

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **JOHN LETT,**

5
6 *Applicant,*

7 **vs.**

8 **L.A.C.M.T.A.; THE TRAVELERS**
9 **INSURANCE COMPANY,**

10
11 *Defendant(s).*

Case No. VNO 0378504
VNO 0378505
VNO 0382578
VNO 0402513
VNO 0462718

OPINION AND DECISION
AFTER RECONSIDERATION

12
13 On December 15, 2003, the Appeals Board granted
14 reconsideration to further study the factual and legal issues in
15 this matter, so as to give us a complete understanding of the
16 record and enable us to issue a just and reasoned decision.
17 Having completed our study, we hereby issue our Decision After
18 Reconsideration.

19 On May 9, 2003, the applicant's deposition was taken by
20 defendant. On May 14, 2003, pursuant to the petition filed by
21 applicant's counsel, the workers' compensation administrative law
22 judge (WCJ) issued a conditional order allowing applicant's
23 counsel attorney's fees of \$416.60 in accordance with Labor Code
24 section 5710.¹

25 ¹ Pursuant to Labor Code section 5710(b)(4): "Where the employer or insurance carrier requests a deposition to be
26 taken of an injured employee... the deponent is entitled to receive in addition to all other benefits: a reasonable
27 allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state,"
which fee "shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the
employer or his or her insurer."

1 Defendant timely objected to the order on May 22, 2003,
2 contending that it would be an unreasonable exercise of discretion
3 to allow attorney fees when the applicant had not signed and
4 delivered the deposition transcript, and thus, the deposition had
5 not been completed. Defendant also argued as a matter of public
6 policy that Labor Code section 5710 must be interpreted consistent
7 with efforts to eliminate workers' compensation fraud under
8 Insurance Code section 1871.4, and that because Labor Code section
9 5710 fees were a benefit to the injured worker as opposed to his
10 or her attorney, it was logical to provide that benefit only after
11 the injured worker had completed the deposition. Defendant
12 apparently had no objection as to the monetary amount of the fee
13 requested.

14 The issue of the Labor Code section 5710 deposition fees
15 proceeded to hearing on July 7, 2003, and following the submission
16 of points and authorities by the parties, the WCJ issued his
17 decision on October 2, 2003. The WCJ determined that there was no
18 legal requirement that an applicant sign his or her deposition
19 transcript prior to allowing reasonable attorney's fees under
20 Labor Code section 5710. Specifically, the WCJ found that
21 "setting of a discretionary fee pursuant to Labor Code section
22 5710 refers to a reasonable attorney fee to be set and approved by
23 the appeals board; and that the manner in which the deposition is
24 taken and completed is governed by the Code of Civil Procedure
25 section 2025(q) in accordance with Labor Code section 5710."

26 Defendant filed a timely petition from the WCJ's decision,
27 contending that it is an abuse of discretion to allow Labor Code

1 section 5710 fees to an attorney whose client refuses to sign a
2 deposition transcript under penalty of perjury. For the reasons
3 discussed below, we will affirm the WCJ's decision.

4 Labor Code section 5710 requires only that the employer or
5 insurance carrier requests a deposition be taken of the injured
6 worker. Here, the applicant's deposition was taken and therefore,
7 the requirements for setting a fee were satisfied. Labor Code
8 section 5710 contains no requirement that an applicant must sign
9 his or her deposition as a condition precedent to allowing
10 reasonable attorney's fees.²

11 Moreover, even assuming that the substantive provisions of
12 the Code of Civil Procedure are applicable to workers'
13 compensation proceedings, Code of Civil Procedure section
14 2025(q)(1) provides that the deponent "may either approve the
15 transcript of the deposition by signing it, or refuse to approve
16 the transcript by not signing it," and that if "the deponent fails
17 or refuses to approve the transcript within the allotted period,
18 the deposition shall be given the same effect as though it had
19 been approved, subject to any changes timely made by the
20 deponent."

21 In other words, Code of Civil Procedure section 2025(q)(1)
22 allows the deponent not to sign his or her deposition, with the
23 consequence that deposition is given the same effect as if it had

24 ² Labor Code section 5710(a) authorizes "the deposition of witnesses residing within or without the state to be taken *in*
25 *the manner* prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3
26 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure." (emphasis added.)
27 Thus, it would appear that Labor Code section 5710 incorporates the deposition *procedures* set forth in the Code of
Civil Procedure and not its substantive provisions. (See *Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th
654, 64 Cal.Comp.Cases 624, 630 (fn. 7); *Moran v. Bradford Building, Inc.* (1992) 57 Cal.Comp.Cases 273 (Appeals
Board en banc).)

1 been signed. Thus, whether the applicant signs his or her
2 deposition, should have no bearing whatsoever on the discretionary
3 allowance of a reasonable fee under Labor Code section 5710 for
4 attorney services rendered in connection with that deposition,
5 which was taken at the behest of the defendant employer or
6 carrier.

7 Furthermore, this defendant's reliance on *People v. Post*
8 (2001) 94 Cal.App.4th 467, 66 Cal.Comp.Cases 1503 is completely
9 misplaced. In *Post*, the Court of Appeal affirmed the applicant's
10 conviction of workers' compensation fraud under Insurance Code
11 section 1871.4(a)(1) for making false statements and
12 misrepresentations about her physical condition in her *unsigned*
13 deposition. The Court also held that while Ms. Post could not be
14 convicted of perjury in violation of Penal Code section 118 when
15 she did not sign her deposition transcript,³ she could be
16 convicted of attempted perjury. Thus, the alleged public policy
17 concerns of defendant (who has not asserted that there are any
18 material misrepresentations in the applicant's deposition) with
19 respect to workers' compensation fraud are not only speculative,
20 but are wholly unfounded. In addition, defendant has failed to
21 show how it is prejudiced in any way by the applicant's failure to
22 sign his deposition.

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25 ³ This is because under Penal Code section 124, a conviction for perjury requires that the deponent execute his or her
26 deposition transcript. (See *Collins v. Superior Court* (2001) 89 Cal.App.4th 1244, 66 Cal.Comp.Cases 706.) The
27 Court in *Post*, however, also urged the Governor and legislators to reevaluate the signature and delivery requirements of
Penal Code section 124, noting that in federal courts the crime of perjury is complete once a materially false statement
is spoken at a deposition and there is no requirement the transcript be executed by the deponent. (66 Cal.Comp.Cases
at p. 1515.)

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