

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

CARLOS BALLESTEROS, *Applicant*

vs.

**RALPH'S GROCERY COMPANY;
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ12324455
Los Angeles District Office**

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

Lien claimant, applicant's former law firm Levin & Nalbandyan LLP ("Levin & Nalbandyan"), seeks reconsideration of the Second Amended Findings and Award (F&A) of November 6, 2023, wherein the workers' compensation administrative law judge (WCJ) found in relevant part that Levin & Nalbandyan is entitled to attorney fees in the amount of \$12,750.00 (34 hours at \$375.00 per hour). Lien claimant contends that the evidence does not support the WCJ's methodology for allocation of attorney fees between Levin & Nalbandyan and applicant's most recent law firm HB Law Group.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the WCJ's F&A, and return this matter to the WCJ for further proceedings.

FACTS

The uncontroverted facts are as follows: Applicant sustained injury arising out of and in the course of employment on June 20, 2019, that resulted in a Compromise and Release with an Order Approving dated May 23, 2022.

Applicant was represented by Levin & Nalbandyan for the period of time between June 26, 2019 to September 11, 2019; by The Dominguez Firm for the period of time between September 12, 2019 to December 31, 2019; by David Issapour between December 31, 2019 to July 8, 2020; and by Silberman & Lam between July 8, 2020 to December 8, 2020.

Subsequently, applicant was represented by HB Law Group who resolved the matter with an Order Approving dated May 23, 2022. HB Law Group represented applicant from December 8, 2020 to the conclusion of the case. The attorney's fees for the prior firms, The Dominguez Firm; the firm of David Issapour; and Silberman & Lam have all been resolved for the following amounts: The Dominguez Firm for approximately \$11,000; David Issapour for approximately \$35,000 and Silberman & Lam for approximately \$30,000.

DISCUSSION

The sole issue in this case is whether the WCJ reasonably divided the attorney's fees between Levin & Nalbandyan and HB Law Group. The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1149 (*Vierra*.) In calculating attorney's fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903(a), 4906(a) & (d).)¹ Pursuant to section 4906, in determining what constitutes a "reasonable" attorney's fee, the Board must consider four factors: (1) the responsibility assumed by the attorney; (2) the care exercised by the attorney; (3) the time expended by the attorney; and (4) the results obtained by the attorney. (Lab. Code, § 4906(d); see also Cal. Code Regs., tit. 8, § 10844.) In *Vierra, supra*, the Court of Appeal held:

The Legislature has thus spoken clearly and decisively that attorney fees in workers' compensation cases cannot exceed an amount that is "reasonable" and that the WCAB shall be the final arbiter of reasonableness in all cases.

(*Vierra, supra*, at p. 1148.)

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

In the event where multiple attorneys have represented the applicant, the WCJ or the Board may apportion reasonable attorneys' fees between them based on the amount of work that each attorney provided. (*Lerer v. Workers' Comp. Appeals Bd.* (1978) 43 Cal.Comp.Cases 932 [writ denied].)

However, we note that the record is not adequately developed as to how those fees should be divided between Levin & Nalbandyan and HB Law Group. In particular, the record does not address the criteria for determining the reasonable amount of fees owed to each attorney, including the responsibility assumed by each attorney, the care exercised by each attorney, the time involved, and the results obtained. (Ex. 1, pp. 1-3; see Lab. Code, § 4906(d); Cal. Code Regs., tit. 8, § 10844.) Further, the record also does not explain how the WCJ arrived at the hourly rate of \$375 per hour. (11/6/23 Opinion on Decision, pp. 1-2.) Therefore, the issue that we face on reconsideration is that there is an insufficient record to evaluate the WCJ's F&A.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*)). The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

We will therefore rescind the F&A, and we will order that the matter be returned to the trial level for development of the record regarding this issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].)

Accordingly, we will grant reconsideration, rescind the Second Amended Findings and Award, and order that this matter be returned to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the November 6, 2023 Second Amended Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the November 6, 2023 Second Amended Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 29, 2024

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

**CARLOS BALLESTEROS
LEVIN & NALBANDYAN, LLP
HB LAW GROUP, PC
MICHAEL SULLIVAN & ASSOCIATES LLP
DAVID ISSAPOUR
DOMINGUEZ FIRM
SHERYL LAM
SILBERMAN LAM**

JMR/ara

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