

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

JAMES PARISH, *Applicant*

vs.

**ANGELS SHEET METAL, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ642140
Stockton District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 29, 2022

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

**CENTRAL VALLEY INJURED WORKER LEGAL CLINIC
JAMES PARISH
OCCUPATIONAL INJURY LAW CENTER
STATE COMPENSATION INSURANCE FUND**

AH/oo

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

INTRODUCTION

Manner of Injury:	Specific injury
Date of Injury:	7/2/01
Body Parts Injured:	Back
Occupation:	HVAC
Date of Findings and award:	Prior Stipulations on 1/5/2006. Sole issue of attorney fee split.
Petitioner:	Applicant's Attorney #2 John Gonzalez Esq.
Timeliness of Petition:	Timely
Verification of Petition:	Verified

INTRODUCTION

Petitioner, Mr. Gonzalez, the second Applicant's Attorney, filed a Petition for Reconsideration of A Findings and Award regarding an attorney's fee split that was held in trust per the Compromise and Release agreement. The findings and Award for attorney's fees was issued on 5/5/2022. The Petitioner was aggrieved as the Trial Judge awarded an almost equal split of fees, less any already received fees by Respondent, for the two attorney's lengthy and equal representation over a 20 year period. There is a Scrivener's error in the last paragraph of the Findings and Award but it does not change, in any way, the final amount of attorney fees that were awarded to the Respondent Mr. Solorio.

PETITIONER'S CONTENTION(S)

Petitioner contends that

1. By the Order, Decision, or Award made or filed by the Workers' Compensation Judge, the workers' compensation Judge acted without or in excess of its powers.
2. That the evidence does not justify the findings of fact.
3. That the Findings of Fact do not support the Order, Decision, or Award;
4. That WCJ Arendt erred in awarding Occupational Injury Law Center an attorney fee of \$11,007.49.

RESPONSE TO PETITIONER'S CONTENTION

Petitioner/Applicant is incorrect in his assessment of the discretionary attorney fee split and reconsideration should be denied.

SUMMARY OF FACTS

The applicant was employed by Angels Sheet Metal Inc. in Altaville, California. This 2001 case settled by way of stipulations on 1/5/2006. The original Attorney, Respondent Mr. Solorio, continued his representation until 2011. A second Attorney substituted into the case, that being Petitioner Mr. Gonzalez. The matter proceeded to trial on 10/26/21 on Attorney's fees that were held in trust from a Compromise and Release reached on 3/18/21. A Finding and Award issued on 5/5/2022 relating to the attorney fee split only.

The Applicant was represented by two different Attorneys throughout this 20+ year old matter. The representation was approximately of equally duration by both Attorneys.

DISCUSSION

At trial, Respondent, Attorney, Mr. Solorio, took the stand and was questioned under oath. He submitted into evidence his detailed and itemized statement of work done on the file. Petitioner Mr. Gonzalez, did not present any testimony or evidence to the court representing any work he had done on the file.

Petitioner Mr. Gonzalez, now asks the Board to:

- give a lower fee to the Respondent Attorney, Mr. Solorio
- be allowed to present evidence of his work done which was not presented at trial
- change the WCJ's discretionary finding of the Attorney fee split

The court found that the lien claimant/Respondent, Mr. Solorio, in effect, set up the file for a buy out of the future medical award. He stayed on top of the medical treatment issues and litigated treatment denials, requests for services, change of treating physicians, did two commutations, and had many discussions about settlement of the future medical award with his client and the defendants.

The bulk of the Compromise and Release attorney fee is relatively related to the Medicare Set Aside amount of \$143,820.00, and not the work of any specific attorney. A set aside was discussed by Respondent Mr. Solorio throughout his representation of the applicant.

Petitioner further objects to the Respondent amending his lien on the file. This nothing less than a red herring. The Court found that the initial lien put into EAMS by Respondent was not an absolute lien but rather a place holder to be modified as evidence and facts came to light.

Scrivener's Error in the Findings and Award

On page 3 of the Findings and Award there is a Scrivener's error in the last paragraph of the decision. The total attorney fees award for both the prior stipulations and the compromise and release **total \$35,489.18** not \$28,752.08. When \$35,489.18 is divided by two that totals \$17,744.59. The prior Attorney's fee received by Respondent Mr. Solorio, was \$6737.10. This amount was deducted from the amount to Respondent/Mr. Solorio and he is to receive the amount correctly identified in the Findings and Award, page 3, of **\$11,007.49**. This discretionary amount

found by the WCJ is a fair assessment and takes into account the work done by both Attorneys in this matter.

CONCLUSION

Petitioner, Mr. Gonzalez, failed to produce any evidence to the court on his own behalf. He then objected to the prior Applicant's Attorney's re-creation of the very old Board file (a red herring). Fortunately, the court did not require any use of the old Board file as there was ample evidence to justify the court's Findings and Award. There was no evidence presented or indicated that Petitioner did any more work than the Respondent. There was plentiful evidence indicating that Respondent put a lot of time and effort into setting up the claim for a Compromise and Release down the road.

Respondent Attorney Mr. Solorio, credibly testified under oath and produced additional evidence by way of his work logs. The WCJ was moved to utilize her discretionary authority to split the Attorney fees as she did, there were deductions made for any prior attorney's fees received by Respondent Mr. Solorio.

Petitioner's failure to present any evidence to the court on behalf of any work done should not be rewarded by the Board.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

Dated: 6/14/2022

Maribeth Arendt
WORKERS' COMPENSATION JUDGE