

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

**EDGAR GIRON, *Applicant***

**vs.**

**LAW OFFICE OF LIONEL E. GIRON and  
EMPLOYERS COMPENSATION INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8244129  
Pomona District Office**

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

Applicant, in pro per, seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on May 19, 2022, wherein the WCJ found that lien claimant, Sandra Castro, was entitled to, and was awarded, an attorney fee in the amount of \$19,500.00.

Applicant contends that the attorney fee should have been calculated based on the amount of time attorney Sandra Castro represented him.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from the Law Office of Sandra H. Castro, Inc.<sup>1</sup>

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, except the clerical error corrected herein, and for the reasons discussed below, we will deny reconsideration.

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<sup>1</sup> The Answer has 62 pages of exhibits attached which is in violation of Appeals Board Rule 10945(c) (Cal. Code Regs., tit. 8, § 10945.) The exhibits will not be considered and counsel is reminded that failure to comply with the Appeals Board Rules may be deemed sanctionable conduct.

## BACKGROUND

Applicant claimed injury to his lumbar spine and psyche, and in the form of sleep disorder, sexual dysfunction, and a hernia, while employed by defendant as a file clerk on August 12, 2010.

Sandra Castro was appointed to represent applicant by the October 11, 2017 Substitution of Attorneys. The injury claim was settled by Compromise and Release; a WCJ issued the Order Approving Compromise and Release on January 27, 2022. The Compromise and Release included language stating that \$19,500.00 was to be held in trust pending resolution of the attorney fee issue. (See Compromise and Release – signed, p. 6, paragraphs 7 and 8.) By correspondence to the WCJ who approved the Compromise and Release, Sandra Castro submitted an itemization of the services rendered to applicant (See Lien Claimant Exh. 1, February 3, 2022) and on February 4, 2022, the lien for attorney fees was filed.

Applicant and Sandra Castro proceeded to trial on May 12, 2022. The issue submitted for decision was the proper amount of attorney fees to be awarded to Sandra Castro. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 12, 2022, p. 2.)

## DISCUSSION

A petition for reconsideration must accurately state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945.) Each contention contained in a petition for reconsideration must be stated separately and clearly set forth. The petition shall support its evidentiary statements with specific references to the record. (*Ibid.*) Where reconsideration is sought on the ground that findings are not justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to justify the findings. “A petition for reconsideration . . . may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.” (Cal. Code Regs., tit. 8, § 10972.)

Here, applicant’s Petition is skeletal. Applicant makes no reference to the record in support of his arguments. Applicant cites no facts that would support a finding contrary to the WCJ’s F&A. In her Report, the WCJ stated:

Ms. Castro testified that she amended the application on December 7, 2017 to add genital/erectile dysfunction as a compensable consequence to the hernia surgery as well as sleep disturbance and psychiatric overlay. She then began to aggressively advocate on behalf of her client, as shown by Lien Claimant’s Exhibit 1. She objected to or set hearings as necessary and attended those

hearings. She cross-examined and corresponded with panel doctors, resulting in their changing their opinions. ... She obtained additional panels in more than one specialty. She corresponded regularly with the insurance company, defense attorney and applicant.

(Report, pp. 3 – 4.)

Based on our review of the trial record and the Electronic Adjudication Management System (EAMS) ADJ file, we agree with the WCJ's conclusion that:

The results Ms. Castro obtained for the applicant were substantial. She subsequently negotiated with the applicant and reduced her fee to \$19,500.00 instead of the \$21,000.00 she would otherwise have been entitled to. The court found she was entitled to that money.

(Report, p. 5.)

Finally, we note that, "The Appeals Board or a Workers' Compensation Judge may correct a clerical error at any time and without necessity for further hearings, notwithstanding the lapse of the statutory period for filing a petition for reconsideration." (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal. App. 3d, 543, 558 (internal citation omitted).) On page four of the Report the WCJ states that 34% permanent disability combined with 3% permanent disability results in "approximately thirty-eight percent which would be valued at somewhere near \$40,000.00." (Report p. 4.) However, when 34% is combined with 3% the result is 36%, which in turn results in \$39,790.00 permanent disability indemnity. Since \$39,790.00 is "somewhere near \$40,000.00" it appears that "thirty-eight percent" was a clerical error which we will correct in the Report attached hereto.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on May 19, 2022, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 9, 2022**

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

**EDGAR GIRON  
LAW OFFICES OF SANDRA H. CASTRO**

**TLH/pc**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

EDGAR GIRON while employed on August 12, 2010, as a file clerk at Ontario, California, by LAW OFFICES OF LIONEL GIRON, whose workers' compensation insurance carrier was EMPLOYERS COMPENSATION INSURANCE COMPANY, sustained injury arising out of and occurring in the course of employment to his lumbar spine, and claims to have sustained injury to psych, sleep, sexual dysfunction and hernia.

The matter proceeded to trial on the issue of distribution of applicant's attorney's fees from the compromise and release currently held in trust by defendant.

Applicant has filed a timely Petition for Reconsideration, objecting to said decision(s) in the following particular(s):

1. Petitioner(s) contend(s) that the undersigned erred as the evidence did not justify the Findings and Award,
2. Petitioner(s) further contend(s) that the undersigned erred by acting in excess of their powers,
3. Petitioner(s) further contend(s) that the undersigned erred by abusing their discretion.

FACTS ON DISPUTED ISSUE(S)

Lionel Giron, applicant's employer and son, filed a workers' compensation claim on his behalf on, or about March 12, 2012. The initial application was for injury sustained while lifting copy paper boxes to applicant's back and resulting in a hernia. At some point there was a realization that Lionel Giron could not be both applicant's attorney and defendant employer and he was dismissed on January 17, 2013.

After dismissal of his attorney, Applicant testified that other than going to his doctors' appointments, he did no real work on his case.

In August of 2017, defendant filed for an MSC on the case in chief based on the October 21, 2015 reporting of the sole PQME at the time, Alex Etemad. The hearing was set for October 11, 2017 and no objection was filed by applicant.

On October 11, 2017, the day of the hearing, Ms. Castro came into a case which had been drifting for four years and eight months. She assumed the responsibility of righting the ship, cleaning up a period of neglect where

applicant faced being wed to a two year old PQME report which didn't, as shown by subsequent action on the matter, adequately reflect the state of his disability.

The case ultimately settled for \$140,000.00. Ms. Castro was dismissed as attorney of record shortly after she negotiated the settlement. The settlement was not changed in any fashion after she negotiated it, and the parties actually used the same Compromise and Release drafted while she was attorney of record as indicated by the crossing out of her information. Defendant withheld \$19,500.00 in applicant's attorney's fees in trust pending resolution. This litigation followed.

**SANDRA CASTRO IS ENTITLED TO THE FULL  
\$19,500.00 IN ATTORNEYS FEES**

Applicant seems to be under the false impression that the only thing the court should have looked at in making the decision was the amount of time each person involved had the "file." This is his basis for reconsideration. That, however, is not the standard the court uses to determine distribution of disputed attorney's fees.

In the noteworthy panel decision of *Stephens v. Patten Energy Enterprises, Inc.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 668, the WCJ followed the criteria set forth by the DCA and the WCAB in resolving the issue of attorney's fees.<sup>1</sup> They reasoned that applicants' attorneys are generally entitled to a reasonable fee calculated upon the full amount of the benefits they obtain on an applicant's behalf. This encourages representation by competent attorneys and, as such, applicants' attorneys should be awarded a fee that reflects the efforts made and that rewards them for the results obtained. *Stephens* further indicated that the court should look to Labor Code §4906(d) and 8 California Code of Regulations §10775 in determining the reasonableness of a fee. These factors include the responsibility assumed by the attorney in the case, the care exercised in the representation, the time involved and results obtained.

While this case revolves around a fee split dispute between an applicant and his former counsel, those same factors are relevant.

Upon substituting in as counsel, Ms. Castro began to cultivate and care for the case. In order to more accurately reflect the state of the injuries sustained, Ms. Castro testified that she amended the application on December 7, 2017 to add genital/erectile dysfunction as a compensable consequence to the hernia surgery as well as sleep disturbance and psychiatric overlay. She then began to aggressively advocate on behalf of her client, as shown by Lien Claimant's Exhibit 1. She objected to or set hearings as necessary and attended those hearings. She cross-examined and corresponded with panel doctors, resulting in

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<sup>1</sup> While the issue in *Stephens* was whether life pension should have been part of the fee, the court's analysis of the determination of the value of the fee is relevant to the case at bar.

their changing their opinions. She testified that she obtained an AME, Jackson, but he ended up treating applicant and subsequently retired. She then obtained new treating doctors as well as doctors in additional specialties. She obtained additional panels in more than one specialty. She corresponded regularly with the insurance company, defense attorney and applicant.

For an example of the results obtained, Ms. Castro's efforts resulted in a PD value (based on the consultative rating after cross-examinations and re-evaluations)<sup>2</sup> averaging out to approximately thirty-four percent (34%) for orthopedic, and an additional three percent (3%) for reproductive issues. This is effectively a PD value of approximately thirty-six percent which would be valued at somewhere near \$40,000.00. She then negotiated an initial settlement amount of \$130,000.00, which is almost \$90,000.000 more than the estimated median PD value. She then went back, at applicant's request, and obtained an additional \$10,000.00, without a resignation. Lien Claimant's Exhibit 2.

Ms. Castro testified that she and applicant had a meeting about attorney's fees and she agreed to reduce the request to twelve percent (12%). Mr. Giron testified that they did have a meeting about attorney's fees and she agreed to lower her fee. He also testified that he initially agreed to a fifteen percent (15%) fee for Ms. Castro. What he disputed is that she was entitled to fifteen-percent of the monetary value of the case and that they never agreed to the amount Ms. Castro was going to reduce her fee to.

Ms. Castro obtained the settlement on December 6, 2021 for \$140,000.00 and no resignation. Lien Claimant's Exhibit 2 and Ms. Castro's testimony. The Compromise and Release was drafted with her information as representative. Mr. Giron dismissed her eight days later, on December 15, 2021. Applicant's Exhibit 2. He executed the Compromise and Release and didn't even bother to have defendant draft a new page 2, choosing instead, to merely cross out Ms. Castro's information. Nothing about that settlement changed between December 6, 2021 and Mr. Giron signing the document.

Based on all of this, the court found Ms. Castro version of the attorney fee discussion and subsequent reduction to be more credible than the version offered by Mr. Giron.

The value of this case was not who sat in the driver's seat for what period – clock time – but rather what they did when they were there. Ms. Castro assumed responsibility for a case that was going nowhere, slowly. She exercised care for her client in getting the case worked up the way it obviously, by the amount of work she did, needed to be. She used her time as counsel on the matter far more effectively than applicant had on his own. The results Ms. Castro obtained for the applicant were substantial. She subsequently negotiated with

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<sup>2</sup> The consultative rating is, obviously, consultative and not final. The court used it not as a definitive valuation, but rather as a snapshot of the ball-park worth of the permanent disability in the case at the time of settlement.

the applicant and reduced her fee to \$19,500.00 instead of the \$21,000.00 she would otherwise have been entitled to. The court found she was entitled to that money.

### **CONCLUSION**

Based on the forgoing the Board should uphold the Findings and Award, awarding Ms. Castro the full applicant's attorney fee of \$19,500.00 withheld in the Compromise and Release.

DATE: June 21, 2022

AMY BRITT  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE