

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

JAIME MONTES, *Applicant*

vs.

**20TH CENTURY AIR, INC.;
INSURANCE COMPANY OF THE WEST, THIRD PARTY ADMINISTRATOR,
*Defendants***

**Adjudication Numbers: ADJ14092813; ADJ15510077; ADJ15510080
Los Angeles District Office**

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

Blanca Hund Interpreting, Inc., (Lien Claimant) by and through its non-attorney representative, Omar G. Escalante and Associates seeks reconsideration of the Order Awarding Interpreting Costs (Order) in the amount of \$390.00 and \$150.00 for preparation of the petition for costs issued by the workers' compensation administrative law judge (WCJ) on July 27, 2023, in cases ADJ14092813, ADJ15510077, and ADJ15510080 .

Lien claimant in essence contends that: "The Order disregards Cost Petitioner's Market Rate, Penalties, Interests[sic], collections [sic] costs, and expenses incurred to resolve dates of services [sic] in which Spanish translating were [sic] required as stated in the petition." (Petition for Reconsideration, July 31, 2023, pp. 1-2.)

We have not received an Answer from defendant. 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 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 discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further

development of the record and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

BACKGROUND

Applicant filed multiple applications for adjudication, as follows:

In case ADJ14092813, applicant claimed a cumulative injury from August 17, 2012 to September 17, 2019, to various body parts (neck, hand, back, leg, feet, hips, fingers, stomach, stress, psyche; bilateral upper and lower extremities; shoulders, wrists, knees, feet, internal, head; sleep gastro diverticulitis; neuro; multiple) while employed by defendant as an air conditioning installer.

In case ADJ15510080, applicant claimed a specific injury on February 8, 2016, to skin while employed by defendant as an air conditioning installer. On April 7, 2022, applicant amended this application adding skin from exposure to rain at work.

In case ADJ15510077, applicant claimed a specific injury on September 1, 2018, to back, foot, and toes while employed by defendant as an air conditioning installer.

On August 30, 2022, parties entered into a Compromise and Release (C&R) in case numbers ADJ14092813, ADJ15510080, and ADJ15510077, and interpreter Robert Arroyo, state certification number 301531 with Lien claimant interpreted for applicant at the signing of a C &R.

On September 8, 2022, the WCJ issued an Order Suspending Action on Settlement.

On October 5, 2022, the WCJ approved a Joint Order Approving Compromise and Release (OACR) in case numbers ADJ14092813, ADJ15510080, and ADJ15510077.

On January 4, 2023, Omar G. Escalante and Associates served a demand for payment.

On January 9, 2023, Omar G. Escalante and Associates filed a non-attorney Notice of Representation of Lien Claimant.

On June 26, 2023, Lien claimant filed and on June 23, 2023, served a Petition For Costs, (Interpreting Fees) and Exhibits.

On July 27, 2023, the WCJ issued an Order Awarding Interpreting Costs (Order) pursuant to CCR § 10545.

On July 31, 2023, Lien claimant filed and served an Objection to Order.

On August 1, 2023, Lien claimant filed a Petition for Reconsideration (Petition) dated and served on July 31, 2023.

DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313¹. A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Board. en banc).)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board. en banc) (*Hamilton*)). As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (Lab. Code, § 5313; *Hamilton, supra*, at p. 475.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Part of the WCJ’s responsibility is to “frame the issues and stipulations for trial.” (*Id.* at p. 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

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.)

¹ All statutory references not otherwise identified are to the Labor Code.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

WCAB Rule 10832 states:

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

(1) Allowing, disallowing or dismissing a lien;

(Cal. Code Regs., tit. 8, § 10832(a)(1).)

Here, after the Lien claimant filed its Petition for Costs, the WCJ needed to issue a notice of intention (NIT) pursuant to WCAB Rule 10832. Here, the WCJ failed to issue a NIT in response to the Lien claimant's Petition for Costs, and instead on July 27, 2023, issued an Order without holding a hearing. Further, there were no minutes of hearing filed nor testimony taken and the WCJ did not provide a summary of the evidence relied on when making the decision to issue the Order. Thus, we are unable to perform meaningful review or evaluate the basis of the Order without an evidentiary record. Therefore, we must grant reconsideration, rescind the Order, and return this matter to the trial level for further proceedings.

Upon return to the trial level, we recommend that the WCJ hold a hearing to allow the parties to frame the issues and any stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, and make their legal arguments.

Accordingly, we grant reconsideration, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 27, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 27, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPPURO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 2, 2023

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

**JAIME MONTES
OMAR G. ESCALANTE AND ASSOCIATES
INSURANCE COMPANY OF THE WEST
LA COUNTY CSSD
TELLERIA TELLERIA & LEVY**

DLM/oo

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