

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

SAMER ABO DLEAA, *Applicant*

vs.

TEAM CORP.; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ11064081
Riverside 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 and 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, both of which we adopt and incorporate, we will deny reconsideration.

Ignorance of the law is not an excuse for petitioner's actions. (*Anderson v. Sherman* (1981) 125 Cal.App.3d 228, 238 ("ignorance of the law coupled with negligence in ascertaining it will certainly sustain a finding denying relief.")) If it holds itself out to be a provider of interpretation services in workers' compensation cases, it behooves lien claimant to ascertain the relevant legal provisions under which it operates.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 18, 2021

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

**ESSENTIAL INTERPRETING
STATE COMPENSATION INSURANCE FUND**

PAG/ara

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

REPORT & RECOMMENDATION OF JUDGE ON PETITION FOR RECONSIDERATION

Introduction

Petitioner Essential Interpreting (hereafter petitioner), filed a Petition for Reconsideration on 3/22/2021 asserting that the evidence does not justify the Findings of Fact. The Petition is verified.

The Findings and Order was served on 3/2/2021. The Petition for Reconsideration was timely filed.

Respondent, Travelers Ins. (hereafter defendant), by and through their attorneys, State Comp. Ins. Fund, has not filed an Answer to the Petition for Reconsideration as of 4/5/2021.

STATEMENT OF FACTS

Samer Abo Dleaa, born 9/12/1982, while employed on 3/31/2017 claimed to have sustained injury arising out and in the course of employment to his back and lower extremities.

The case in chief was resolved by a Compromise and Release on 6/26/2019. An interpreter signed the C&R agreement.

The matter proceeded to a trial regarding the cost petition of Essential Interpreting on 4/28/2020. Essential alleges that services were provided on 3/12/2018 for Arabic interpreting by Nabila Rizk at a deposition. Essential billed \$1,000.00 for a full day of services. Defendant paid \$282.23. Essential contended that they were owed for the balance on their billing, penalties, and costs.

Defendant contacted Essential to provide an Arabic Interpreter for a deposition scheduled on 3/12/2018.

Exhibit 6 is the Deposition transcript of the applicant, dated 3/12/2018. Interpreter Nabila Rizk, with certification as U.S. District Court Interpreter No. 28, was present. The deposition proceeded from 2:14 p.m. to 4:19 p.m. Defendant does not dispute that the proceedings are considered a full day.

Pursuant to the California Code of Regulations, the interpreter is not considered a certified interpreter, such that she should be paid at the certified interpreter rate.

Calif. Code of Regulations, title 8, section 9795.1.5 states:

(a) To qualify to be paid for interpreter services at a hearing, deposition or arbitration, the interpreter shall be

(1) certified, which means listed on the State Personnel Board webpage at <http://jobs.spb.ca.gov/InterpreterListing/> or the California Courts webpage at <http://courts.ca.gov/programs-interpreters.htm>; or

(2) provisionally certified, which means deemed qualified to perform interpreter services when a certified interpreter cannot be present, either:

(A) by agreement of the parties, or

(B) based on a finding by the workers' compensation administrative law judge conducting a hearing that the interpreter is qualified to interpret at the hearing,...

There is no dispute that the interpreter was not certified under jobs.spb.ca.gov or courts.ca.gov. The interpreter was not certified under California Law.

DISCUSSION

1. Petitioner contends that the interpreter should be considered “provisionally certified.”

Petition contends that the interpreter at the deposition should be considered “provisionally certified” for terms of payment. Since defendant requested the services of an Arabic interpreter at the deposition, there was an agreement to have an interpreter present. Somehow, this request for an interpreter should be considered to include an agreement that the interpreter can be “provisionally certified.” It should be noted that the petitioner did not contend that the interpreter should be paid as being “provisionally certified” at trial. This issue is being raised for the first time in the Petition for Reconsideration.

Pursuant to the decision in *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228 at 246 (en banc), when a certified interpreter cannot be present, a “provisionally certified” interpreter is one deemed qualified to perform interpreting services **by agreement of the parties**.

In the present case, there was no agreement of the parties to use a “provisionally certified” interpreter. The interpreter was presented as being certified and the defendant did not question her certifications. Since there was no agreement that the interpreter was provisionally certified, defendant contends that the payment should be based on a “Language Skilled Interpreter,” per the U.S. District Court website (Exhibit B). Since a certified interpreter is not involved, Essential Interpreting’s claim that Market Rate applies, is not applicable.

At the trial, Essential argued that their interpreter should be paid as a certified interpreter. Now that it has been shown that their interpreter was not certified by the State of California, they are arguing that the interpreter should be paid as being “provisionally certified.”

In the present case, it appears that Essential dishonestly billed an Arabic Interpreter who is not certified by the State of California as a certified interpreter. Since defendant did not properly

object to their knowing misrepresentation, Essential contended that they should receive that full amount billed. It was found that Essential should not profit from their dishonesty and misrepresentations.

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

DATED AT RIVERSIDE, CA

**DAVID THORNE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**

OPINION ON DECISION

Samer Abo Dleaa, born 9/12/1982, while employed on 3/31/2017 claimed to have sustained injury arising out and in the course of employment to his back and lower extremities.

The case in chief was resolved by a Compromise and Release on 6/26/2019. An interpreter signed the C&R agreement.

This matter was set regarding the lien for interpreter services at the applicant's deposition on 4/7/2018. On behalf of the defendant, Patty Taylor testified as a bill reviewer. Cost Petitioner objected to Ms. Taylor as not being a certified bill reviewer. Ms. Taylor has worked for State Fund for 18 years and has worked with lien issues for 10 years. She appears on a regular basis before the Riverside WCAB. She is well known and respected by the Riverside WCAB. Patty Taylor is very well-qualified to testify about lien issues.

LIEN OF ESSENTIAL INTERPRETING

On 4/28/2020, Essential Interpreting filed a Petition for Costs (Exhibit 8). Essential alleges that services were provided on 3/12/2018 for Arabic interpreting by Nabila Rizk at a deposition. Essential billed \$1,000.00 for a full day of services. Defendant paid \$282.23. Essential contended that they were owed for the balance on their billing, penalties, and costs.

Essential contends that they are entitled to be paid at their market rate.

Exhibit 1 refers to the bill of Essential Interpreting, dated 4/7/2018, for a date of service on 3/12/2018, for full day of Arabic Interpreting in the amount of \$1,000.00.

Exhibit 5 refers to a Response to Partial Payment by Essential Interpreting, dated 5/8/2018. State Fund made a payment in the amount of \$282.23. Essential requests the balance of \$717.77 because the applicant required an Arabic interpreter. Arabic is considered an exotic language.

Exhibit 6 is the Deposition transcript of the applicant, dated 3/12/2018. Interpreter Nabila Rizk, with certification as U.S. District Court Interpreter No. 28, was present. The deposition proceeded from 2:14 p.m. to 4:19 p.m. Defendant does not dispute that the proceedings are considered a full day.

Defendant contends that the Interpreter at the Deposition was not certified according to the Calif. Code of Regulations.

Defendant contends the interpreter at the deposition was certified according to the California Code of Regulations, the interpreter should not be considered a certified interpreter, such that she should be paid at the certified interpreter rate.

Calif. Code of Regulations, title 8, section 9795.1.5 states:

(a) To qualify to be paid for interpreter services at a hearing, deposition or arbitration, the interpreter shall be

(1) certified, which means listed on the State Personnel Board webpage at <http://jobs.spb.ca.gov/InterpreterListing/> or the California Courts webpage at <http://courts.ca.gov/programs-interpreters.htm>; or

(2) provisionally certified, which means deemed qualified to perform interpreter services when a certified interpreter cannot be present, either:

(A) by agreement of the parties, or

(B) based on a finding by the workers' compensation administrative law judge conducting a hearing that the interpreter is qualified to interpret at the hearing,...

There is no dispute that the interpreter was not certified under jobs.spb.ca.gov or courts.ca.gov. The interpreter was not certified under California Law.

Essential contends that they should be paid at their “market rate.” Calif. Code of Regulations, title 8, section 9795.1 defines the “Market Rate” as the amount an interpreter has actually been paid for recent interpreter services provided in connection with the preparation and resolution on an employee’s claim.

Pursuant to Calif. Code of Regulations, title 8, section 9795.3 (b) (1), the interpreter shall establish the market rate for the interpreter’s services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services.

In the present case, Essential entered Exhibit 5 to support their Market Rate for exotic languages. There is no foundation to explain how this list was prepared or whether the payments were selected to show only the maximum payments that were made. Additionally, in this case an interpreter who was not certified by the State of California is involved. It is unknown if the list refers to certified or non-certified interpreters; or whether Essential makes the distinction.

Pursuant to the decision in *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228 at 246 (en banc), when a certified interpreter cannot be present, a “provisionally certified” interpreter is one deemed qualified to perform interpreting services **by agreement of the parties**.

In the present case, there was no agreement of the parties to use a “provisionally certified” interpreter. The interpreter was presented as being certified and the defendant did not question her certifications. Since there was no agreement that the interpreter was provisionally certified, defendant contends that the payment should be based on a “Language Skilled Interpreter,” per the U.S. District Court website (Exhibit B). Since a certified interpreter is not involved, Essential Interpreting’s claim that Market Rate applies, is not applicable.

In the present case, it appears that Essential is dishonestly billing an Arabic Interpreter who is not certified by the State of California as a certified interpreter. Since defendant did not properly object to their knowing misrepresentation, Essential contends that they should receive that full amount billed. It is found that Essential should not profit from their dishonesty and misrepresentations.

COST PETITIONER'S ISSUES

Whether defendant objected to the interpreter prior to or at the deposition or whether defendant requested the certification?

There is no evidence that defendant objected to the interpreter before the deposition started. Prior to the start of the deposition, the interpreter stated that she was certified by the Federal Courts. In addition, there was no offer to agree to have the interpreter qualify as being “provisionally certified” interpreter.

Whether defendant sent an objection with the partial payment?

There was no evidence presented regarding what was sent with the partial payment to Essential. It is customary for an Explanation of Review (EOR) to be attached to a check for a partial payment.

Exhibit A is a print-out of the EOR sent to Essential Interpreting for the date of service on 3/12/2018. The sum of \$282.23 was paid. The bill was reduced based on Cal. Code of Regulations, Title 8, section 9795.3(b)(1). This section refers to the fees for interpreter services provided by a certified or provisionally certified interpreter. In addition, defendant alleged that the charge exceeded the OMFS allowance. Based on the existence of the EOR, defendant sent an objection with the partial payment.

Whether defendant objected to the market rate for exotic languages?

Cost Petitioner contends that defendant should have objected to the market rate. In the present case, cost petitioner attempted to bill an Arabic Interpreter as being certified, though they knew that she was not certified per the State of California. It is found that Essential should not profit from their dishonesty and misrepresentations.

It is found that Essential Interpreting has not established a market rate for a non- certified interpreter in Arabic or an exotic language.

Defendant contends that Essential Interpreting failed to file for a Second Bill Review and is not entitled to additional payments.

Defendant contends that Essential Interpreting failed to file for a Second Bill Review pursuant to Labor Code section 4603.2 and/or Title 8 Cal. Code of Regulations section 9792.5.5. Defendant relies upon the decision in *Meadowbrook Ins. Co. v. W.C.A.B.* (2019) 42 Cal. App. 5th 432, 84 Cal. Comp. Cases 1033.

Labor Code section 4603.2 discussed the procedure for independent bill review. If the only dispute is the amount of payment and the provider has received a second review that did not resolve the dispute, the provider may request an independent bill review within 30 calendar days of service of the second review. If the provider fails to request an independent bill review within 30 days, the bill shall be deemed satisfied, and the employer shall not be liable for any further payment.

In *Meadowbrook Ins*, the Court acknowledged that Title 8 Cal. Code of Regulations section 9795.3 describes the events for which a claims administrator shall pay an interpreter, including, inter alia, an examination by a physician requested by a claims administrator, the AD, or the WCAB, a comprehensive medical legal examination, a deposition of an injured employee, and an appeals board hearing. Because the fee schedule set out in Title 8, section 9795.3 is an applicable fee schedule, the court held that the interpreter's liens were barred by its failure to request a second review.

Based on the decision in *Meadowbrook Ins* and the finding that Essential Interpreting did not request a second bill review, it is found that their bill is deemed satisfied, and the employer shall not be liable for any further payment.

Lien Claimant contends that they may file a Petition for Costs instead of a lien.

Lien claimant contends that they may file a Petition for Costs pursuant to Labor Code section 5811. Labor Code section 5811 states that "interpreter fees that reasonably, actually, and necessarily incurred shall be paid by the employer under this section, provided they are in accordance with the fee schedule adopted by the administrator director."

The issue whether the lien claimant should have filed a lien claim rather than a Petition for Costs was not raised or contested by defendant. What is relevant is that the interpreter is subject to the fee schedule. In accordance with the *Meadowbrook Ins* decision, the interpreter is subject to a second bill review.

Lien claimant contends that defendant failed to object to Judge Yee's order dated 8/29/2019.

On 8/29/2019, Judge Yee issued an Order to Pay Interpreter Costs the sum of \$75.00 for reasonable balance as full satisfaction of all claims stated in the petition. The order included language stating, "An objection stating good cause and filed within 15 days shall void this order."

On 9/13/202019, Essential Interpreting filed an Objection to the Order to Pay Interpreter Costs. They requested the sum of \$415.00.

Lien claimant contends that defendant should have filed an objection to order since they did not pay the \$75.00 that Judge Yee ordered. Once lien claimant filed their timely objection to the order, the order was considered void. There was no need to file an objection to the void order. If the order was not objected to, defendant would have had time to make the timely payment.

Lien Claimant contends that defendant failed to provide an EOR and an objection.

Lien claimant contends that defendant failed to provide an Explanation of Review (EOR). They provide no evidence as to what defendant provided. It is customary for the EOR to be attached to a partial payment to a provider. In the present case, defendant paid \$90.00 for 10/27/2017 and \$90.00 for 2/19/2018. Neither party provided the court with what was served. The WCJ is unable to address this raised issue based on the lack of evidence.

Lien claimant also contends that defendant failed to provide an objection. On 11/20/2017, Travelers sent an objection to Essential in the amount of \$105.00. On 2/22/2018, Travelers sent an objection to Essential in the amount of \$160.00 for a date of service on 2/9/2018 (Exhibit 7). Based on the evidence presented, defendant served objections upon the lien claimant.

Petition for Costs and Sanctions.

In the present case, Essential Interpreting was requesting a balance of \$265.00, plus their claimed penalties and costs. At the trial, they were pursuing a balance in the amount of \$474.07.

Based on the finding that Essential Interpreting should profit from their dishonesty and misrepresentations regarding the billing of the interpreter, their Petition for Costs and Sanctions is denied.

DATE: 03/02/2021

David Thorne
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE