

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

MARIA MALAGON, *Applicant*

vs.

**EARNIE BALL, INC.;
TRAVELERS INSURANCE, *Defendants***

**Adjudication Number: ADJ10971970
Riverside District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision after Reconsideration.

Essential Interpreting (cost petitioner) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on August 25, 2020. As relevant herein, the WCJ found that cost petitioner was required to request a second bill review subject to Labor Code section 4603.2, which it failed to do;¹ that the issue of costs and sanctions was denied; and that defendant was not liable for any further payment. The WCJ ordered that the lien claim of cost petitioner was deemed satisfied and that the employer was not liable for any further payment.²

Cost petitioner contends that it was not required to file a lien to recover the expenses for its interpreting services. Cost petitioner argues, as relevant herein, that the statutes and regulations allow cost petitioner to recover its interpreting services as a petition for costs.

Defendant filed an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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

² We note that cost petitioner did not file a lien. Instead, cost petitioner filed a "Petition for Costs & Fees (Labor Code § 5811, 5813, and 4622: Rule 9794.4)." This discrepancy did not play a role in this decision.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of record, and for the reasons discussed below, we will rescind the F&O and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant, while employed during the period of June 20, 2016, through June 20, 2017, as a guitar string winder by defendant, sustained injury arising out of and in the course of employment to her neck, right hand, right elbow, and right shoulder. Applicant resolved her case by way of Compromise and Release on October 23, 2019. (Minutes of Hearing (MOH), August 5, 2020, p. 2:4-9.)

At issue are cost petitioner's two invoices for interpreting services: one on October 27, 2017, for \$195.00 for deposition preparation; and the second on February 9, 2018, for \$250.00 for review of deposition transcript. The invoices were served on November 9, 2017, and February 15, 2018, respectively. (Ex. 1, Invoices, October 27, 2017, and February 9, 2018.)

On November 29, 2017, and February 28, 2018, respectively, cost petitioner sent a letter to defendant in response to defendant's partial payment of \$90.00 each for the October 27, 2017 and February 9, 2018 invoices. (Ex. 4, Response to Partial Payment, November 29, 2017 & February 9, 2018.)

On April 8, 2019, cost petitioner sent a demand letter to defendant requesting payment for the outstanding balance of \$343.53 for the two invoices at issue. Cost petitioner indicated, as relevant herein, that "no valid objection" was received. (Ex. 2, Demand Letter, April 8, 2019.)

On August 29, 2019, cost petitioner filed its Petition for Costs and & Fees for its interpreting services on October 27, 2017, and February 9, 2019 (Petition for Costs). (Ex. 5, Petition for Costs & Fees, August 29, 2019.)

Also on August 29, 2019, WCJ Yee issued an "Order to Pay Interpreter Costs" in connection to cost petitioner's Petition for Costs. WCJ Yee ordered that defendant pay \$0.00 and \$75.00 as the reasonable balance of cost petitioner's interpreting services. The WCJ denied cost petitioner's request for attorney's fees pursuant to section 5811 and included a provision that "an objection stating good cause and filed within 15 days shall void this order." (Ex. 6, Order to Pay Interpreter Costs, August 29, 2019.)

On September 13, 2019, cost petitioner filed a timely objection to the WCJ's Order to Pay Interpreter Costs.

On February 24, 2020, cost petitioner filed a Declaration of Readiness to Proceed requesting WCAB assistance in collecting payment based on the WCJ's August 29, 2019 Order to Pay Interpreter Costs.

On August 5, 2020, the WCJ held a hearing on, as relevant herein, cost petitioner's Petition for Costs and Sanctions. (MOH, August 5, 2020, p. 2:16-17.)

DISCUSSION

Section 5710 allows for interpretation services at an injured employee's deposition:

If interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language, upon a request from either, the employer shall pay for the services of a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code. The fee to be paid by the employer shall be in accordance with the fee schedule adopted by the administrative director and shall include any other deposition-related events as permitted by the administrative director.

(Lab. Code, § 5710(b)(5).)

Section 4620(a) defines as a medical-legal expense, a relevant herein, "interpreter's fees by a certified interpreter pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code, for the purpose of proving or disproving a contested claim." (Lab. Code, § 4620(a).)

AD Rule 9795.3(a)(4) allows for a certified interpreter at a "deposition of an injured employee or any person claiming benefits as a dependent or an injured employee," including "[p]reparation of the deponent immediately prior to the deposition" and "[r]eading of a deposition to a deponent prior to signing." (Cal. Code Regs., tit. 8, § 9795.3(a)(4)(i)&(ii).) AD Rule 9795.3(b) provides the fee schedule for interpreting services identified in subsection (a).

The interpreting services at issue in this case were for deposition preparation as well as deposition review prior to signing. Thus, these interpreting services are medical-legal expenses as defined by section 4620.

The WCJ's finding that the interpreting services are subject to section 4603.2 is incorrect. Section 4603.2 applies to services provided "pursuant to Section 4600, including, but not limited to, . . . interpreters, . . ." (Lab. Code, § 4603.2(b)(1)(A).) Section 4600 deals with medical treatment

provided by the employer. In particular, subsection (g), as relevant herein, states that, “[i]f the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments.” (Lab. Code, § 4600(g).) It is undisputed that the interpreting services at issue were not related to applicant’s treatment by her treating physician. Thus, section 4603.2 is not applicable.

Prior to cost petitioner’s Petition, the Appeals Board issued an en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. P.D. LEXIS 388] (Appeals Board en banc), clarifying a medical-legal provider’s burden of proof pursuant to sections 4620 and 4621. Here, sections 4620 and 4621 are satisfied as the interpreting services were provided in connection with applicant’s deposition.

II.

The analysis then shifts to the reasonable value of the invoices pursuant to section 4622. (See *Colamonico, supra.*) A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant essentially has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. If a defendant does not pay the invoice in full within 60 days, “the portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer.” (Lab. Code, § 4622(a)(1).) If a defendant pays the invoice in full within 60 days, it will avoid additional costs in the form of a penalty and interest.

Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment.³ Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1).) Objecting to an invoice with an EOR within the 60-day window is defendant’s burden. If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider’s billing. (Cal. Code Regs., tit. 8, former § 10451.1(f)(1)(A); see

³ Should a defendant decide to pay nothing, it must provide an explanation in an EOR.

Colamonico, supra.)⁴ A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest. A medical-legal provider has the burden of proof of the reasonable value of its services.

When a fee schedule is applicable, such as the interpreter fee schedule in this case, the EOR plays a crucial role in the framework provided in section 4622; depending on the defendant's reasons given in the EOR, the provider must either file a request for a second review or an objection. If the employer denies all or a portion of the invoice for "any reasons other than the amount to be paid pursuant to the fee schedule in effect," the provider must file an objection within 90 days. (See Lab. Code, § 4622(c).) If, however, the employer objects to the invoice based on the amount to be paid pursuant to the fee schedule, then the provider must file a request for second review within 90 days of the EOR. (See Lab. Code, § 4622(b)(1).)

Here, it does not appear that defendant submitted any EORs as exhibits in the record.⁵ On return to the trial level, the WCJ should hold a hearing to determine whether defendant timely filed an objection/EOR pursuant to section 4622(e)(1). If defendant failed to object to the invoices in a timely manner, then defendant has waived all objections and is liable for the reasonable value of cost petitioner's interpreting services pursuant to former WCAB Rule 10451.1(f)(1)(A)(i)(I). Furthermore, failure to object to cost petitioner's invoices in a timely manner may expose defendant to penalty and interest pursuant to section 4622(a)(1). If, on the other hand, defendant timely served an EOR, then the reasons given by defendant for partial payment in the EORs will determine the proper course of action that cost petitioner should have taken, i.e., whether cost petitioner should have filed an objection pursuant to section 4622(c) or a request for second bill review pursuant to section 4622(b)(1). These issues should be addressed by the parties in the first instance.

Accordingly, we rescind the F&O and return this matter to the WCJ for further proceedings consistent with this decision.

⁴ Effective January 1, 2020, former WCAB Rule 10451.1 is now 10786.

⁵ We note that cost petitioner responded to defendant after receiving a partial payment for each invoice. (See Ex. 4, *supra.*) In each response, cost petitioner mentioned that partial payment was received. However, there is no reference to an EOR or objection to the invoices.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 25, 2020 Findings and Order 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/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 15, 2021

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

**MARIA MALAGON
BENCIVENGA & ASSOCIATES
TRAVELERS INSURANCE
ESSENTIAL INTERPRETING**

SS/abs

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