

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

PAUL GARCIA, *Applicant*

vs.

**WORKFORCE SOLUTIONS; THE HARTFORD; TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ9315978
Long Beach District Office**

**OPINION AND ORDER
GRANTING RECONSIDERATION ON BOARD MOTION AND
DECISION AFTER RECONSIDERATION**

On June 5, 2023, a decision was issued by the Workers' Compensation Appeals Board. It has come to our attention that the decision incorrectly ordered monetary sanctions payable to a party, rather than to the general fund, as required by Labor Code section 5813.

Labor Code section 5315 provides that, "[w]ithin 60 days after the filing of the findings, decision, order or award, the appeals board may confirm, adopt, modify or set aside the findings, order, decision, or award of a workers' compensation judge and may, with or without further proceedings, and with or without notice, enter its order, findings, decision, or award based upon the record in the case." (Lab. Code, § 5315.)

Accordingly, we will grant reconsideration of the decision on our own motion, rescind our June 5, 2023 decision, and reissue the decision to correct the order for payment of sanctions.

The following is our Decision After Reconsideration:

Cost Petitioner Joyce Altman Interpreters (cost petitioner) seeks reconsideration of the March 23, 2022 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) awarded costs and expenses to the cost petitioner, but determined that separate monetary sanctions were unwarranted.

Cost petitioner contends that timely payment of expenses for interpreter services is required under Administrative Director (AD) Rule 9795.4, and that the failure of timely payment warrants the imposition of sanctions.

We have received a joint Answer from the defendants. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration (petition) and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&A, except that we will amend the decision to impose sanctions of \$500 as against both carriers, jointly and severally.

BACKGROUND

Applicant claimed injury to the bilateral knees, bilateral shoulders, and lumbar spine while employed as a cook, by defendant Workforce Solutions from December 1, 2010 to December 1, 2011. The case in chief resolved by stipulated award approved September 26, 2019.

This dispute arises out interpreting services provided by cost petitioner during the pendency of the case in chief. On February 7, 2022, the parties proceeded to trial on the sole issue of “whether additional costs and sanctions for late payments are due [to cost petitioner] under Labor Code Section 5813.” (Minutes of Hearing (MOH), dated February 7, 2022, at 2:19.)

On March 23, 2022, the WCJ issued her Findings of Fact, which determined, in relevant part, that cost petitioners’ principal balance, including penalties and interest, had been fully paid by defendants, but that the payment was late, as defined by AD Rule 9795.4(a). (Findings of Fact, dated March 23, 2022, Nos. 4, 5.) The WCJ awarded an additional 5.5 hours of costs in the form of collection expenses “at the non-attorney rate,” but declined to impose further monetary sanctions pursuant to Labor Code section 5813.¹ The WCJ explained that the imposition of collection costs was reasonable and warranted, but that defendants’ payment of the principle balance, including penalties and interests, “sufficiently counterbalances any sanctions the Court would have otherwise considered.” (Opinion on Decision, dated March 23, 2022, p. 3.)

¹ All further statutory references are to the Labor Code unless otherwise stated.

Cost petitioner contends the WCJ erred by not imposing monetary sanctions. The Petition observes that AD Rule 9795.4(a) requires that interpreter services be paid within 60 days of receipt, absent a timely assertion of non-liability. (Cal. Code Regs., tit. 8, § 9795.4(a).) Additionally, WCAB Rule 10421 requires the imposition of monetary sanctions for failure “to comply with the ... regulations of the Administrative Director or the Court Administrator...” (Cal. Code Regs., tit. 8, former § 10561, now § 10421 (eff. Jan. 1, 2020).) Accordingly, cost petitioner concludes that defendant’s failure of compliance with Rule 9795.4 requires the imposition of sanctions under WCAB Rule 10561. (*Ibid.*)

Defendants’ Answer observes that the imposition of monetary or other sanctions is within the sound discretion of the WCJ, who after considering the facts and evidence in this matter declined to do so.

The WCJ’s Report observes that although the defendants were found to have engaged in bad faith actions, WCAB Rule 10421 “does not take away the discretionary power of the Court to Sanction.” (Report, at p. 2.) The WCJ elaborated, “[w]hile the Court agreed that costs were warranted, Petitioner’s argument for Rule §10421 implies that sanctions are mandated for any Rule violation. That would mean any violation, whether big or small, would automatically incur a sanction, regardless of a WCJ’s exercise of judgment or weighing of the equities. This interpretation is draconian and strips the WCJ of his/her discretionary power.” (*Id.* at p. 3.) Accordingly, the report recommends we deny the petition.

DISCUSSION

Section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) However, “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice” (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [9 Cal. Rptr. 2d 345, 57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant’s petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.)

Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Cost Petitioners’ Petition was timely filed on April 18, 2022. Our failure to act was due to a procedural error and our time to act on the Petition was tolled.

Section 5813 provides that “[t]he workers’ compensation referee or appeals board may order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).)

WCAB Rule 10421, promulgated under section 5813, explicates the nature and scope of conduct that is subject to sanctions in proceedings before the Appeals Board. Subdivision (b) provides that “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) WCAB Rule 10421 authorizes the WCJ or the Appeals Board to order payment of reasonable expenses, including attorney’s fees and costs, and in addition, sanctions as provided in Labor Code section 5813.

While we agree with the WCJ that generally, the imposition of sanctions as described in section 5813 and WCAB Rule 10421 rests with the sound discretion of the WCJ, we also note that in this instance WCAB Rule 10786 contains specific provisions applicable to this dispute. Rule 10786 sets out the procedure for determinations of medical-legal expense disputes, and provides in relevant part:

(i) Bad Faith Actions or Tactics:

(1) If the Workers' Compensation Appeals Board 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 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs and for sanctions under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after October 23, 2013, the monetary

sanctions shall not be less than \$ 500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, the defendant might be obligated to reimburse to the medical-legal provider. (Cal. Code Regs., tit. 8, § 10786(i)(1).)

Thus, with respect to determinations of medical-legal expense disputes, the WCJ retains the discretion to determine whether, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines and procedures set forth in the Labor Code and in the Rules of the Administrative Director. However, once the WCJ has determines that the failure to comply arose out of bad faith actions or tactics, monetary sanctions “shall not be less than \$500.00.” (*Ibid.*)

Here, the WCJ notes that cost petitioner provided interpreting services at eight hearings before the WCAB as well as a deposition reading. (Opinion on Decision, dated March 23, 2022, at p. 2.) The WCJ has previously made a Finding of Fact that “the actions of the carriers qualify as ‘bad faith actions or tactics’ under Labor Code §5813.” (Findings of Fact, dated March 23, 2022, No.6.) Consequently, the mandatory provisions of WCAB Rule 10786(i)(1) require monetary sanctions of not less than \$500.00. (Cal. Code Regs., tit. 8, § 10786(i)(1).)

Accordingly, we will affirm the March 23, 2022 Findings of Fact, except that we will amend Findings of Fact No. 8 to reflect that pursuant to WCAB Rule 10786(i)(1), monetary sanctions of \$500.00 are payable by defendants The Hartford and Travelers Property Casualty Company of America, jointly and severally.

For the foregoing reasons,

IT IS ORDERED that reconsideration on Board motion of the decision issued by the Workers' Compensation Appeals Board on March 23, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, dated June 5, 2023, is **RESCINDED**.

IT IS FURTHER ORDERED that the Findings of Fact, dated March 23, 2022 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

8. Defendants' bad faith actions or tactics require the imposition of monetary sanctions in the amount of \$500.00 as against The Hartford and Travelers Property Casualty Company of America, jointly and severally.

IT IS HEREBY ORDERED THAT the Hartford and Travelers Property Casualty Company of America are jointly and severally liable for sanctions in the amount of \$500.00 to be paid to the General Fund. Payment shall issue within twenty (20) days of service hereof and must be sent to:

Workers' Compensation Appeals Board
P.O. Box 429459
San Francisco, CA 94142-9459
Attn: Julie Podbereski

Tax ID No. 94-3160882

The case name and case number shall be listed on the memo portion of the check.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 9, 2023

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

**JOYCE ALTMAN INTERPRETERS, INC.
ALCALA & ASSOCIATES
LEWIS, BRISBOIS, BISGAARD & SMITH
DIMACULANGAN & ASSOCIATES**

SAR/abs

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