

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

KEVIN TORRES, *Applicant*

vs.

**ARTIC MECHANICAL; TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA, administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ11197293
Anaheim District Office**

**OPINION AND AWARD
OF ADDITIONAL
ATTORNEY'S FEES AND COSTS¹
(LAB. CODE, §§ 5801 & 5811(a))**

In its April 29, 2021 order dismissing defendant's Petition for Writ of Review (No. G059861), the Fourth District Court of Appeal (Div. 3) remanded this matter to the Appeals Board to make a supplemental award of reasonable attorney fees to the attorney for respondent (applicant), based upon services rendered in connection with defendant's petition for writ of review. (Lab. Code, § 5801; *Crown Appliance v. Workers' Comp. Appeals Bd. (Wong)* (2004) 115 Cal.App.4th 620, 627-628 [69 Cal.Comp.Cases 55, 60-61]; *Employers Mutual Liability Insurance Company v. Workers' Comp. Appeals Bd. (Rodriguez)* (1975) 46 Cal.App.3d 104, 108-109 [40 Cal.Comp.Cases 167, 169-170].) The court's order has become final.

In separate fee and cost petitions filed July 7, 2021, applicant's attorney claimed attorney fees of \$5,200.00 for 13 hours of itemized attorney time spent on the appellate answer, at a requested rate of \$400.00 per hour.² In his petition for costs, applicant's attorney claimed costs of

¹ Commissioner Katherine Williams Dodd signed the December 18, 2020 Opinion and Order Denying Petition for Reconsideration that was the subject of defendant's petition for writ of review in the Court of Appeal. Commissioner Dodd became unavailable after she signed the December 18, 2020 decision. Another commissioner has been assigned in her place.

² Although the requested hourly rate of \$400.00 appears to be reasonable, the Board is not required to determine or specify a reasonable hourly rate in any case. Rather, the Board considers the attorney's time, effort, care, experience and results.

\$1,465.25 for the costs of printing and submitting an appellate brief by Lawyers Brief Service. The petition for costs is supported by attached bills, receipts and copies of checks.

Defendant filed an objection, which has been considered.

In determining an award of appellate attorney's fees, we consider the attorney's time, effort, care, experience, skill and results in opposing the writ. We also consider the complexity of the issues raised by defendant requiring a response by applicant's attorney, the length of the reply, and the number of cases cited. Where the issues are novel, for example involving the interpretation of a new statute requiring an analysis of legislative intent, or an area of law which has published appellate cases containing holdings in opposition, or a complex issue of law intertwined with a complex factual pattern, or where the issues are numerous, a higher fee may be awarded because the case is of above average complexity. Thus, we determine the overall amount of an appellate attorney's fee based on the merits of the appellate work, on a case-by-case basis.

In addition, we note that the touchstone of a fee awarded pursuant to section 5801 is reasonableness. (2 *Cal. Workers' Comp. Practice* (Cont. Ed. Bar, March 2019 Update) Judicial Review, § 22.15.) The issue of reasonableness includes consideration of the fact that the fee must be based on services rendered in connection with the petition for writ of review. For instance, a reasonable fee does not include attorney time spent on "inefficient or duplicative efforts" or on clerical tasks. In such a case, the Appeals Board has discretion to award less than what otherwise would be a "reasonable" fee or to award nothing, if the fee request appears to be "unreasonably inflated." (*Mota v. Allgreen Landscape* (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 272.)

Although this case was one of average complexity involving Labor Code section 4660.1(c)(1), applicant's attorney produced a thorough answer to defendant's petition for writ of review, and a good result was achieved for his client. We further note that although defendant's objection herein claims that the costs claimed by applicant's attorney are excessive, defendant does not claim that the hourly rate, itemized time spent, or total fee requested by applicant's attorney is unreasonable.

Thus we have considered the time, effort, care, experience, skill and results of applicant's attorney in opposing defendant's petition for writ of review. Based on our review of the record and the factors involved in determining a reasonable fee, we conclude that a fair and reasonable amount for the services rendered by applicant's attorney in the Court of Appeal is \$5,200.00.

As for the issue of costs, we note that the costs claimed by applicant's attorney are substantiated by bills, receipts and copies of checks. In its objection, defendant does not claim that the costs were unnecessary, only that the amount of \$1,465.25 is excessive for an appellate answer that "was only 31 pages." However, defendant's objection appears to be based on defense counsel's personal opinion that the amount charged by Lawyers Brief Service is excessive. Defendant offers no other evidence in rebuttal to the charges, and defense counsel's personal opinion is not substantial evidence. Therefore, we do not find defendant's objection to be persuasive, and we will award the \$1,465.25 costs claimed by applicant's attorney.

For the foregoing reasons,

AWARD IS MADE in favor of the Law Offices of James J. Rucker, and against Travelers Property Casualty Company of America administered by Sedgwick, of appellate attorney's fees in the amount of \$5,200.00 and appellate costs in the amount of \$1,465.25, in addition to any compensation otherwise paid or payable to the applicant.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER



/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2021

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

**KEVIN TORRES
BRADFORD & BARTHEL, LLP
LAW OFFICES OF JAMES J. RUCKER**

JTL/bea

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