

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

**RICHARD VATTER, *Applicant***

**vs.**

**SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant***

**Adjudication Number: ADJ7169486  
San Luis Obispo District Office**

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

Applicant's attorneys, Ghitterman, Ghitterman & Feld (GGF), seek reconsideration of the February 10, 2023 Award following a Stipulations with Request for Award and the February 16, 2023 Order and Response to Letter, wherein the workers' compensation administrative law judge (WCJ) awarded and later affirmed applicant's attorney's fees of 15%.

GGF contends that it merits a 25% attorney's fees because Subsequent Injuries Benefit Trust Fund (SIBTF) cases are of above average complexity, the two partners at GGF are certified Workers' Compensation Specialists who make presentations to other law firms on SIBTF law and are often referred by other attorneys to handle SIBTF claims, and GGF secured a 100% permanent disability for applicant.

We received GGF's supplemental brief. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We accept and review GGF's supplemental brief.

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

We have considered the Petition for Reconsideration, GGF's letter dated February 13, 2023, the February 16, 2023 Order and Response to Letter, GGF's letter dated February 24, 2023, the contents of the Report, the supplemental briefing, and we have reviewed the record in this

matter. For the reasons discussed below, we grant reconsideration, amend the February 10, 2023 Award, order the February 16, 2023 Order and Response to Letter be stricken, and return this matter to the trial level for further proceedings.

## **FACTS**

On February 10, 2023, an Award issued following the parties' Stipulations with Request for Award. The Award slashed by hand the typewritten attorney's fees of 25% and replaced it with 15%. (Award dated February 10, 2023.)

On February 13, 2023, GGF wrote a letter to the WCJ under WCAB Rule 10966 (Cal. Code Rules, tit. 8, § 10966) asking for 25% attorney's fees. (Letter dated February 13, 2023.)

On February 16, 2023, the WCJ issued an Order and Response to Letter with an 8 CCR § 10966 Request and affirmed the 15% attorney's fees. (Order and Response Letter dated February 16, 2023.)

On February 24, 2023, GGF wrote another letter to the WCJ again articulating reasons for a 25% attorney's fees award. (Letter dated February 24, 2023.)

On March 7, 2023, GGF filed the instant Petition for Reconsideration. (Petition for Reconsideration.)

On March 17, 2023, the WCJ issued his Report. (Report.)

On March 21, 2023, GGF filed a supplemental briefing. (Supplemental Briefing.)

## **DISCUSSION**

Labor Code<sup>1</sup>, section 5313 requires the WCJ to,

. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

Section 5313 requires the WCJ to state the "reasons or grounds upon which the [court's] determination was made." (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIA 74].) The WCJ's opinion on decision "enables the

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise indicated.

parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Furthermore, the WCJ is charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.)

Here, while the WCJ provided his reasoning for a 15% attorney’s fees in his February 16, 2023 Order and Response Letter and GGF provided its reasoning for a 25% attorney’s fees in its letters and pleadings, there has been no evidence taken on the issue of attorney’s fees. Accordingly, we grant reconsideration, amend the February 10, 2023 Award, order the February 16, 2023 Order and Response to Letter be stricken, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that applicant's attorneys, Ghitterman, Ghitterman & Feld's Petition for Reconsideration of the February 10, 2023 Award and the February 16, 2023 Order and Response to Letter is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 10, 2023 Award is **AMENDED** as follows:

**AWARD**

AWARD is made in favor of RICHARD VATTER against SUBSEQUENT INJURIES BENEFITIS TRUST FUND FOR THE STATE OF CALIFORNIA OF:

(A) Permanent disability and life pension indemnity in accordance with paragraph 5 of the Addendum, less applicant's attorney's fees as the reasonable value of services rendered. The issue of the amount of applicant's attorney's fees is deferred.

...

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 16, 2023 Order and Response to Letter is **STRICKEN**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**May 8, 2023**

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

**RICHARD VATTER  
GHITTERMAN, GHITTERMAN & FELD  
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)**

**LSM/pc**

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