 5811(b)(2): "Interpreter fees that are reasonably, actually, and necessarily incurred shall be paid by the employer ... and [a], qualified interpreter may render services during ... [a]n appeals board hearing ... [and d]uring 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."

Pursuant to Cal. Code Regs., tit. 8, § 9795.3(b)(1), the presumed reasonable reimbursement amount for interpreting services rendered at appeals board hearings are the greater of the following (i) at the rate of 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) the market rate. Cost Petitioner provided evidence to support the WCJ's finding of the market rate and the award is consistent with the fee schedule. (*Meadowbrook Ins. Co. v. Workers' Comp. Appeals Bd.* (2019) 42 Cal.App.5th 432[84 Cal.Comp.Cases 1033].)

Turning to the WCJ's award of costs, we note WCAB Rule 10545(h) permits a WCJ to award reasonable attorney's fees and costs pursuant to Labor Code section 5813 and WCAB Rule 10421. Labor Code section 5813 permits the award of a sanction of up to \$2,500.00 to be transmitted to the General Fund, attorney's fees and costs against a party who engages in "bad faith actions or tactics that are frivolous or solely intended to cause delay." Section 5813, subdivision (b), provides: "The determination of sanctions shall be made after written application by the party seeking sanctions or upon the Appeals Board's own motion." The sanction provision of Labor Code section 5813 is designed to protect against litigation abuses and to help WCJs and the "WCAB manage their calendars and provide for the expeditious processing of workers' compensation cases." (*Duncan v. Workers' Comp. Appeals Bd. (Silva)* (2008) 164 Cal.App.4th 294 [73 Cal.Comp.Cases 1197].)

WCAB rule 10421(a) provides that sanctions shall not be imposed "where the one subject to the sanction acted with reasonable justification." (Cal. Code Regs., tit. 8, § 10421(a).) The WCJ did not find that defendant engaged in a bad faith action or actions as defined by Section 5813. Defendant is entitled to notice and opportunity to be heard prior to a sanction issuing. Therefore, upon return of this matter to the trial level, the WCJ should identify which actions were potentially in bad faith and provide defendant with an opportunity to respond.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the September 7, 2021 Findings and Award is **RESCINDED** and the following is **SUBSTITUTED** in its place:

**FINDING OF FACT**

1. Santana Lopez & Associates is entitled to a fee of \$250.00 for interpreting services performed on June 20, 2018.
2. All other issues are deferred with jurisdiction reserved at the trial level.

**ORDER**

**IT IS HEREBY ORDERED** that defendant pay Santana Lopez & Associates \$93.44 as the balance due for interpreting services.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**November 29, 2021**

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

**ALBERT AND MACKENZIE  
MARIA LUISA BAUTISA  
MISSION COLLECTIONS**

**MWH/oo**

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