

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

YOLANDA RAMIREZ, *Applicant*

vs.

SWAT FAME, INC.; ZURICH AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ12901263
Pomona District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Order After Reconsideration.

Applicant's attorney Martin Arteaga (Arteaga) seeks reconsideration of the Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on May 15, 2023. In relevant part, the WCJ awarded Arteaga a 12 percent attorney fee to be commuted from the final weekly payments of applicant's permanent disability (PD) award.

In his Petition for Reconsideration (Petition), Arteaga contends that the 12 percent attorney fee does not reflect the reasonable value of his services rendered in the case. Arteaga also contends that applicant agreed to a 15 percent attorney fee.

We did not receive an Answer. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that reconsideration be denied.

We have considered the allegations in the Petition and the contents of the WCJ's Report. Based upon our review of the record, and for the reasons discussed below, we will rescind the 12 percent fee award and substitute a finding that Arteaga is entitled to an attorney fee of 15 percent of the PD award, to be commuted from the far end of the PD award in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute. The remainder of the F&A will be affirmed.

BACKGROUND

On April 22, 2019, applicant retained Arteaga as her legal counsel. (See Fee Disclosure Statement; DWC-1 Form; Lab. Code, § 4906(h) Declaration; Venue Verification.) On January 15, 2020, Arteaga filed applicant's Application for Adjudication. Prior to trial, and after engaging (and replacing) two panel Qualified Medical Evaluators (QMEs) with an Agreed Medical Evaluator (AME), the parties successfully stipulated to a final PD rating of 54%. The parties also stipulated to the following issues: 1) injury AOE/COE; 2) applicant's permanent and stationary (P&S) date; 3) that defendant had issued 104 weeks of temporary disability (TD); and 4) that defendant had issued a supplemental job displacement voucher to applicant. (Minutes of Hearing (MOH), April 27, 2023, pp. 2-3.)

On April 27, 2023, the parties proceeded to trial on the issues of: 1) applicant's need for further medical treatment; 2) defendant's liability for self-procured medical treatment/mileage reimbursement (reserved by the parties); and 3) attorney fees. (MOH, April 27, 2023, p. 3.)

On May 15, 2023, the WCJ issued the F&A, awarding, among other things, a 12 percent attorney fee to Arteaga. Arteaga sought timely reconsideration of the F&A.

DISCUSSION

The sole issue is whether the WCJ abused his discretion in awarding a 12 percent attorney fee to Arteaga. Arteaga contends that the 12 percent attorney fee does not accurately reflect the reasonable value of his services rendered in this case. Arteaga also states that applicant had agreed to a 15 percent fee award in a Fee Disclosure Statement signed in 2019.

The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd. (Vierra)* (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 Labor Code section 4906,¹ 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, supra*, the Court of Appeal held:

¹ All further statutory references are to the Labor Code unless otherwise stated.

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.

In awarding Arteaga a 12 percent attorney fee, the WCJ explained:

The instant case does not appear to involve issues that can be considered above-average complexity to warrant a fee in excess of the normal upper limit of 12%. In fact, based upon the current record, the case appears relatively straightforward...the April 27, 2023 Trial essentially had no disputed issues and no witness testimony, allowing for a fairly quick submission on the record, to memorialize the stipulated [PD] ratings and award future medical care and attorney fees. Without any evidence of there being any highly disputed factual or medical issues or there being new or obscure theories of injury or law, this Court does not find this case to be considered above-average complexity so as to warrant a fee in excess of the normal upper limit of 12%. Accordingly, this Court finds that attorney fees of 12% of the Applicant's Award to be reasonable.

(Opinion on Decision, May 12, 2023, pp. 4-5.)

Upon review, we believe that the 12 percent attorney fee awarded to Arteaga was slightly short of reasonable, as it failed to fully account for the time that Arteaga expended on applicant's three-year case, the work that he performed during that time, and results that he obtained on applicant's behalf, which included future medical care and a 54% PD rating. The record also indicates that Arteaga's efforts assisted the parties in settling multiple issues outside of court, including, but not limited to, stipulations as to injury AOE/COE, applicant's PD rating, and P&S date, as well as the use of an AME over a QME. (MOH, April 27, 2023, pp. 2-3; Exh. A2, pp. 94-96, Joint AME Letter, March 11, 2022.) The 12 percent fee award did not adequately compensate Arteaga for successfully settling these issues; in fact, it was *because* these issues were settled that the WCJ declined to award Arteaga a higher fee, finding, as noted above, that the trial "essentially had no disputed issues and no witness testimony, allowing for a fairly quick submission on the record, to memorialize the stipulat[ions]...." However, the stipulations reflect competence and

diligence on Arteaga's part; the fact that they allowed for a quicker submission on the record and simplified the issues for trial should not weigh against Arteaga.²

Based on the foregoing, we rescind the 12 percent attorney fee award and substitute a finding that Arteaga is entitled to an attorney fee of 15 percent of applicant's PD award, to be commuted from the far end of the PD award in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute. The remainder of the F&A is affirmed.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&A of May 15, 2023 is **AFFIRMED**, except that Findings of Fact Nos. 4 and 6, and Item (c) of the Award, are **RESCINDED** and **SUBSTITUTED** as set forth below.

FINDINGS OF FACT

...

4. The injury caused permanent disability of 54%, equal to 303.25 weeks of indemnity payable at \$290.00 per week for the total sum of \$87,942.50, less credit for sums previously paid and less reasonable attorney fees in the amount of 15% of the Applicant's Award.

...

6. Martin Arteaga is entitled to an attorney fee of fifteen percent (15%) of the permanent disability award, to be commuted from the far end of the award in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

² Although not controlling on the issue, we also note, as does Arteaga, that applicant agreed to a 15 percent attorney fee. (See Correspondence filed June 9, 2023; Fee Disclosure Statement, filed January 15, 2020; Lab. Code, §§ 4903, 4906; Cal. Code Regs., tit. 8, §§ 10840, 10844.)

AWARD

(c) An attorney fee of fifteen percent (15%) of the permanent disability award, which shall be commuted from the far end of the award in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 8, 2024

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

**YOLANDA RAMIREZ
LAW OFFICES OF MARTIN ARTEAGA
MAVREDAKIS PHILLIPS**

AH/cs

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