

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

CHRISTINA MARIE PADILLA, *Applicant*

vs.

BETHANY HOME SOCIETY OF SAN JOAQUIN COUNTY, INC., Permissibly Self-Insured; administered by ATHENS ADMINISTRATORS, *Defendants*

**Adjudication Numbers: ADJ11056989; ADJ11036108
Stockton District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 18, 2022

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

**CHRISTINA MARIE PADILLA
RATTO LAW FIRM
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC
GOLDMAN MAGDALIN
LITTLER MENDELSON**

PAG/pc

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

JOINT REPORT AND
RECOMMENDATION ON PETITION
FOR RECONSIDERATION

INTRODUCTION

Date of Injury:	11/30/2016; 06/20/2016 - 06/20/2017
Body Parts Injured:	Bilateral shoulders, cervical
Occupation:	Caregiver
Occupational Group Number:	340
Age on Date of Injury:	29
Date of Findings and Award:	October 22, 2021
Petitioner:	Applicant's Attorney Ratto Law Firm
Timeliness of Petition for Reconsideration:	Timely
Verification of Petition for Reconsideration:	Verified

PETITIONER'S CONTENTIONS

Petitioner contends that the WCJ's Findings of Fact do not support the order, decision or award. Petitioner's Contentions:

- A. Reconsideration should be granted because the award of 60% of the attorney fees to the Lien Claimant was not supported by the facts of the case when you consider days of representation or itemized attorney time.
- B. Reconsideration should be granted because the award of 60% of the attorney fees to the Lien Claimant was not supported by the facts of case when you consider that Petitioner settled the case and procured the award of benefits for the Applicant.
- C. Reconsideration should be granted because WCJ Bowdry opined that the level of detail of descriptions is important for the division of attorney fees. This is in contrast with valuing the actual activities performed by the attorneys.
- D. Reconsideration should be granted because the award discourages Applicant Attorneys from taking over Workers' Compensation cases when an Applicant is dissatisfied with their current attorney.

FACTS:

The case in chief settled under a Stipulations With Request for Award on December 15, 2020 and WCJ Arendt issued an Award for attorney fees in the amount of \$4,643.62, payable to Petitioner. Lien Claimant filed it's lien for attorney fees on October 29 2018. Petitioner stipulated to representing the applicant from October 22, 2018 through the date of the Stipulated Award. Lien

Claimant stipulated to representing the applicant from September 19, 2017 to October 22, 2018.

On October 22, 2021, a Findings and Award issued in which it was found Petitioner was awarded 40% of the Award for attorneys fees and Lien Claimant was awarded 60% of the Award for attorney fees. The Opinion On Decision addresses the analysis of the evidence submitted and relied upon by the WCJ.

DISCUSSION:

CONTENTION A: Petitioner contends the division of attorney fees was not supported by the facts of the case when you consider days of representation or itemized attorney time. Petitioner provides an explanation of measuring time by the hours of attorney time to equate the percentage for the allocation of the attorney fee award.

The WCJ disputes the calculation/analysis. Petitioner is relying upon the itemization submitted into evidence; the same itemization relied upon by the WCJ, Petitioner's [Exhibit] B, EAMS DOC ID 38200907, Itemized Statement dated 9/3/2021 and Lien Claimant's Exhibit 5, EAMS DOC ID 74667886, Itemization Letter dated 5/14/2021. Petitioner's analysis only considers the total of hours as set forth in the itemization and ignores the description of services rendered. The WCJ addressed the totality of the itemizations which include the description of services rendered for the time noted per line item. Petitioner prefers the Board to ignore a portion of the itemization and accept the portion of the itemization which supports their position for a higher percentage. Petitioner omits addressing any legal authority which supports the Board ignoring portions of a document submitted into evidence.

CONTENTION B: Petitioner contends the division of attorney fees was not supported by the facts in the case because Petitioner represented the applicant during the final QME reporting by Dr. Lewis that generated the value of the Stipulations and the Award; therefore, their labor should reflect a greater share of the attorney fee. Petitioner is relying upon the final PQME report by Dr. Lewis dated 8/13/2020, Exhibit A, EAMS DOC ID 38200906 and the settlement document in support of the Board awarding a higher percentage of attorney fee. The settlement document was not listed as an exhibit nor admitted into evidence. Petitioner omits addressing the initial PQME report by Dr. Lewis dated 4/5/2018, Exhibit 2, EAMS DOC ID 74667877. The initial PQME report occurred during the Lien Claimant's period of representation. Lien Claimant's itemization, Exhibit 5, page 2 includes line items "12/5/2017 obtaining panel PQME .3", "1/16/2018 rev panel #2206351 .2", "1/25/18 rev'd def's 1/23 strike .2", "1/30/18 contact with Dr. Moshe Lewis to obtain pqme exam .3", "2/9/18 ltr to Dr. Lewis .3", "2/27/18 tel discussion w/Dr. Lewis's office .1", "3/27/18 exam with Dr. Lewis .1", and "5/16/18 rev'd Dr. Lewis's 4/5/18 rpt plus extensive

memo .5". The total time expended on labor provided for the PQME is 2.0 hours, of which .9 hours of labor was expended on rev'd activities.

Petitioner's line items for dates of service which reference the labor provided for the PQME per Exhibit B, page 2 are 112/7 /19 rev'd cover letter from DA and QME notice .311, 112/14/19 file review for QME appt .1 11, "4/12/19 rev'd QME report .411, and on page 3, 118/19/19 rev'd QME notice .1", "11/26/19 rev'd QME notice .1 ", "12/30/19 rev'd QME report 12/10/19, page 77 .5", "1/3/20 rev'd Cover letter from DA .2", and page 4, "1/28/20 rev'd QME report 1/9/20 .2", "6/11/20 rev'd QME appointment notice .1", and page 5, "7/21/20 Discussion on QME questionnaire .1 ", and "8/26/20 rev'd QME report, 31 pages .6". The total time for these dates of service is 2. 7 hours. The dates of service primarily provide labor described as rev'd activities equals 2.5 hours, and .1 was itemized for labor other than review or rev'd; total time expended was 2.6 hours.

Dr. Lewis' report dated April 5, 2018, page 19, Exhibit 2, finds injury on an industrial basis and the applicant is not yet MMI because right shoulder surgery is necessary. Based upon the statements made by Petitioner in its Petition for Reconsideration, the Board should ignore Lien Claimant's labor in procuring Dr. Lewis as the QME. But for Lien Claimant securing the PQME, Petitioner would not have had the benefit of relying upon the labor expended by Lien Claimant which caused Dr. Lewis to become the designated PQME. Dr. Lewis opined the applicant became MMI as of his report dated 8/13/2020, Exhibit A, page 24, during the period of time Petitioner represented the Applicant.

Per Exhibit B, time described by Petitioner referencing the settlement, is noted for line items with dates of service on page 5, "8/26/20 rev'd DA letter re: settlement .1", 1111/4/20 rev'd proposed stipulations .3", 12/11/2020 rev'd signed stipulation from client .1 ", "12/14/20 email to DA with stipulation .1" and "12/14/20 Hearing on the case, stipulation approved .4"; all of which total 1 hour. Line items concerning pre-settlement activities [performed] by Lien Claimant listed in Exhibit 5, are page 1, "9/17/17 filing petition for Penalty P/LC 132(a) 1.0", page 2, "6/11/18 filing DOR .311 and page 3, "7/10/18 appearance at exhibit hearing and preparation 3.0"; all of which total 4.3 hours.

WCJ disagrees with Petitioner's focus for a higher percentage should be placed solely upon the settlement and final QME report activities and ignore the activities of Lien Claimant during the discovery period of the case, as described in the itemizations submitted into evidence. Petitioner states they spent more time on handling the case.

The only evidence proffered on time spent on handling the case were the itemizations. The WCJ reviewed the entirety of the itemizations not just the time recorded. Petitioner contends the time spent is the only factor to consider and other portions of the itemizations should be ignored.

In considering the division of attorney fees, Regulation section 10844 states, "The WCJ shall consider responsibility assumed by the attorney, care exercised in representing the applicant, time involved and results obtained." The evidence submitted addressed numerical increments of time, dates and descriptions of how the time was spent. The WCJ considered time involved as time was itemized and described by Petitioner and Lien Claimant. All factors included in the itemizations go to the issue of time and the results obtained.

CONTENTION C: Petitioner contends the detail of descriptions of the activities performed is in contrast to valuing the activities performed by the attorneys. Petitioner contend they expended a lot of time reviewing mail but fail to address other activities to cause a case to reach final resolution. Reviewing mail is one activity. Lien Claimant itemized activities performed and reviewing activities. Each attorney made a decision to offer their respective itemizations as evidence to be relied by the WCJ for arriving at a percentage for the division of attorney fees. Petitioner places emphasis on the "value" of services; however, did not present any evidence other than their itemization and the final PQME report. No witnesses were presented to offer further details concerning Petitioner's value added labor versus the Lien Claimant's lack of value added services. The WCJ considered all of the information provided on the itemizations and all evidence submitted, which also included the Notice and Request for Allowance of Lien Exhibit 1 EAMS DOC ID 68744680, the Award dated 12/15/2020, Exhibit 3 EAMS DOC ID 73625321 and the Stipulations and Award and/or Order dated 7/10/2018, Exhibit 4 EAMS DOC ID 67561030.

Lien Claimant's itemization, Exhibit 5 page 1 addresses a date of service "9/21/2017 filing Petition for Penalty P/LC Sec 132(a) 1.0 and on page 3, "appearance at exhibit hearing and preparation 3.0". Exhibit 4, Stipulations and Award and/or Order is an Order for number 1.) TTD per PQME until MMI/P&S report issues and defendant to withhold 15% of retro TD and number 2.) "Def to provide AA with an MPN list, in ortho surgery & Physical Med & Rehab within 30 days." Exhibit 4 and 5 support descriptions of labor expended by Lien Claimant for securing TTD benefits and the MPN list. Lien Claimant's efforts secured TTD and the MPN list. Petitioner secured PD which is supported by the Award of attorney fees per Exhibit 3. Petitioner contends the WCJ should only address the quantity of hours and ignore the Lien Claimant's services rendered, which secured TTD. Petitioner contends it generated the "value of PD for the stipulations and award" but did not list the Stipulations With Request for Award as an exhibit; therefore, the stipulated PD value was not admitted into evidence.

Petitioner and Lien Claimant submitted PQME reports generated under their respective periods of exposure. Petitioner and Lien Claimant submitted itemization of the services rendered. Lien Claimants description were more detailed. Petitioner claims the WCJ should ignore the descriptions set forth in the itemizations and should only consider the finding based upon the number of days of representation, the settlement and final QME report occurring during

their period of their representation and the "value" of their work. The only evidence proffered addressing the labor they performed was the itemization. The WCJ considered the totality of all evidence submitted.

CONTENTION D: Petitioner contends the WCJ's award discourages Applicant Attorneys from taking over other cases when an applicant is dissatisfied with their current attorney. The WCJ disputes this allegation. There was no evidence submitted nor was the issue raised by Petitioner concerning the reasons for applicant changing attorneys. Issues and/or evidence not set forth at trial should not be initially raised in a Petition for Reconsideration.

In this case, the evidence presented by Petitioner was insufficient to meet its burden of proof supporting a greater percentage of attorney fees that should only be based upon the evidence of number of days of services rendered as shown in the itemization submitted.

CONCLUSION:

The Findings and Award issued in this matter is supported by the evidence submitted, the parties stipulations and request to submit on the record.

Petitioner did not present any witness testimony setting forth the quality and/or complexity of services performed.

RECOMMENDATION:

It is respectfully recommended that the Petition for Reconsideration be denied.

Irene Bowdry
Workers' Compensation Judge
Dated: 11/24/2021

JOINT OPINION ON DECISION

The relevant facts are as follows: Applicant, Christina Marie Padilla, born on [], while employed on November 30, 2016 and from June 20, 2016 through June 20, 2017, as a caregiver, by Bethany Home Society of San Joaquin County, sustained injury to the bilateral shoulders and cervical spine.

The case in chief settled under a Joint Stipulated Award, Award dated December 15, 2020, see LC - 3. The attorney fee awarded was \$4,643.62. The applicant's attorney of record at the time of settlement was Ratto Law. A lien filed by Central Valley Injured Worker Legal Clinic for reasonable attorney fees was filed on October 29, 2018.

The Lien Claimant requested a hearing for the Court to address its lien. Exhibits were entered into evidence. No witnesses were presented to testify. There were no objections to the exhibits admitted.

After review of the evidence, the Court finds Ratto Law is liable to lien claimant for 60% percent of the attorney fees awarded and received, under the Stipulated Award.

Review of Ratto Law's exhibit B, Itemization, indicates Ratto Law's total time expended for dates of service from 9/6/2018 to 12/11/2020 totals 28.5 hours. Lien Claimant's exhibit LC-5, Itemization indicates Lien Claimant's total time expended from 3/17/2017 to 10/25/2018 totals 24.5 hours.

As per Lab. Code section 4903, attorney fees shall not be allowed for any services rendered prior to the filing of the disclosure form. Although neither party listed their respective disclosure forms as evidence, the parties stipulated to their respective dates of representation. Ratto Law stipulated their period of representation was from October 22, 2018 to the date of the Stipulated Award. Lien Claimant stipulated their representation was from September 19, 2017 to October 22, 2018. Since the issue is the amount of attorney fees awarded as of the date of the Stipulated Award, any dates of service after December 15, 2020 will not be taken into consideration. Dates of service after the stipulated dates of representation shall not be considered.

Dates of service listed in Ratto Law's Exhibit B for 9/6/2018, 9/10/2018 and 10/17/2018 equals .8 of an hour and shall be excluded from their total amount of hours because the dates pre-date the stipulated period of representation. Ratto Law's adjusted total time is 27.7 hours.

Dates of service listed in Lien Claimant's Exhibit LC-5 for 3/17/2017 equals 1.7 hours and shall be excluded from their total amount of hours because the date, pre-dates the stipulated period of representation. Dates of service and time itemized after the stipulated date of representation, .2 of an hour for 10/25/2018, shall also be excluded. The total adjusted time for Lien Claimant is 22.6 hours.

Under Regulation section 10844, "In establishing a reasonable attorney fee, the workers' compensation judge shall consider, (b) care and exercise in representing the applicant, (c) Time involved and (d) results obtained."

Although Exhibit B and Exhibit LC-5 list activities itemized in abbreviations, there are some line items that are more discernible in Exhibit LC-5 than Exhibit B. Exhibit LC-5 for date of service 9/19/2017, states "filing application for adjudication of claim". Date of service 9/21/2017, states "filing Petition for Penalty P/LC Sec 132(a)" for 1 hour. Date of service 9/19/2017, is described as "discussion w/ applicant" for 1 hour. Date of service 9/22/2017 states "3 letters to applicant". On 11/21/2017, the activity is described as "subpoena for

personnel file". On 12/5/2017, the activity is described as "obtaining panel of QME". There are 12 entries described as "telephone discussion w/applicant". On 7/10/2018, there is an entry for, "appearance at exhibit hearing and preparation" for 3.0 hours.

The majority of activities listed in Exhibit B begin with the abbreviation "rev' d" and the majority of the line item time is for .1 of an hour. Date of service 12/26/2018 states, "rev'd file from CVIWLC 408 pages for 2.2 hours. There are 12 "telephone calls to client" equaling 2.4 hours. On 12/14/2020, there is an entry for "Hearing on the case, stipulation approved" for .4 of an hour.

Based upon the more detailed descriptions itemizing the initial discovery efforts and time expended before the WCAB by Lien Claimant, the itemization supports activities performed which lay the foundation for a case to progress, it is the Courts opinion the \$4,643.62 should be divided 60% to Lien Claimant and 40% to Ratto Law.

HON. IRENE R. BOWDRY
Workers' Compensation Judge
Dated: 10/22/2021