WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HANSEL LOPEZ, *Applicant*

vs.

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS, legally uninsured, *Defendant*

Adjudication Number: ADJ20168793
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant's attorney seeks reconsideration of the Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on April 20, 2026 wherein the WCJ held, in relevant part, that while employed by defendant as a correctional officer during the period from June 1, 2003 through October 18, 2024, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) "to hypertension and left ventricular hypertrophy (LVH)" resulting in a fifty-five percent (55%) permanent disability after apportionment with a need for further medical treatment. The WCJ held that applicant "is entitled to [the] heart trouble presumption pursuant to Labor Code 3212.2" and that "Dr. Alpern's report qualifies as substantial medical evidence without the cardiac MRI to confirm LVH." The WCJ further found that attorney fees of twelve percent (12%) are reasonable and issued an award of permanent disability, further medical care to cure or relieve the effects of the injury, and attorney fees in accordance thereof.

Applicant's attorney contends that the WCJ "abused his discretion in awarding a [12%] attorney fee because the awarded fee does not accurately reflect the reasonable value of applicant's attorney's services rendered." (Petition for Reconsideration (Petition), p. 1.) Applicant's attorney further argues that the "court abused its power in determining the case was of average complexity" and failed "to comply with Labor Code section 5313[.]" (*Id*. at pp. 4-5.)

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that Petition be denied.

We have considered the contents of the Petition and Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, amend the F&A to reflect a reasonable fifteen percent (15%) attorney fee, but otherwise affirm the WCJ's findings.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) on November 27, 2024, alleging that while employed by defendant during the period from June 1, 2003 through October 18, 2024, as a correctional officer, he sustained injury AOE/COE to the circulatory system (hypertension).

The parties retained Harvey L. Alpern, M.D. as the internal panel Qualified Medical Evaluator (PQME) who evaluated applicant on March 31, 2025 and issued a corresponding report as well as supplemental reports dated May 13, 2025, June 10, 2025, and September 11, 2025.

In his report dated May 13, 2025, Dr. Alpern indicated that stress at work was the cause of applicant's heart issues and that applicant qualified for the heart presumption. (Joint Exhibit 2, p. 2.) Dr. Alpern noted a thirty percent (30%) whole person impairment (WPI) as a result of LVH and medication usage with ten percent (10%) apportionment to a history of obesity and the remaining ninety percent (90%) to the subject injury. (*Id*. at p. 3.)

On October 9, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issues of permanent disability and future medical treatment. The matter proceeded to a mandatory settlement conference on December 16, 2025, wherein it was set for trial, to be held on February 10, 2026.

At trial, the parties stipulated that applicant sustained injury AOE/COE in the form of hypertension while employed by defendant as a correctional officer during the period June 1, 2003 through October 18, 2024, and set the following issues for determination: parts of body injured; permanent disability; need for further medical treatment; attorney fees; whether applicant is entitled to the heart trouble presumption pursuant to section 3212.2; and whether Dr. Alpern's reporting qualifies as substantial medical evidence without a cardiac MRI to confirm LVH.

On April 20, 2026, the WCJ issued an F&A which held that while employed by defendant as a correctional officer during the period from June 1, 2003 through October 18, 2024, applicant

sustained injury AOE/COE to hypertension and LVH resulting in 55% permanent disability after apportionment. The WCJ also held that applicant "is entitled to [the] heart trouble presumption pursuant to Labor Code 3212.2" and that "Dr. Alpern's report qualifies as substantial medical evidence without the cardiac MRI to confirm LVH." The WCJ awarded a reasonable attorney fee of 12%, along with the value of a 55% permanent disability, and further medical care.

It is from this F&A that applicant's attorney seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code section 5909[1] 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 May 26, 2026, and 60 days from the date of transmission is July 25, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is July 27, 2026. (See Cal. Code Regs., tit. 8, §

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

10600(b).)[2] This decision was issued by or on July 27, 2026, 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, the Report was served on May 26, 2026, and the case was transmitted to the Appeals Board on May 26, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on May 26, 2026.

II.

Turning now to the merits of the Petition, it is well established that the Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd*. (2007) 154 Cal.App.4th 1142, 1149 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) In calculating attorney fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a), (d).) Pursuant to section 4906, in determining what constitutes a "reasonable" attorney fee, the Appeals Board must consider four factors: 1) the responsibility assumed by the attorney; 2) the care exercised by the attorney; 3) the time expended by the attorney; and 4) the results obtained by the attorney. (Lab. Code, § 4906(d); see also Cal. Code Regs., tit. 8, § 10844.) In *Vierra*, the Court of Appeal held:

> The Legislature has…clearly and decisively spoken that attorney fees in workers' compensation cases cannot exceed an amount that is "reasonable" and that the WCAB shall be the final arbiter of reasonableness in all cases.

(*Id.* at p. 1151.)

Although not binding, WCAB/DIR Policy & Procedure Manual, section 1.140 also provides guidance in our analysis of this matter. Under section 1.140, we may also consider the complexity of the issues, whether the case involved highly disputed factual issues, and whether

detailed investigation, interrogation of prospective witnesses, and/or participation in lengthy hearings are involved.

Here, applicant's attorney contends that the 12% attorney fee awarded by the WCJ does not accurately reflect the reasonable value of services rendered and that based upon the complexity of the case, applicant's attorney should be awarded a fee of 15%. (Petition, pp. 1, 4-5.)

In awarding the 12% attorney fee, the WCJ explained in her Opinion on Decision (OOD) that:

> Applicant's attorney has provided valuable services. In determining a reasonable fee for said services, the court is guided by Labor Code Section 4906 and CCR Section 10844, which requires the court to consider the responsibility assumed by the attorney, the care exercised in representing the injured worker, the amount of time involved, and the results obtained. Furthermore, pursuant to the Policy and Procedural Manual Section 1.140, in cases of average complexity, the WCAB believes that a reasonable fee will be in the range of 9-12% of the PD, TD, out of pocket medical benefits, death benefit, or C&R awarded. *By definition, most cases are average.* Fees for cases of above average complexity can be as high as 15%. Such cases include those establishing new or obscure theories of injury or law, cases with highly disputed participation in lengthy hearings, cases involving highly disputed medical issues, and cases involving multiple defendants. And in cases of below average complexity, fees can be as low as 1%. This includes essentially undisputed cases. The WCAB also believes that the time involvement of a recognized specialist who has demonstrated his or her skills in the field is to be valued much more highly on an hourly basis than the time involvement of a person less knowledgeable and skilled in the field of workers' compensation law. The case at bar was relatively straightforward with just a few disputed issues set for trial. There was just one trial session on the record, with no witnesses. It does not appear that any new or obscure theories of injury or law are involved herein. There was only one defendant. Based upon the above discussion, this case appears to be of average complexity.

(F&A and OOD, p. 4.)

Based upon our review of the record, we do not believe the case at hand was of average complexity. Applicant attorney obtained the result sought on a technical issue (hypertension as heart presumption) and prevailed on all issues including avoiding apportionment due to the anti-attribution provisions related to the heart presumption. Further, although there was no testimony at trial and only one defendant, applicant's attorney brought several issues to trial rather than compromise or settle, including the issues of parts of body injured; permanent disability; need for further medical treatment; attorney fees; whether applicant is entitled to the heart trouble presumption pursuant to section 3212.2; and whether Dr. Alpern's reporting qualifies as

substantial medical evidence without the cardiac MRI to confirm LVH. Ultimately, applicant's attorney was able to convince the WCJ that notwithstanding lack of a cardiac MRI, applicant did in fact suffer from LVH based upon the medical records submitted. Thus, based upon the foregoing and the totality of the evidence, we believe applicant's attorney provided skilled representation in a case of above average complexity.

Further, we find that counsel properly notified applicant of their adverse interest in seeking an increased attorney fee and their right to seek independent counsel in accordance with WCAB Rule 10842[2] and filed a fully executed fee disclosure addendum advising applicant that the judge may set the fee and of their intention to seek fees of fifteen to eighteen percent (15-18%) of the benefits awarded.

Accordingly, we grant the Petition and affirm the F&A except that we will amend it to reflect a reasonable attorney fee of 15%.

For the foregoing reasons,

IT IS ORDERED that applicant attorney's Petition for Reconsideration of the workers' compensation administrative law judge's April 20, 2026 Findings and Award is **GRANTED**.

[2] WCAB Rule 19842 (Cal. Code Regs., tit. 8, § 19842) states that: "All requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorneys' adverse interest and of the application's right to seek independent counsel. Failure to notify the applicant may constitute grounds for dismissal of the request for increase in fee."

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the workers' compensation administrative law judge's April 20, 2026 Findings and Award is **AFFIRMED**, **EXCEPT** as **AMENDED** below:

FINDINGS OF FACT

4. Attorney fees of 15% are found to be reasonable.

AWARD

3. Attorney fees of $13,539.37 payable in a lump sum to be commuted from the far end of the award as necessary.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 9, 2026

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

HANSEL LOPEZ
WHITING, COTTER & HURLIMANN, L.L.P.
STATE COMPENSATION INSURANCE FUND

RL/*cs*

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