

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

BERTHA VALERIO, *Applicant*

vs.

**KIMCO STAFFING SERVICES, INC.; XL INSURANCE;
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ15329380
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) dated August 5, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed on September 9, 2021 by defendant as a packer, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the trunk, back, and hips; that defendant failed to satisfy their burden in proving that applicant improperly treated outside the Medical Provider Network (MPN) and that the Requests for Authorization (RFAs) issued prior to August 9, 2022 by Dr. Marina Russman were defective; that lien claimant, Joyce Altman Interpreting, Inc., established their market rate for interpreting services as \$180.00 for the first two hours until July 1, 2022, and then, \$230.00 for the first two hours thereafter; and that lien claimant is entitled to recovery in the sum of \$7,930, with the remaining portion of the lien disallowed, and without penalties or interest.

Defendant contends that the medical treatment provided by Dr. Russman, during which time the disputed interpreting services were used, was not reasonable and necessary because applicant improperly treated outside defendant's MPN, and, as a result, the corresponding interpreter fees were similarly unreasonable, unnecessary, and non-recoverable. (Petition for Reconsideration (Petition), p. 2.) Defendant further contends that the F&A does not address whether treatment with Dr. Russman was performed in accordance with "MTUS or ACOEM

guidelines” as required under Labor Code¹ section 4604.5 and that the said failure renders the lien non-recoverable. (*Id.* at p. 3.) Lastly, defendant alleges that lien claimant failed to properly establish the market rate. (*Id.* at pp. 3-4.)

We have received an Answer from lien claimant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

On October 22, 2021, applicant filed an Application for Adjudication of Claim alleging that while employed by defendant as a packer on September 9, 2021, she sustained injury AOE/COE to the trunk, back, and hips.

Thereafter, applicant apparently sought treatment from Dr. Steven Greene and Dr. Marina Russman, and the parties retained Dr. Todd Peters as the orthopedic panel Qualified Medical Evaluator (PQME).

Ultimately, the parties proceeded to settle the claim via Compromise and Release (C&R). An Order Approving Compromise and Release (OACR) was issued by the WCJ on September 8, 2023. Per the C&R documents, settlement was “based upon the panel QME reports of Dr. Todd Peters which defendant asserts rates at 15% PD.”

On April 4, 2024, a Declaration of Readiness to Proceed to a lien conference was filed. Thereafter, a lien conference was scheduled for June 5, 2024, and continued, on numerous occasions, until the matter was finally set for a lien trial on May 8, 2025.

On May 8, 2025, the following issues were set for trial: the permanent and stationary date; the lien of Joyce Altman Interpreters; whether medical treatment provided by Dr. Russman was medically necessary despite applicant allegedly reaching permanent and stationary/maximum medical improvement (P&S/MMI) status on November 29, 2021 per a report by Dr. Greene; whether applicant was entitled to treat outside defendant’s MPN although there was no denial of care; whether Dr. Russman’s RFAs prior to August 9, 2022 were defective because they were not served upon defendant at the correct address; whether lien claimant is entitled to payment in the

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

amount of \$8,490 per Administrative Director (AD) Rule 9795.3(7)(b)(2); and penalties and interest pursuant to section 4603.2. Defendant submitted as evidence a temporary disability start notice dated September 23, 2021; an MPN notice and acknowledgement regarding the existence of an MPN dated September 15, 2021; and the April 12, 2022, and January 10, 2023, reports of Dr. Peters. Lien claimant submitted as evidence, the Notice and Request for Allowance of Lien; invoices; an itemized bill, a market rate summary graph; an Independent Bill Review (IBR) determination market rate summary graph; explanation of reviews (EORs); market rate letters from SCIF; a California minimum wage chart; a section 4600 election letter dated October 22, 2021; invoices; health insurance claim forms; affidavits; a report from Dr. Russman dated November 18, 2021; non-narrative reports of Drs. Russman, Najib, Kang, and Heimann; RFAs; and IBR determinations.

The matter was continued to a further lien trial on July 10, 2025, at which point the matter stood submitted.

On August 5, 2025, the WCJ issued an F&A which held, in relevant part, that applicant, while employed on September 9, 2021 as a packer, sustained injury AOE/COE to the trunk, back, and hips; that defendant failed to satisfy their burden in proving that applicant improperly treated outside the MPN and that the RFAs issued prior to August 9, 2022 by Dr. Marina Russman were defective; that lien claimant, Joyce Altman Interpreting, Inc. established their market rate for interpreting services as \$180.00 for the first two hours until July 1, 2022, and then, \$230.00 for the first two hours thereafter; and that lien claimant is entitled to recovery in the amount of \$7,930, with the remaining portion of the lien disallowed, and without penalties or interest.

DISCUSSION

I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

- (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 3, 2025, and 60 days from the date of transmission is November 2, 2025, which is a Sunday. (See Cal. Code Regs., tit. 8, § 10600(b).)² The next business day is November 3, 2025. This decision was issued by or on November 3, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on September 3, 2025, and the case was transmitted to the Appeals Board on September 3, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 3, 2025.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II.

Turning now to the merits of the Petition, on the issue of lien claimant's right to recovery for interpreting services provided during medical treatment, we note that Labor Code section 4600 states, in relevant part, that:

- (a) Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

...

- (g) If the injured employee cannot effectively communicate with the employee's treating physician because the employee cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f), but shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. The administrative director shall adopt a fee schedule for qualified interpreter fees in accordance with this section. Upon request of the injured employee, the employer or insurance carrier shall pay for interpreter services. An employer shall not be required to pay for the services of an interpreter who is not certified or is provisionally certified by the person conducting the medical treatment or examination unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.

(Lab. Code, § 4600.)

Section 5811 further states, in relevant part, that:

- (b) (2) ...Interpreter fees that are 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 administrative director. A qualified interpreter may render services during the following:
 - (A) A deposition.
 - (B) An appeals board hearing.
 - (C) A medical treatment appointment or medical-legal examination.

(D) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who does not proficiently speak or understand the English language.

(Lab. Code, § 5811(b)(2).)

Here, defendant contends that the medical treatment given by Dr. Russman, during which time the disputed interpreting services were used, was not reasonable and necessary because applicant improperly treated outside the defendant's MPN, and, as a result, lien claimant's services are similarly unreasonable, unnecessary, and non-recoverable. (Petition, p. 2.) As parties are well aware, it is defendant's burden to establish the existence of the MPN, and that written notification of the MPN, and all other requisite information under AD Rule 9767.12, was provided to applicant, both before and after the subject injury. (Cal. Code Regs., tit. 8, § 9767.12.) Treatment through the MPN must also be accessible, not neglectful, and actually available to applicant. (See Cal. Code Regs., tit. 8, § 9767.5; Lab. Code, § 4600(a); see also *McCoy v. I.A.C.* (1966) 64 Cal.2d 82, 87 [31 Cal.Comp.Cases 93] ["the employer is required to provide treatment which is reasonably necessary to cure or relieve the employee's distress, and if he neglects or refuses to do so, he must reimburse the employee for his expenses in obtaining such treatment"].) Although notice of the MPN was apparently given to applicant after the injury (Defense Exhibit C), defendant failed to produce evidence that Dr. Greene was in fact listed within the MPN and provided actual treatment to applicant. As observed by the WCJ, the reports of Dr. Greene were not offered into evidence by defendant. (Report, p. 3.) Defendant similarly failed to provide evidence that an objection was served on Dr. Russman regarding her alleged non-MPN treatment. As such, defendant failed to sustain its burden of proof on the MPN issue.

Defendant further contends that the WCJ failed to address whether the treatment provided by Dr. Russman was in accordance with "MTUS or ACOEM guidelines[.]" and that this failure rendered the treatment unreasonable and unnecessary, and any corresponding interpreter fees, non-recoverable. (Petition, p. 3.) Based upon our review of the Pretrial Conference Statement preceding the May 8, 2025 trial date, and the corresponding Minutes of Hearing and Summary of Evidence (MOH/SOE), we see no evidence that this issue was previously raised. As such, we agree with the WCJ that this "contention lacks merit because this issue was not one of the issues listed in dispute for the court to decide at the time of trial." (Report, p. 4.)

III.

Lastly, defendant argues that lien claimant failed to properly establish their market rate. (Petition, pp. 3-4.) On the issue of fees for interpreter services, AD Rule 9795.3 states, in relevant part, that:

(a) Fees for services performed by a certified or provisionally certified interpreter, upon request of an employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:

(1) An examination by a physician to which an injured employee submits at the requests of the claims administrator, the administrative director, or the appeals board;

(2) A medical treatment appointment;

...

(b) The following fees for interpreter services provided by a certified or provisionally certified interpreter shall be presumed to be reasonable:

(1) For an appeals board hearing, arbitration, or deposition: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. 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. Services over 8 hours shall be paid at the rate of one-eighth the full day rate for each hour of service over 8 hours.

(2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of \$11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. 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.

(Cal. Code Regs., tit. 8, § 9795.3(a)-(b).)

Here, in addition to trial testimony by Joyce Altman regarding market rate (MOH/SOE, May 8, 2025 & July 10, 2025), lien claimant provided as evidence, an EOR, letters confirming the market rate paid by State Compensation Insurance Fund (SCIF), various summary graphs, and IBR determinations (Lien Claimant's Exhibits 4-7, 19). Defendant argues that since each of the certified interpreters working for lien claimant is an independent contractor, the evidence should

be “based on what the individual interpreter has been paid” and not what has been received by lien claimant. (Petition, p. 4.) There is nothing within AD Rule 9795.3 which makes this distinction. Further, it has been established that interpreters seeking recovery for services may apply the principles outlined in the en banc case of *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Bd. en banc), wherein the Appeals Board stated that:

In determining the reasonableness of a facility fee (as with any medical treatment charge that is not subject to the Official Medical Fee Schedule), *the Board may take into consideration a number of factors, including but not limited to the medical provider's usual fee, the usual fee of other medical providers in the geographical area in which the services were rendered, other aspects of the economics of the medical provider's practice that are relevant, and any unusual circumstances in the case.*

...*In the absence of persuasive rebuttal evidence from the defendant, the outpatient surgery center's billing, by itself, will normally constitute adequate proof that the fee being billed is what the outpatient surgery center usually accepts for the services rendered (and that the fee being billed is also consistent with what other medical providers in the same geographical area accept).* The defendant, however, may present evidence that the facility fee billed by the outpatient surgery center is greater than the fee the outpatient surgery center usually accepts for the same or similar services, both in a workers' compensation context and a non-workers' compensation context, including contractually negotiated fees. Similarly, the defendant may present evidence that the facility fee billed by the outpatient surgery center is greater than the fee usually accepted by other providers in the same geographical area, including in-patient providers.

(*Id.* at pp. 1598-1599, emphasis added; see also *Cruz v. Benu, LLC* (February 22, 2023, ADJ10995520) [Cal. Wrk. Comp. P.D. LEXIS 45].)

Here, defendant failed to submit any evidence rebutting the market rate outlined by lien claimant. As such, we agree with the WCJ that lien claimant “was entitled to be paid at the market rate.” (Report, p. 5.)

Accordingly, defendant’s Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award dated August 5, 2025, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 31, 2025

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

**BERTHA VALERIO
ALCALA ASSOCIATES
JOYCE ALTMAN INTERPRETERS
KIMCO STAFFING SERVICES LEGAL
LILIA RAMIREZ LAW FIRM
MEDICAL COST REVIEW, INC
SEDGWICK**

RL/kl

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