

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

**ANABEL VILLANUEVA, *Applicant***

**vs.**

**EPIPHANY CARE HOMES, INC.;  
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ13114480  
Oxnard 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, we will deny reconsideration.

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**

**March 28, 2023**

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

**LAW OFFICES OF ALEXANDER SOLHI & ASSOCIATES  
LAW OFFICES OF ALLWEISS MCMURTRY & MITCHELL  
ANABEL VILLANUEVA**

**PAG/oo**

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**

The Workers' Compensation Administrative Law Judge ("WCJ") issued an Opinion on Decision and Findings of Fact, on January 13, 2023. Cost Petitioner ScanDoc Imaging Inc., hereinafter, "Petitioner," has filed a timely and verified Petition for Reconsideration on the following grounds pursuant to Labor Code § 5903 / Rule 10843:

1. The evidence does not justify the Findings of Fact.

**I. CONTENTIONS**

Petitioner contends that the evidence does not justify the findings of fact, and that "a hearing be set to allow petitioner to be heard and present its evidence; and that decision be made to award Cost Petitioner all the benefits under CCR § 10786, as Petitioned for in the April 5, 2022 Petition for Reimbursement of NON IBR Med Legal Expenses with Request for Penalty, Interests, Costs, Attorney fees. And Sanctions against the Carrier if appropriate for breach of L.C. § 4622 and CCR § 10786, as well Sanctions against Defendants under L.C. § 5813 for failure to Serve and Pay an Order of the Court, as well as frivolous litigation tactics, as the relief requested herein." Petition for Reconsideration, January 30, 2023, page 7, lines 22-28, page 8, lines 1-2.

**II. FACTS**

The case in chief resolved via Compromise and Release approved on June 10, 2021 by Judge Mays, now retired. Cost Petitioner subsequently filed various documents, including a notice of representation and "Petition to Resolve Med-Legal Dispute non-IBR"(hereinafter "Cost Petition" EAMS Doc ID #40857432) on April 5, 2022 in EAMS.

In the petition, Cost Petitioner outlines that they issued subpoenas for two locations, "Ventura Orthopedic" and "Epiphany Care Homes," at the request of applicant's attorney Paul Kinsler on June 24, 2020. Cost Petition, April 5, 2022, page 2, lines 8-11. Further, that the billings for each were submitted to the claims administrator on September 18, 2020 and August 25, 2020, with a total outstanding amount of \$440.35. Id. at page 2, lines 15-18. The claims administrator issued "EORs" for each location and Cost Petitioner objected to each one. Id. at page 2, lines 24-25.

Judge Tolman reviewed the cost petition and issued an "Order In Re: Petition for Reimbursement of Medical-Legal Expenses," dated April 27, 2022, ordering defendant to pay \$440.35 to Cost Petitioner, and deferring the issues of "penalty, interest, Reasonable costs, attorney's fees, and monetary sanctions." Order dated April 27, 2022, EAMS Doc ID # 75440232.

Judge Tolman gave notice to defense attorney "Saul Allweiss Woodland Hills, Email" to serve pursuant to Rule 10629, on the order. The judge's secretary processed service and included her electronic signature in the "By" line at the bottom, on the same day. Thus, service is presumed to have been completed on defendant.

No objections were filed by defendant to either the cost petition or the Order of April 27, 2022.

Cost Petitioner then filed a Declaration of Readiness on June 28, 2022, approximately 2 months following the order. The DOR requested an MSC on the issue of an “unpaid Order,” with Cost Petitioner providing a timeline of the filing of their cost petition and the order issued by Judge Tolman, and that the order had “not been complied with.” Declaration of Readiness, June 28, 2022, page 7. A proof of service was efiled in EAMS showing service of the DOR on defense attorney.

Defendant did not file an objection to the DOR.

Parties were scheduled for MSC before Judge Tolman on July 19, 2022, and defendant requested an “OTOC” opposed by cost petitioner. Judge Tolman wrote the following in “Other/Comments:”

“No Stips & issues in FileNet 3:30. Cost claimant states that stips & issues were submitted to EAMS at 3:35 PM. They are not yet in FileNet. Defendant wants to OTOC to permit objection to the Order of Costs. OTOC due to lack of Stips & issues.”

The MSC was taken off calendar.

Pursuant to defendant’s Exhibit D, a check was issued by defendant, on July 22, 2022, to Cost Petitioner for \$491.65. Specifically, the amounts listed as paid on the check are \$440.35 for “Negotiated Medical Legal costs,” for “04/27/2022,” which appears to be pursuant to Judge Tolman’s April 27, 2022 Order, and \$51.30 for “Penalty & Interest (Late Medical Pymt).” Thus, defendant included an amount for late payment of the order.

Following the above payment, defendant filed “Defendant’s Objection to Scandoc Imaging’s Petition for Reimbursement of Medical-Legal Expenses, Penalties, Costs, Sanctions, and Attorneys’ Fees & Objection to 4/27/2020 Order for Payment” on July 26, 2022 (hereinafter “Defendant’s Objection” EAMS Doc ID# 42404960. Defendant attached “Exhibits A-C” as separate documents, and a proof of service listing Cost Petitioner.

The objection itself contains arguments about why defendant should not be liable for the copy services, and how they had provided some of the records to the applicant’s attorney. On page 2 of the Objection, defendant indicated the following: “Defendant objects to the 4/27/2022 Order and asserts that the 4/27/2022 Order was never received.” Defendant’s Objection, July 26, 022, page 2, lines 21-22. However, defendant does not address same in the body of the petition. Defendant specifically requested that an Order issue denying the Cost Petition. Id. at page 6, lines 19-21. Judge Tolman did not issue any further orders.

Cost Petitioner filed another DOR on September 6, 2022, requesting a Status Conference on their “CCR § 10786 Petition,” and included the timeline from their prior DOR, with the additional issues:

“This order was not served, nor was the order paid. Defendants have now issued a late objection, therefore cost petitioner is seeking discovery of all requested documentation.”

The “order” being referenced is Judge Tolman’s order of April 27, 2022. The DOR was served on defendant, and they did not file an objection.

The matter was again set before Judge Tolman, on September 27, 2022, and the MOH reflected that “Cost claimant” requested a continuance for further discovery. Judge Tolman typed in the “Other/Comments” section as follows:

“PTCS appears but paragraphs one and two are incomplete. Remaining issues are interest and attorneys fees. Parties to e-file amended PTCS within five days. Further discovery not required due to payment of principle amount. Set for trial on cost claim.”

Judge Tolman then set the matter for trial, which was scheduled before the undersigned on October 19, 2022.

On October 19, 2022, defendant appeared live in the courtroom before the undersigned, and cost petitioner appeared via phone. The following was typed in “Other/Comments” after extensive discussions with the parties:

“Parties are ordered to efile PTCS within 5 business days. Parties were admonished about possible sanctions for not following Judge Tolman’s MOH orders. Parties are to appear live unless Motion for good cause is filed.”

Parties could not agree on how to complete the PTCS, thus the undersigned indicated the above in the MOH and continued the matter to another trial date on November 10, 2022.

Parties appeared live on November 10, 2022 and the matter proceeded to trial.

The issues submitted at trial were as follows:

1. Scandoc Imaging cost petition:

- a) Med-legal costs of \$444.35, with two sets of attorneys fees and costs being requested, one in the amount of \$2,812.50, and the additional attorney fee in the amount of \$1,800.00.
- b) Cost petition of April 5, 2022, with defendant arguing that it is invalid because the claim was accepted and that Cost Petitioner is not entitled to attorneys’ fees and costs.
- c) Cost Petitioner seeks costs related to filing of the two Declarations of Readiness to Proceed and late payment of the Order that was issued on April 27, 2022; Defendant paid the Order and Objected to same once they discovered the Order.

Minutes of Hearing, November 10, 2022, page 2, lines 12-20.

The undersigned issued a Findings of Fact and Opinion on Decision, on January 13, 2023, finding that the issue of determining whether the medical legal costs were valid was moot, given that they had been paid pursuant to Judge Tolman’s Order. Further, that the costs themselves had been paid and were no longer at issue, and that Cost Petitioner was not entitled to attorneys’ fees and costs.

Petitioner then timely filed a Petition for Reconsideration. Defendant submitted an Answer on February 9, 2023.

### III. DISCUSSION

#### a. THE PETITION FOR RECONSIDERATION WAS IMPROPERLY FILED

Petitioner's Petition for Reconsideration violated CCR 10945 (c)(1). Specifically, petitioner attached their own "Exhibits A-F" to the Petition for Reconsideration, which were not exhibits labeled as such at the time of trial. CCR 10945, titled "Required Content of Petitions for Reconsideration, Removal, Disqualification and Answers," subsection (c)(1) provides as follows:

"Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration... Documents attached in violation of this rule may be detached from the petition or answer and discarded."

Petitioner attached seven "exhibits" to the Petition for Reconsideration (hereinafter "Petition"), in violation of CCR 10945 subsections (c)(1) and (c)(2).

"Exhibit A" of the petition is Judge Tolman's April 27, 2022 Order, which is already part of the adjudication file, and for which the undersigned took judicial notice at trial. This is a violation of subsection (c)(1).

"Exhibit B" of the petition is a Declaration of Readiness, for which petitioner failed to identify via date or EAMS DOC ID number. This is a violation of (c)(1).

"Exhibit C" is a "2nd DOR," as identified by petitioner, without a date or EAMS DOC ID number. Petition for Reconsideration, page 3, lines 23-25. This is a violation of (c)(1).

"Exhibit D" is the Minutes of Hearing dated September 28, 2022, which is already part of the adjudication file. No EAMS DOC ID number was provided. Petition for Reconsideration, page 4, lines 6-7. This is a violation of (c)(1).

"Exhibit E" is identified as "a true and correct copy of defendants Pre Trial-Conference Statement, listing several issues that were already ruled on. (Res Judicata)." Petition for Reconsideration, page 4, lines 10-12. No date or EAMS DOC ID number was provided for this document, and is not the Jointly filed Pre Trial Conference statement that parties completed following Day One of Trial on October 19, 2022. This is in violation of (c)(1).

"Exhibit F" is identified as "Cost Petitioners Response and Objection to Defendants untimely Explanation of Review(s)." Petition for Reconsideration, page 5, lines 22-23. The document itself consists of nine total pages, consisting of an objection, review and "Review Analysis, with various dates. These nine pages were attached to the Cost Petition of April 5, 2022, which was taken into the record by the undersigned. Minutes of Hearing, November 10, 2022, page 2, lines 21-25. This was attached in violation of (c)(1).

In addition to the above improper attachments, petitioner efiled their Petition for Reconsideration twice. Petitioner is admonished for not adhering to the relevant Rules and Regulations in the content and filing of their petition.

**b. PETITIONER REQUESTS HEARING**

Petitioner requests as relief that “a hearing be set to allow petitioner to be heard and present its evidence; and that decision be made to award Cost Petitioner all the benefits under CCR 10786...”. Petition for Reconsideration, page 7, lines 22-25.

The matter proceeded to trial, at which time petitioner submitted their Cost Petition of April 5, 2022 as their evidence. The matter was submitted for decision, and a finding was issued by the undersigned.

Thus, a hearing was set, petitioner presented their evidence, however, the undersigned did not issue an award in their favor. Petitioner’s request is deficient in that they are requesting relief that has already occurred.

**c. PETITIONER REQUESTS THEY BE AWARDED COSTS AND ATTORNEY FEES PER CCR 10786, AND SANCTIONS ISSUED AGAINST DEFENDANT**

Petitioner provides an extensive timeline of events in their petition as evidence that they are entitled to be awarded “all” benefits under CCR § 10786, attorney fees as outlined in their Cost Petition of April 5, 2022, and sanctions against the carrier for breach of L.C. § 4622 and CCR § 10786, and sanctions against defendants under L.C. § 5813 for failure to serve and pay an Order of the court, and frivolous litigation tactics. Petition for Reconsideration, pages 7-8, lines 24-28, and 1-2.

Specifically, petitioner in their petition of April 5, 2022 seeks payment of \$35.00 in costs “associated with drafting, filing and serving this pleading,” and \$2,250.00 as “attorney fees, pursuant to CCR 10786,” and sanctions in the amount of \$500.00. Further, at trial they raised additional amounts of \$2,812.50 and \$1,800.00 in attorney fees, and “costs related to filing of “two Declarations of Readiness to Proceed and late payment of the order that was issued on April 27, 2022...”. Minutes of Hearing and Summary of Evidence, November 10, 2022, page 2, lines 18-20.

No evidence or itemization was provided for the additional attorney fee amounts of \$2,812.50 and \$1,800.00, or the amount in costs related to the filing of DORs.

In support of the attorney’s fees outlined in the Cost Petition, Cost Petitioner attached a “Declaration of Alexander Solhi, Esq.” the attorney for cost petitioner. In said declaration, Mr. Solhi outlines that he bills at \$450.00 per hour, and that he provided 5 hours of work, including client intake, research, filing the petition, reaching out to defendants and drafting, filing and serving a “Declaration of Readiness for a Status Conference.” Cost Petition, April 5, 2022, page 35, lines 1-14.

Cost Petitioner did not file a DOR until June 28, 2022, almost three months after the cost petition was filed. Thus, it is unclear why Mr. Solhi would have included “drafting, filing and serving a Declaration of Readiness for status conference,” in his declaration, when none was filed and served with the board. Mr. Solhi is admonished for this action, and advised that as an officer of the court he should only seek costs and fees for actual filings and action taken.

Attorney fees and costs are awarded if the WCAB determines that “as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines, and procedures set forth in Labor Code sections 4622, 4603.3, and 4603.6...”. CCR 10786(i).

In the case herein, at the time the Cost Petition was filed on April 5, 2022, there was no evidence provided that defendant had engaged in bad faith actions or tactics. Specifically, defendant not following L.C. § 4622 does constitute bad faith actions or tactics.

Defense Exhibits A through C consist of objection letters sent to Cost Petitioner regarding their services and charges issued on July 31, 2020, September 24, 2020, and January 6, 2021. The dates of these letters are close in time to when Cost Petitioner engaged in the services and provided billing to the defendant. The failure of defendant not complying with L.C. § 4622 in and of itself does not rise to a level of “bad faith action or tactic.”

Further, while defendant did not timely pay the Order of April 27, 2022, which was presumed to have been served on defendant by the WCAB, the undersigned did not find that late payment was due to bad faith actions or tactics. Petitioner did not provide evidence that defendant engaged in such actions or that they in fact refused to pay the order.

As included in the “Facts” section above, defendant paid the order following the hearing of July 19, 2022 when they represented they learned of same. It does not appear that petitioner attempted to communicate with defendant regarding the outstanding order, or if they in fact served same on them prior to the DOR they filed on June 28, 2022. The DOR of June 28, 2022 requested an MSC on the issue of an “unpaid Order,” including a timeline of the filing of their cost petition and the order issued by Judge Tolman, and that the order had “not been complied with.” Declaration of Readiness, June 28, 2022, page 7. Thus, petitioner was in receipt of said order, but does not indicate how they received said Order, nor did they include efforts made to resolve the issue with defendant. Thus no bad faith actions or tactics were found to have been committed by defendant.

In regards to the additional attorney fees sought and “costs” related to the filing of the two Declaration of Readiness, Cost Petitioner did not provide itemization for same, nor an amended Petition outlining same was served on defendants to provide notice and due process that they were seeking these additional fees and costs.

### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.