

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

MARCO ORTIZ, *Applicant*

vs.

**AZTECA LANDSCAPE INC.;
CYPRESS INSURANCE COMPANY dba BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ16728100; ADJ16728102
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Cost petitioner, Tony Barriere Interpreting Service, Inc., through its attorney, seeks reconsideration of the Joint Findings and Order (F&O) that was issued by the workers' compensation administrative law judge (WCJ) on June 16, 2025.

Cost petitioner contends, in pertinent part, that the discovery issues remain relevant and that defendant engaged in bad faith actions by unreasonably delaying payment.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations of the Petition and the contents of the WCJ's Report 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.

While we agree with the WCJ that the Petition should be denied, we add the following: Cost petitioner's Petition for Reconsideration also raises the issue of WCAB Rule 10545(h) (Cal. Code Regs., tit. 8, § 10545(h)). Imposition of sanctions of \$500.00 as specified in subdivision (h) still requires a finding of bad faith as set forth under Labor Code section 5813. If bad faith is found, then the WCJ determines the amount of the attorney's fees, costs and sanctions payable. Here, we agree

with the WCJ that defendant's conduct did not rise to the level of bad faith conduct based on the existing record.

I.

Preliminarily, former Labor section 5909¹ 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 August 5, 2025, and 60 days from the date of transmission is October 4, 2025, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, October 6, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on October 6, 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

¹ All section references are to the Labor Code, unless otherwise indicated.

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.

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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on August 5, 2025, and the case was transmitted to the Appeals Board on August 5, 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 August 5, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2025

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

**LAW OFFICE OF GEORGE CORSON
SIEGEL, MORENO & STETTLER
PEATMAN LAW GROUP**

JL/pm

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

I. REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

1. Identity of Petitioner: Cost Petitioner, Tony Barriere ("CP")
2. Timely: Yes
3. Verified: Yes
4. Petitioner's Petition: The Cost Petitioner is seeking discovery to determine if there was an unreasonable delay in paying their invoice which should result in sanctions and attorney fees.

There was no response filed by Respondent.

II

STATEMENT OF RELEVANT FACTS

A dispute arose regarding payment to Tony Barriere, Cost Petitioner. An invoice for the total of \$491.00 was served on Defendant. The charges included were \$266.00 for interpreting the C&R on May 10, 2023 and \$225.00 for deposition preparation on April 13, 2023. (Exhibit 2). On 12/15/23 a new invoice for \$326.29 was sent to Defendants. That bill was for the sum associated with reading the deposition transcript and included charges for penalties and interest. (Exhibit 3). The provider also requested a second bill review at that time. The request was accompanied by several invoices where payment of \$266.00 had been made to interpreters for reading compromise and release agreements. On April 4, 2024, Tony Barriere sent a letter to Defendants offering to accept \$336.49 in full satisfaction of the sum owed.

On September 25, 2024, the Cost Petitioner filed a demand for production of certain documents needed to prosecute this case. It was filed by George Corson on behalf of Mr. Barriere.

On 11/12/24 George Corson filed a motion to compel production of documents and submitted a bill for \$4545.00 as attorney fees. No order was issued as Defendants objection to the Notice to Produce and the matter proceeded to trial.

According to the Defendants an offer was made to settle the attorneys fee issue for approximately \$1000 which included the sum paid to the Cost Petitioner. It was rejected by the Cost Petitioner at the time of the lien conference and again at the time of the trial. The matter proceeded to trial and the WCJ issued the Findings and Order on June 16, 2025 denying CP's claim for attorney's fees and sanctions. They filed a Petition for Reconsideration dated July 10, 2025, raising the same issues and asserting that the findings did not address the issue of unreasonable delay of the payment and bad faith. The WCJ now files this recommendation.

The CP continues to shift the burden of proof to the Defendant's to demonstrate that the payment was not timely made. However, they have not acknowledged that the Defendant's did pay a self-imposed penalty of \$50.47 on the \$266.00 amount owed. This represents a 19% penalty. CP accepted the payment and the penalties but continued to litigate the issue of attorney fees. Defendants made an offer and CP rejected it and proceeded to trial.

At the time of trial, CP sought an adverse inference against the Defendants based on their alleged failure to turn over discovery in response to a Notice to Produce which they filed seeking copies of invoices and payments to other interpreters in this case. California Code, Evidence Code - EVID § 412, reads:

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

Cases where the adverse inference is relied upon are typically those where a party has violated an order directing that discovery be turned over. In the case before us, there was no discovery order on file.

As the WCJ pointed out, Defendant proceeded in filing proper legal documents to object to the Notice to Produce prepared by CP. There is no evidence to indicate that the parties met and conferred further on that issue. In the decision, the WCJ noted that the discovery issue was not relevant as it did not relate to the question of payment to the interpreter in question as that had already been executed. For the services rendered here, the CP was paid in advance of the trial date and a bill review with a full explanation was offered as Defendant's Exhibit B. The court accepted that explanation at the time of trial. CP argued that the bill review should have been excluded from evidence, while at the same time arguing that they wanted to see documents explaining the bill. These contradictory positions, undermine the CP's theory that the documents are significant to the Defendants to turn over any other documents. Therefore, no such orders were violated and there is no basis upon which an adverse inference can be drawn. CP offers no valid argument to the contrary to suggest what the documents would possibly prove.

The court addressed the issue of bad faith and unreasonable delay in the Opinion on Decision. It was noted that payments were made to the interpreter and the parties engaged in settlement negotiations up to and including at the trial. Defendants had issued payment, with its Explanation of Review and the self-imposed penalty. Further, CP failed to meet its burden of proof in showing bad faith but instead argued that it was the Defendant's burden to prove that their failure to comply with discovery was due to mistake, inadvertence or excusable neglect. CP also did not offer any evidence of the unreasonable delay of payments. No witnesses were offered, nor were the[re] any facts presented to suggest that the delay in payment was based on any reasonable action by Defendant's other than the dispute in payment rate requested based on the market rate question.

A finding of bad faith requires evidence of the following (b) actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. CCR § 10421. The allegations of bad faith must be supported by substantial evidence with [*sic*] proves an improper motive, or a deliberately planned action meant to avoid a legally required course of action, without any evidence of corrective or remunerative effort. The time to present the evidence was during trial and having failed to present it, the WCJ ruled that the CP did not meet their burden of proof.

IV
RECOMMENDATION

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

**THIS REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION
WAS TRANSMITTED TO THE APPEALS BOARD ON: AUGUST 5, 2025**

DATE: 8-5-25

MARTHA D. HENDERSON
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

INJURY AOE/COE

Marco Ortiz, applicant, was employed by Azteca Landscape on September 23, 2021, when he claimed to have sustained injury arising out of and in the course of employment to his back. He filed case number ADJ16728100 for that date of injury. He also filed case number ADJ16728102 for the date of injury of December 27, 2021, alleging injury to his left knee. On May 10, 2023, the parties signed a Compromise and Release agreement settling the case for \$60,000.00. (Exhibit 1). The C&R contains the signature of an interpreter acting on behalf of Tony Barriere.

A dispute arose regarding payment to Tony Barriere. An invoice for the total of \$491.00 was served on Defendant. The charges included were \$266.00 for interpreting the C&R on May 10, 2023 and \$225.00 for deposition preparation on April 13, 2023. (Exhibit 2). On 12/15/23 a new invoice for \$326.29 was sent to Defendants. That bill was for the sum associated with reading the deposition transcript and included charges for penalties and interest. (Exhibit 3). The provider also requested a second bill review at that time. The request was accompanied by several invoices where payment of \$266.00 had been made to interpreters for reading compromise and release agreements. On April 4, 2024, Tony Barriere sent a letter to Defendants offering to accept \$336.49 in full satisfaction of the sum owed.

Exhibit 5 shows Tony Barriere in good standing with the Court Interpreter's Resources. Exhibit 6 shows the certified interpreters rate as \$76.00 per hour. The court confirmed that that rate has not been rescinded.

On September 25, 2024, the Cost Petitioner filed a demand for production of certain documents needed to prosecute this case. It was filed by George Corson on behalf of Mr. Barriere.

On 11/12/24 George Corson filed a motion to compel production of documents and submitted a bill for \$4545.00 as attorney fees.

According to the Defendants an offer was made to settle the attorneys fee issue for approximately \$1000 which included the sum paid to the cost petitioner. It was rejected by the Cost Petitioner at the time of the lien conference and again at the time of the trial. The matter proceeded to trial and the WCJ now offers the following opinion on the issues before the court.

ISSUES BEFORE THE COURT

The only issue before the Court is that involving the cost petition of Tony Barriere Interpreting Service, Inc., and the request for attorney fees made by Mr. George Corson's office.

THE ISSUES IN ADJ16728100 AND ADJ16728102 ARE:

1. Attorney fees.
2. Cost Petitioner issues, pertaining to Tony Barriere Interpreting Service, Inc.:
 - A. Does the Notice to Produce Relevant Documents reasonably address issues raised in the Petition for Costs?
 - B. Has Defendant substantiated good faith legal basis to withhold printout of all interpreter payments?
 - C. Has Defendant substantiated good faith legal basis to withhold all interpreter explanations of review?
 - D. Should a Notice of Intent re Sanctions issue to prevent further willful suppression of evidence by Defendant as alleged by Cost Petitioner?
 - E. Should Cost Petitioner be afforded an adverse presumption on unreasonable delay issues under CCR 10670(d)?
 - F. Should attorney fees be deferred to trial number 2 on the basis of unreasonable delay/bad faith following discovery resolution?
 - G. If the Court resolves all issues at trial number one, what is the proper reimbursement to Cost Petitioner, Tony Barriere Interpreting Service, Inc.?

3. DEFENDANT RAISES THE FOLLOWING ISSUES:

- A. Whether a certified interpreter was used.
- B. Whether an interpreter was necessary.
- C. The reasonableness of the interpreting charges and attorney fees.
- D. Whether a 60-day demand was issued.

DISCUSSION OF APPLICABLE CASE LAW

The WCAB recently discussed this issue in *Vasquez v. Millwork Bros., Inc.*, 2024 Cal. Wrk. Comp. P.D. LEXIS 383. The language in the case is relevant to the case before us. In relevant part the court wrote:

Turning to the merits of the petition, the interpreter has the burden of proving among other things that the fees charged were reasonable in

order to recover charges for interpreter services. (Guitron v. Santa Fe Extruders, (2011) 76 Cal. Comp. Cases 228, 234 (Appeals Board en banc).) In this matter, petitioner is entitled to payment for the translation services provided to applicant. The issue is the amount of the payment given the fact that the translation services are not related to medical treatment.

The provisions of the Labor Code and the Administrative Director (AD) rules regarding interpreter services needed for medical treatment are different from the provisions as to interpreter services provided in other settings. Also, the billing and payment requirements in section 4603.2 are in regard to "A provider of services provided pursuant to section 4600, including but not limited to ... interpreters ... " (Lab. Code, § 4603.2(b)(1)(A).)

Section 5811 states:

.... 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: ... (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).)

As to the actual amount to be paid for interpreter services, the provisions of AD Rule 9795.3 are relevant to the issue herein:

(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: ... (4) A deposition of an injured employee or any person claiming benefits as a dependent of an injured employee, at the request of the claims administrator, including the following related events: (i) Preparation of the deponent immediately prior to the deposition, (ii) Reading of a deposition to a deponent prior to a signing, and, and (iii) Reading of prior volumes to a deponent in preparation for a continuation of a deposition. (5) An appeals board hearing, or arbitration. (6) A conference held by an information and assistance officer ... to assist in resolving a dispute between an injured employee and a claims administrator. (7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee.

(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.... (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. (Cal. Code Regs., tit. 8, § 9795.3 (bold added).)

Petitioner contends that the rate of reimbursement for section 5811 interpreter services is the higher of the established market rate or the superior court half/full day rate in the county where the services were provided and cites the above AD Rule 9795.3(b)(1) in support of his position.

Here, providing translation services for an applicant at a board hearing, deposition, conference, or arbitration, is similar to providing translation services for the reading of a C&R. These are all proceedings where an applicant with limited English language abilities has a civil right to be provided with interpretation services in order to fully understand the document and/or proceedings that he is signing and/or participating in. We agree with petitioner that the correct rate for his services falls within AD Rule 9795.3(b) (1).

In the case involving Marco Ortiz, before us today, the defendants have paid the rate of \$266.00 requested by the Cost Petitioner. (Exhibit 2). As noted in their trial brief, Defendants state the following:

On January 21, 2025, Defendant issued payment to Tony Barriere in the amount of \$266.00, and Defendant issued a self-imposed penalty of \$50.47 to Tony Barriere on January 28, 2025. *See* Defendant Exhibit B.

The sum paid is consistent with the demand made by the Cost Petitioner. The dispute remaining before the court relates to a request for attorney fees billed by George Corson for services rendered to the cost petitioner. The fee request requires a finding of bad faith on the part of the defendants. It is the Cost Petitioner's burden of proof to present evidence to justify such a finding. The cases have defined bad faith as follows: (b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. CCR §10421. The allegations of bad faith must be supported by substantial evidence with proves an improper motive, or a deliberately planned action meant to avoid a legally required course of action, without any evidence of corrective or remunerative effort.

Cost Petitioner requests that it be presumed that the Defendant's claimed failure to comply with their Notice to Produce is an act of bad faith. However, Defendant's proceeded through proper channels to object to the Notice to Produce and there has been no finding that discovery was relevant or reasonably anticipated to lead to relevant evidence. In fact, discovery in this instance is moot as the request to produce evidence of payment to other interpreters on this case is not related to the remaining issue of the attorney fees demanded. The underlying bill has already been paid and a self-imposed penalty was paid on that sum. No further consideration is due.

Cost Petitioner seeks an adverse presumption against Defendants based on the claimed failure to produce discovery, however, a bill review with a full explanation was offered as Defendant's Exhibit B and Cost Petitioner now argues that it must be excluded as it was not produced at the time of the Mandatory Settlement Conference (MSC). However, it was not prepared until after the MSC. Therefore, it could not have been listed on the MSC statement. The WCJ has discretion and in this instance, the Judge believes that the item is relevant and as there is no prejudice argued by the cost petitioner, it is admitted into evidence.

Cost Petitioner attempts to shift their burden of demonstrating bad faith to the Defendant by arguing in their brief that defendant would have to prove that a failure to comply with discovery is due to a mistake, inadvertence or excusable neglect and that failing to do so would lead to a finding of bad faith. Cost Petitioner's attempt to reverse the burden of proof here is not supported by the statutory requirements of Labor Code Section 5811. Defendants have not violated any discovery order. They have instead paid the sum requested and self-imposed a penalty which is considered by this court as a corrective act of good faith.

As cost petitioner has not demonstrated bad faith, as required, no attorney fees are awarded. Further, the merits of the invoice filed by cost petitioner, if considered, would be questioned as to its validity given that the individual handling this matter, at least at trial was a hearing representative. Yet, a fee request of \$450.00 per hour was made. This sum would be out of line with fees generally afforded hearing representatives. Additionally, it is not clear that 5811 was meant to allow fees in this situation for anyone other than a licensed California attorney. The court, however, does not consider this question at this time.

Based, on the foregoing, the cost petition is dismissed as payments have been made to the cost petitioner and there is no basis for attorney fees to be awarded.

DATE: 6-16-25

MARTHA D. HENDERSON
Workers' Compensation
Administrative Law Judge