

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

ROSALBA QUINTANILLA, *Applicant*

vs.

**ARH PROPERTY MANAGEMENT,
AMTRUST, *Defendants***

**Adjudication Numbers: ADJ14201895; ADJ15810435
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITIONS FOR
RECONSIDERATION**

We have considered the allegations of the Petitions 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, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 5, 2023

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

**ROSALBA QUINTANILLA
NGUYEN & GRIBBLE LLP
GEORGE E. CORSON, IV, ESQ.
ALVANDI LAW GROUP
BRADFORD & BARTHEL, LLP**

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 DEFENDANT AND COST
PETITIONERS' PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Applicant's Occupation : Property Manager
Applicant's Date of Birth : August 15, 1965
Date of Injury : 1/1/16 – 12/15/20
Parts of Body Injured : jaw, digestive, nervous system,
reproductive, and other body systems

2. Identity of Petitioner: **Defendant** and **Cost Petitioner**
filed the Petition.
Timeliness: The petitions are timely filed.
Verification: The Petition is verified.

3. Date of Findings of Fact: 3/3/2023

4. It is recommended that both petitions be denied.

Defendant alleges the undersigned acted without or in excess of its powers and the evidence does not justify the findings of fact. Defendant based this on the belief that the undersigned did not review Defendant's trial brief and that the decision was inconsistent with applicable law. The cost petitioner does not specify on which basis it has filed the Petition for Reconsideration, but one could infer that they are alleging the undersigned acted without or in excess of its powers when the undersigned excluded proffered exhibits. Cost Petitioner alleges the excluded exhibits were material to the determination of bad faith and that vacating the decision and submission is necessary to allow new evidence that was not available at the time of trial. Both parties failed to state facts that would support the undersigned acted without or in excess of its powers or that the evidence does not justify the findings of fact.

II

BACKGROUND

On December 30, 2021 and December 31, 2021, cost petitioner LG Interpreting provided translation and review services of applicant's deposition transcript. Exhibits 107-108. Cost Petitioner billed defendant \$285.00. MOE/SOE at page 2, 11. Defendant made payment in the amount of \$175.00. Id. at page 2, 13. Thereafter, the cost petitioner sought an additional payment of \$220.00, plus attorney fees and costs against Defendant asserting bad faith actions and frivolous tactics.

The matter was continued to trial from a mandatory settlement conference on November 8, 2022. On January 4, 2023, the parties presented before the undersigned for trial. At that time, the matter was submitted on the documentary record. The issues were as follows: (1) whether Cost Petitioner is entitled to the greater of Market Rate/ Superior Court rate per Rule 9795.3(b)(1) for deposition transcript reviews; (2) whether Defendant correctly reviewed invoices under the Official Medical Fee Schedule (LC 5307); (3) whether petitioner is entitled to adverse presumption on No. 1 and No. 2 in absence of the Amtrust bill review guidelines; (4) whether EORs provided in discovery support that Amtrust underpaid LG Interpreting per its own records; (5) what amount, if any, is petitioner counsel entitled to for compelling proper payment under Rule 9795.3(b)(1). Parties were given the option to submit post-trial briefs no later than January 13, 2023. Defendant

filed Points and Authorities on January 11, 2023, and Cost Petitioner filed their Points and Authorities on January 12, 2023.

On March 3, 2023, the Court issued a Findings and Award and Opinion on Decision¹ (hereafter Findings and Award). The undersigned found that the cost petitioner was entitled to an additional payment of \$91.00 per interpreting services, totaling \$182.00 based on the 2014 Los Angeles Superior Court fee schedule for interpreters. While the Court did find additional monies were owed, the Court held defendants did not engage in bad-faith actions or frivolous tactics. In addition, the Court made evidentiary findings which included the admission of Cost Petitioner exhibits 103, 104, & 116, and exclusion of cost petitioners exhibits 109-115. All other issues were deemed moot.

It is from this Findings and Award that petitioners seek reconsideration. Defendant filed a verified and timely Petition for Reconsideration. Defendant contends that the undersigned failed to consider relevant information raised in his post-trial brief and seeks to set aside the undersigned's Findings and Award. Cost Petitioner filed a verified and timely Petition for Reconsideration. Cost Petitioner argues that the excluded evidence was material to the determination of bad faith and frivolous tactics and that new evidence received after submission is critical and seeks to set aside the undersigned's Findings and Award and reopen evidence.

The undersigned addresses both petitions herein.

¹ Opinion on Decision incorrectly list ADJ13118270, which is unrelated to this matter. The correct case number is ADJ14201895. The rest of the caption is correct.

III

DISCUSSION:

New arguments cannot be raised.

Defendant alleges that the 8 CCR 9795.3(b)(1) is inapplicable. (*Defendant Petition for Reconsideration*, at page 3-4, lines 26-28, 1-23). This is a new argument that was not raised at the time of trial. The issues were listed by the parties specifically asking whether additional payments were warranted per 8 CCR 9795.3(b)(1). Defendant's post-trial brief also failed to address this issue that is now being raised. Since this issue was not raised at the trial level, it should not be considered for reconsideration. (See *Cuevas v. Workers' Comp. Appeals Bd.* (2005), 70 Cal.Comp.Cases 479 (writ den.); *L.A. Unif. School Dist. v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 1220 (writ den.).)

Admissibility of evidence.

Defendant alleges that the undersigned did not explain the basis for admitting exhibit 116.

The undersigned overruled Defendant's objection of relevancy and concerns that it was not a complete document. (*MOE/SOE*, page 5 at 14-19). The Court decided the document is relevant as it goes to support the argument for the superior court rate it was seeking.

As it pertained to Defendant's second objection that the document was not complete, the Court found this did not prevent it from being admitted but rather it would go to the weight of the evidence. The Court also took into judicial notice of the Los Angeles County 2014 fee schedule as it is a public record, rather than relying on the incomplete fee schedule provided by the cost petitioner.

(*fee-schedule-2014.pdf* (lacourt.org)).

Cost Petitioner alleges that the Court should have taken in Exhibits 109-115, which it states were material to establishing that defendant engaged in bad faith and frivolous tactics. (*Cost Petitioner Petition for Reconsideration*, at page 1, lines 15-22). The Court sustained Defendant's objections in this instance. Defendant objected to the admission of the abovementioned exhibits on the basis of relevance and foundation because the EORs represented payments that were made

to other entities and there was no full description of the services provided. (*MOH/SOE*, page 5 at 7-13). The undersigned found Defendant's objections valid for admissibility purposes.

Additionally, it was unclear whether those EORs represented all the EORs ever issued by Defendant or whether they were self-servingly selected to show when defendants paid more than the cost petitioner requested. The cost petitioner alleges that the EORs are material to showing Defendant acted in bad faith. Even if the EORs were admitted into evidence, they would not have been helpful in informing whether Defendant acted in bad faith or frivolous tactics in this particular case. There were no witnesses called to provide any further information about Defendant's payment practices, for which Cost Petitioner was seeking to establish.

Discussion of all the things the Court did not rely on is not required.

Defendant contends that the undersigned acted without or in excess of its power by not specifically addressing Defendant's trial brief. (*Defendant Petition for Reconsideration*, at page 3, lines 3-8, page 5-6, lines 26-28, 1-3). Trial briefs are not evidence; they are arguments that the court considers in addition to reviewing the documents supporting the parties' claims. The main issue in this case was whether the Los Angeles Superior Court fee schedule (LASC) or the California Judicial Council (CJC) rate applies for payment of interpreter fees. The undersigned chose to rely on the strict interpretation of 8 CCR 9795.3(b)(1), which was discussed in the undersigned decision.

While the Court can understand Defendant's position that the CJC rate should be applicable, 8 CCR 9795.3(b)(1) states in relevant part that "interpreter fees shall be billed and paid ... 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 services was provided..." Although there is no longer a superior court fee schedule in use due to AB 1657, the code section clearly states a superior court fee schedule is to be used. The Findings and Award stated that the undersigned relied on this section in applying the last known LASC, which is from 2014. (*fee-schedule-2014.pdf (lacourt.org)*) at page 3, 66. Further, the code states payment to be made for one half day or full day as specified. The superior court interpreter fee of \$76 is per hour or portion thereof. *Id.* A half day of court is typically 3.5 hours. This was used to determine additional monies owed to the cost petitioner.

If the appeals board finds that the language "superior court fee schedule for interpreters in the county where the service was provided" does not mean the superior court fee schedule in the county where the service was provided, then the undersigned would also agree that the CJC rate is more appropriate. The CJC rate provides the rate used for contract interpreters. The interpreter used in Workers' Compensation proceedings are more akin to contract interpreters since they are not employees of the Department of Industrial Relations. The LASC contemplated the fees for interpreters who were actual employees of the superior court. Nonetheless, 8 CCR 9795.3(b)(1) specifies that the superior court fee schedule where the services occurred is to be used, and the undersigned relied on this schedule. 8 CCR 9795.3(b)(1) is silent as to what to do if the superior court no longer uses a fee schedule for interpreters.

Findings of Fact and Opinions on Decisions on unrelated matters are not Binding Authority.

Defendant finds it significant that the undersigned did not explain why she was making a ruling different from another judge in an unrelated matter. (*Defendant Petition for Reconsideration*, at page 3, lines 9-17). Defendant asks the Court to consider a decision issued by Workers' Compensation Judge Ward in ADJ13249546 as evidence to support their position. The undersigned is only bound by *en banc* decisions and may consider decisions by the Appeals Board as persuasive. This abovementioned decision was never reviewed by the Appeals Board.

Petition to Reopen Case not yet decided.

The cost petitioner indicates in their Petition for Reconsideration that the undersigned rescind her decision, vacate submission and allow newly received evidence that was not available at the time of trial. (*Cost Petitioner Petition for Reconsideration*, at page 2, lines 3-17). This newly obtained evidence appears to be confirmation that the 2014 LASC was neither changed nor repealed. This petition has not been ruled on at this time. However, the undersigned notes that she did rely on the 2014 LASC. Having this additional information would not change the opinion. Moreover, it would not lead the undersigned to find that Defendant acted in bad faith or frivolous tactics since the information was not available at the time the actions occurred and defendants have a prior decision they were relying on to support their payment of the CJC rate.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant and Cost Petitioner's Petitions for Reconsideration be denied.

DATE: April 11, 2023

Desirae Hutchison

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE