

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

**FRANCISCO ANDRADE, *Applicant***

**vs.**

**LARGO CONCRETE, INC.;  
GALLAGER BASSETT, *Defendants***

**Adjudication Number: ADJ8947051  
Los Angeles 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**December 1, 2023**

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

**LAW OFFICES OF GEORGE A. ALMODOVAR, LIEN CLAIMANT  
MOORE & ASSOCIATES**

**AS/mc**

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

**REPORT AND RECOMMENDATION ON APPLICANT'S  
PETITION FOR RECONSIDERATION**

**I.**

**INTRODUCTION**

1. Identity of Petitioner: **Applicant** filed the Petition.  
Timeliness: The petition was timely filed.  
Verification: The petition is verified.
2. Date of Findings of Fact: October 9, 2023
3. **Petitioner's** Contentions:  
Applicant Attorney contends:
  - a) The evidence does not justify the findings of fact and that the findings of fact do not support the order. Petitioner contends that he should be entitled to a higher percentage of the Attorney Fee Split, suggesting \$10,000.00 of the \$12,000.00 attorney fee.

## II BACKGROUND

The only issue before the Court was the division of attorney fees between former Applicant Attorney, George Almodovar, and the last Applicant Attorney of record, Ola Moore. The attorney fee Pursuant to the December 7, 2022 Order Approving Compromise and Release was \$12,000.00 which was ordered to be held in trust. The matter proceeded to trial on October 3, 2023 and the Court found that attorney fees should be split equally between George Almodovar and Ola Moore. It was found that the final settlement resulted from both attorneys' work on the file. It is from this decision that Ola Moore filed his Petition for Reconsideration.

## III DISCUSSION

Pursuant to California Code of Regulations § 10844 when establishing a reasonable attorney's fee a workers' compensation judge shall consider the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved and the results obtained.

### Responsibility Assumed by the Attorney

George Almodovar began his representation of Applicant on June 4, 2012 and filed the initial Application for Adjudication for the cumulative trauma on June 5, 2013. Mr. Almodovar was the initial attorney to handle the file and was responsible for filing the Application and ensuring Applicant obtained medical treatment. George Almodovar was dismissed as Applicant's attorney on June 22, 2018 and Moore Associates was appointed on the same day (LIEN CLAIMANT'S EXHIBIT 8 AND APPLICANT'S EXHIBIT 3).

When Mr. Moore was appointed as attorney for Applicant, there was already an AME report for which a demand could be made. Mr. Moore's office did not submit any medical exhibits showing what additional treatment was obtained for Applicant, nor did they submit any reports or deposition transcripts for the Court's review showing how the medical record was further developed.

### Care Exercised in Representing the Applicant

Under Mr. Almodovar, Applicant obtained a primary physician who he began seeing in June of 2012 (LIEN CLAIMANT'S EXHIBIT 1 ). This primary physician found Applicant to be temporarily totally disabled, with an eventual permanent and stationary finding of 12% whole person impairment in November 2013 (LIEN CLAIMANT'S EXHIBIT 2). During this time, Applicant was also seen by secondary treating physicians (LIEN CLAIMANT'S EXHIBIT 3 and 4). Mr. Almodovar was able to obtain an agreement to utilize Dr. Steven Silbart as the Agreed Medical Evaluator (LIEN CLAIMANT'S EXHIBIT 6). Although lien claimant did not introduce any deposition transcripts for the Court's review, the cover letter to Dr. Silbart indicates that deposition transcripts from Applicant's two previous depositions would be sent to Dr. Silbart for review (LIEN CLAIMANT'S EXHIBIT 6, pg. 2). Dr. Silbart issued his report on August 14, 2017 with a permanent disability finding of 18% whole person impairment with 15% non-industrial apportionment found for the lumbar impairment as well as provisions for future medical treatment; this was an increase in impairment as compared to the findings of the primary treating physician.

Mr. Moore made a number of appearances in an attempt to move discovery forward. Given there were a number of co-defendants who had not accepted the claim, Mr. Moore pushed to set the matter for trial on AOE/COE (Minutes of Hearing, 2/24/2022), got co-defendants to agree to the findings of AME Silbart rather than proceed with a Qualified Medical Evaluator (Minutes of Hearing, 11/15/2021) and eventually got the claim accepted (Minutes of Hearing, 4/19/2022). Mr. Moore sought to obtain additional discovery by motioning for panels in other specialties (Minutes of Hearing, 8/25/22). Although it does not appear Mr. Moore obtained additional evidence as it relates to impairment, his lawyering allowed him to bind all defendants to the reporting of the AME and to increase the potential exposure for defendants through his request for additional panels. Mr. Moore asserts that Applicant continued to get treatment after his office began their representation, however he failed to introduce any medical exhibits at trial to substantiate this claim. Additionally, Mr. Moore indicates that his office obtained a QME in pain management, but again he did not seek to introduce these reports as exhibits at trial (APPLICANT'S PET FOR RECON, pg 4, lines 1-7). By contrast, Mr. Almodovar introduced medical exhibits to substantiate the medical treatment obtained for Applicant as well as the med-legal reporting obtained. Mr. Moore indicates that his office saw to it that defendants joined all necessary parties, however this is not supported by the evidentiary record (APPLICANT'S PET FOR RECON, pg 7, lines 26-27).

Mr. Moore does not indicate in what ways he pushed for the joinder of additional parties. His office did not file an amended application naming additional parties nor did his office file any petitions for joinder. It was co-defendants that sought to join additional parties (see Petitions for Joinder dated 8/5/2015, 12/2/2016, 3/18/2019, and 2/14/2020).

Mr. Moore indicates that Mr. Almodovar did not secure any compensation benefits for Applicant (APPLICANT'S PET FOR RECON, pg 6, lines 1-3). Neither Mr. Moore nor Mr. Almodovar submitted evidence showing that either attorney secured the payment of benefits to Applicant prior to the settlement. The Court does take judicial notice that EDD filed a lien on October 11, 2013 indicating that State Disability Insurance Benefits were being paid to Applicant at a rate of \$394.00 per week beginning January 18, 2013 and continuing up to the max of \$20,488.00. This was during the time Mr. Almodovar represented the Applicant, which suggests that Applicant was not without benefits during the entire period of Mr. Almodovar's representation.

#### Time Involved

The case was litigated for approximately 9 years and 6 months based on the filing of the Application to the issuance of the Order Approving Compromise and Release. Mr. Almodovar's office had the file for approximately 5 of those years, while Mr. Moore's office handled the file for just under 4 years and 6 months<sup>1</sup>. Both firms made several appearances on the file, with George Almodovar's firm making 7 appearances prior to the Order Approving and Ola Moore's firm making 14. Mr. Almodovar's office had an attorney make all appearances, while Mr. Moore's office utilized a hearing representative for 5 of the hearings. All of the hearings Mr. Almodovar's firm attended were in person while the vast majority of the appearances Mr. Moore's office made were remote as they occurred after the covid-19 changes took effect.

Mr. Moore points out that 2 of the 14 hearings his office handled were trial settings. Although Mr. Moore's office did attend 2 trial settings, neither trial proceeded forward on the record and a hearing rep for Mr. Moore's office appeared at 1 of those trials.

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<sup>1</sup> Based on the Fee Disclosure Agreement filed with the board on June 5, 2013 Mr. Almodovar began his representation of Applicant on June 4, 2012, approximately a year before the Application for Adjudication was filed.

Results Obtained

Ola Moore was able to resolve the case by way of compromise and release in the amount of \$80,000.00 with an Order Approving issuing on December 7, 2022. Mr. Moore asserts that he was able to secure a settlement that was approximately \$63,000.00 above the permanent disability finding of the AME, however he does not take into account the future medical costs associated with the AME's findings (APPLICANT'S PET FOR RECON, pg 7, line 3). Had Mr. Almodovar not obtained Applicant as a client in the first place, there would not have been a case for Mr. Moore to settle. The final settlement resulted from both attorneys' work on the file. Mr. Almodovar oversaw the medical discovery eventually obtaining a final report from the AME, and Mr. Moore was able to bind all defendants to the AME report while also negotiating the final settlement.

**IV**

**RECOMMENATION**

For the reasons stated above, it is respectfully requested that Applicant's Petition for Reconsideration be denied.

DATE: 10-23-23

Andrew Malagon  
WORKERS' COMPENSATION JUDGE