

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

LAURENCIO CUEVAS, *Applicant*

vs.

**RED-WHITE VALVE CORP.; OAK RIVER INSURANCE COMPANY, administered by
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11005247; ADJ11869092
Oxnard 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.

WCAB Rule 10786(i)(1) provides that, “[i]f the Workers’ Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs and for sanctions under Labor Code section 5813 and rule 10421.” (Cal. Code Regs., tit. 8, former § 10451.1, now § 10786 (eff. Jan. 1, 2020), *emphasis added*.) Here, the WCJ's Report and Recommendation on Petition for Reconsideration correctly observes that the award of any costs and sanctions arising out of a parties' actions or tactics would necessarily be premised on a determination by the WCJ that those actions were taken in bad faith. (Report, at p. 3.)

Labor Code section 5813 further provides that “[t]he workers’ compensation referee or appeals board *may* order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs, incurred by another party *as a result of bad-faith actions or tactics* that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a),

emphasis added.) Accordingly, the imposition of costs and sanctions rests within the sound discretion of the WCJ.

Here, the WCJ has explained that the record does not support the imposition of attorney fees or costs, based on a lack of evidence of actions taken in bad faith. (Report, at pp. 3-4.) Following our review of the record occasioned by the Petition for Reconsideration, we discern neither an abuse of discretion, nor good cause to disturb the WCJ's findings.

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/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 6, 2023

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

**MATRIX DOCUMENT IMAGING, INC.
LITIGATION AND CONSULTING ASSOCIATES
WAI, CONNOR & HAMIDZADEH**

SAR/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Laurencio Cuevas, born [], while employed by Red-White Valve Corp. at Lake Forest, California on 08/01/2016 through 08/16/2017 claimed to have sustained injury arising out of and occurring in the course of employment to his brain, neck, shoulders, legs, arms, head and back.

In pursuit of this claim applicant's attorney obtained records through the services of cost petitioner and petitioner herein Matrix Document Imaging. Petitioner seeks reconsideration of the Findings and Award herein allowing its charges together with penalty and interest, but finding that there is no evidence of bad faith on the part of the defendant requiring imposition of sanctions and allowing an attorney fee as a cost.

II. CONTENTIONS

Petitioner and cost petitioner contends that defendant failed to object to or pay petitioner's charges within 60 days, that defendants must be found to have acted in bad faith since no evidence of inadvertence, mistake, surprise or excusable neglect was proffered, and that failing to raise billing objections timely is "clearly sanctionable."

III. FACTS

Cost petitioner Matrix Document Imaging served bills upon defendant (Cost Petitioner's Exhibit 13) showing the following invoices and payments:

12/29/2017 - \$241 paid 02/22/2019

01/02/2018 - \$180 paid 03/11/2019

08/01/2018 - \$180 paid 03/11/2018

11/08/2018 - \$180 paid 02/22/2019

Petitioner does not contest the findings that the charges were reasonable, that the services were medical legal in a contested claim or that penalty and interest is due on the delayed amounts.

IV. DISCUSSION

In short, petitioner contends that the tardiness of the payments in full by itself requires a finding of bad faith on the part of defendant, warranting sanctions and costs of \$15,313.85 in attorney fees for pursuing the charges (already paid) and penalty and interest by non-IBR petition of 02/01/2023.

Petitioner's request for sanctions seems to be based on the assumption that any time a defendant contests liability or is late in paying a medical legal cost, sanctions must be imposed. This ignores the provisions of 8 Cal. Code of Reg. Sec. 10451.1(g). In particular, the action in question must be determined by the Board to have been taken in bad faith and "may" include late payment of an *uncontested* charge or failing to make a good faith effort to comply with timeliness or procedures or contesting a charge based on a dispute over injury or parts of body.

Defendant did not timely make the payments and did not timely object to the billings. However, they did contest some charges (such as charges for applicant's attorney requesting records from his own office, Defendant's Exhibit S).

There is a difference between not contesting a charge and failing to timely object.

Petitioner is seeking an inference based on surmise or speculation as to defendant's mindset at the time of the failures to timely object or timely pay.

Where the evidence shows no more than untimely objection and/or payment, the punishment is embedded in Labor Code Section 4622 in the form of penalty and interest, both of which were here imposed.

Absent such bad faith, the cost of disputing a medical legal charge is the risk of Labor Code Section 4622 penalty and interest which is imposed herein.

The claim for sanctions and costs of \$15,313.85 in attorney fees is without merit.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

Dated at Oxnard, California
Date: 04/12/2023

WILLIAM M. CARERO
WORKERS' COMPENSATION JUDGE