

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

MARAI LOPEZ, *Applicant*

vs.

PUDWILL FARMS; ZENITH INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ12801585
Santa Barbara District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

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 stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Furthermore, we emphasize that the WCJ's finding that defendant unreasonably denied cost petitioner's billing was based upon evidence that defendant itself had paid cost petitioner at the requested rate for the exact same service on at least *six* prior occasions. Defendant's argument that "only" one of these instances was documented in the original invoice, with the implication that it was therefore reasonable to object to the requested rate, frankly strains credulity – as defendant itself admits, it was on notice that it had paid the requested rate previously, whether it was provided with one example or with six. Nor did defendant's original objection to cost petitioner's invoice provide any such explanation at the time, instead simply paying at a substantially lower rate, with no explanation as to how that rate was determined, and no acknowledgement that it itself had paid at cost petitioner's higher requested rate in the past. Defendant's course of conduct in this matter amply justifies the WCJ's finding that it behaved unreasonably.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ NATALIE PALUGYAI, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 3, 2023

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

**MARAI LOPEZ
CHERNOW PINE AND WILLIAMS
MEGAN MEYER
ZENITH**


AW/pm

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I.

INTRODUCTION

- | | | |
|----|----------------------------------|--|
| I. | Applicant's Occupation: | Laborer |
| | Date of Birth: |  |
| | Date(s) of Injury: | May 1, 2019-November 14, 2019 |
| | Parts of Body Injured: | Left wrist, left hand, left fingers, left upper. extremity |
| | Manner in Which Injury Occurred: | Not in dispute |
| 2. | Identity of Petitioner: | Defendant |
| | Timeliness: | The petition is timely |
| | Verification: | Yes |
| | Service: | The petition was served on all parties |
| 3. | Date of Issuance of Award: | August 15, 2023 |
| 4. | Petitioner's Contention: | The WCJ erred in awarding attorney fees and costs to the Cost Petitioner |

II.

FACTS

The Applicant was injured while employed by Pudwill Farms to her left wrist, left hand, left fingers, and left upper extremity. The case was settled by Compromise and Release with an OACR being issued on February 2, 2022.

The Cost Petitioner Ortiz Schneider Interpreting and Translation (CP) provided reading and translation of the Compromise and Release to the Applicant on January 24, 2022. The Cost Petitioner billed the carrier \$350.00 for their market rate for said service.

Zenith Insurance paid \$235.00 and disputed the balance of \$115.00.

On March 8, 2023, the case proceeded to trial over the market rate, attorney fees, costs, and sanctions.

On April 18, 2023, the WCJ issued a Finding of Fact and Award that cost petitioner had established their market rate of \$350.00, that the CP was owed an additional \$115.00, and that attorney fees, costs, sanctions, and interest were reserved and deferred. The Opinion on Decision noted that the underpayment by Zenith was unreasonable and the amount of attorney fees, costs, sanctions together with interest were to be addressed at a subsequent trial.

No Petition for Reconsideration was filed from that Finding of Fact and Award.

The case returned to trial on the issue of attorney fees, costs, sanctions, and interest on July 18, 2023, which had been reserved and deferred.

III.

DISCUSSION

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, the Report and Recommendation cures those defects.

The findings of fact of April 18, 2023, numbers 4-6 stated:

4. It is found Cost Petitioner has established her market rate for the interpretation of a Compromise and Release at \$350.00.
5. It is found Cost Petitioner is owed an additional \$115.00.
6. Attorney fees, costs, and sanctions together with interest are reserved and deferred.

The Award of April 18, 2023, stated:

AWARD

Award is made in favor of Cost Petitioner Ortiz Schneider Interpreting and Translation and against Zenith Insurance as follows:

- A. Market rate is established at \$350.00 as provided in Findings number 4;
- B. An additional \$115.00 as provided in findings number 5;

- C. Attorney fees, costs, and sanctions together with interest are reserved and deferred as provided in finding number 6.

That Findings of Fact and Award were undisturbed with no Petition for Reconsideration being filed.

The Opinion on Decision of April 18, 2023, as to attorney fees, costs, and sanctions together with interest was discussed at page 2:

Labor Code §5813 & Labor Code §5814

Defendant on prior occasions has paid Ortiz Schneider Interpreting & Translation its market rate of \$350.00 for interpretation of a Compromise and Release, see Cost Petitioner Exhibit 7. Exhibit 7 includes 6 prior payments Defendant made to this Cost Petitioner at \$350.00 for the same service, a C&R signing.

In this case, Defendants' payment of \$235.00 was accompanied by correspondence where Defendant stated, "Zenith Insurance Company pays at the market rate", (Cost Petitioner Exhibit 2). Yet in this case, they only paid \$235.00 for this service, however, have paid \$350.00 on prior occasions. Defendants' failure to pay at Cost Petitioner's market rate of \$350.00 was unreasonable when they have paid \$350.00 on prior occasions for this service.

The amount of costs, attorney fees, sanctions together with interest will be addressed at a subsequent trial. Notice of that hearing will be sent separately.

The word "amount" was inadvertently omitted from the Findings of Fact and Award. As such the case returned to trial on July 18, 2023, as to attorney fees, costs, sanctions, and interest. Although it was the intention of the WCJ to only defer the amount of fees, as the word "amount" was inadvertently omitted from the Findings of Fact and Award the WCJ readdressed the issue of attorney fees, costs, sanctions, and interest at the time of trial on July 18, 2023. Defendant objected to how this WCJ worded the issue at trial which was "that which was deferred and reserved from the Findings and Award, which was attorney fees, costs and sanctions together with interest" and argued it should have been read as "Whether" the Cost Petitioner is entitled to attorney fees, costs, sanctions, and interest. As this WCJ decided whether the CP was entitled to said fees in the August 15, 2023, decision, the objection is moot.

Just as was stated in the Opinion on Decision on April 18, 2023, and again on July 18, 2023, the WCJ noted that in Exhibit 7 were 6 prior payments by Zenith to this CP for the same service, signing of the C&R where they paid the CP's market rate of \$350.00. Yet in this case they only paid \$235.00 and objected to the balance. Their correspondence that accompanied the underpayment stated that they pay at the market rate, yet they seem to cherry pick when they do that. As the CP pointed out in their post-trial brief dated August 4, 2023 "... claiming that they pay

at the market rate while simultaneously asserting that the market rate is excessive is logically inconsistent” (p3 lines 24-25). Further Defendant noted in their post-trial brief of August 8, 2023, at page 8 lines 4-5, “while the objection may not have been 100 percent accurate, it was still an objection and there was no intent to mislead Cost Petitioner in any way”. It appears even the defendant acknowledges that their objection is logically inconsistent.

Ultimately, as discussed, in the Opinion on Decision of April 18, 2023, at page 2 and found on August 15, 2023 Findings of Fact and Award, the underpayment was determined to be unreasonable.

Defendants now file their Petition for Reconsideration and argue that it was not bad faith or frivolous to contest the market rate of the CP and contest the evidence presented by the CP to establish their market rate. Their time to make that argument has long passed as Defendants did not file a Petition for Reconsideration to the April 18, 2023, Finding of Fact and Award where it was found the CP established their market rate.

To the question whether the CP was entitled to attorney fees and costs, the answer is yes. The underpayment was found to be unreasonable. The CP is entitled to attorney fees and costs and probably sanctions.

8 CCR §I0545(h) states:

... “ If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs under Labor Code §5813 and rule 10421. The amount of 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 the effective date of the rule, the monetary sanctions shall not be less than \$500.00”.

Here the WCJ found the Cost Petitioner was entitled to attorney fees and costs.

As stated in the Opinion on Decision on August 15, 2023...

“In support thereof the attorney for the CP filed a bill of particulars (Exhibit 9) for their fees to collect on the \$115.00 underpaid amount. The attorney spent 18.75 hours to review, research, prepare and file their petition for costs, prepare for trial and attend trials on this issue and prepare other correspondence, communication with their client and administrative services. They billed at \$450.00 per hour which is reasonable. This totaled \$8,451.00 and the court finds the total amount reasonable and owing.

The cost petitioner also filed a cost itemization for their services (Exhibit 10) to collect on the underpaid amount of \$115.00 totaling \$899.00 which included preparing the file for collections, trial prep with their attorney and attending the trial which the court finds reasonable and owing.

While the court finds penalties should be due based on the cherry picking by the Defendant on which bills, they paid at the market rate of \$350.00 (see Exhibit 7) and those they choose not to for the same service, there is no petition for penalty on file.”

Defendant would argue they issued timely “... reasonable and appropriate payment based on the rates established by the Judicial Council of the State of California and the Superior Court Rate and objected to the balance” (PFR page 7 lines 20-22). However, that's not what Zenith only pays. Based on their own correspondence, they pay at the market rate (Exhibit 2). They have paid this CP at their market rate yet on this occasion did not. That's neither reasonable nor appropriate.

As to the amount, as stated above based on the CP bill of particulars (exhibit 9) their hours and amount was deemed reasonable and they were awarded their request of \$8,451.00 and the CP was awarded costs of \$899.00 (exhibit 10). There was no argument from the Defendant that the actual amount was not justified, only that there should be no award of attorney fees or costs at all.

IV.

RECOMMENDATION

For the reasons stated, it is respectfully recommended that s Petition for Reconsideration be denied based on the arguments and merits addressed herein.

Date: September 20, 2023

Deborah Rothschilder
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE