

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

PAUL PARSONS, *Applicant*

vs.

**STATE FARM INSURANCE; permissibly self-insured, adjusted by SEDGWICK
*Defendants***

**Adjudication Number: ADJ11349792
Sacramento District Office**

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

In its April 30, 2021 order denying defendant's Petition for Writ of Review (No. C093419), the Third District Court of Appeal 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 a verified claim for attorney's fees dated June 18, 2021 and subsequently submitted herein, applicant's attorney claimed attorney's fees of \$23,400.00 based on 52 hours of attorney time at a requested rate of \$450.00 per hour,¹ for services rendered in connection with the petition for writ of review. According to a time itemization included by applicant's attorney, his services included review of defendant's petition for writ of review and exhibits, several consultations with applicant and an appellate attorney, and creation of and finalizing the appellate answer.

Defendant filed an objection, which has been considered.

¹ Although the requested hourly rate of \$450.00 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.

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," as stated in section 5801 itself. Thus, an award of a reasonable attorney's fee will not include compensation for clerical tasks, or for attorney time spent on "inefficient or duplicative efforts." 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.)

The instant case was one of above-average factual complexity, involving a claim of psychiatric injury flowing from multiple and varying sources of stress at work. In its petition for writ of review, defendant alleged that the work stress experienced by applicant did not involve "actual events of employment" as required by Labor Code section 3208.3(b)(1); defendant also mounted a lengthy attack on the medical opinion of Dr. Strahley, the psychiatrist relied upon by the WCJ and the Board to award compensation. The appellate answer produced by applicant's attorney shows that he undertook considerable time and effort, consistent with the time itemization attached to his fee claim, to rebut defendant's factual allegations and to clarify and broaden the factual context of applicant's claim for the Court of Appeal. Applicant's attorney also had to expend time and effort to counter defendant's assertion that the WCAB erred in permitting trial witnesses to testify by telephone, an assertion that lacked both factual and legal support. In short, applicant's attorney produced a factually compelling and legally solid answer to defendant's

petition for writ of review in a moderately complex case of psychiatric injury. Of course, another factor of key importance is that applicant's attorney achieved a good result for his client.

We further note that defendant's objection herein consists of a line-by-line disputation of the time spent by applicant's attorney on each of the services he rendered in connection with defendant's petition for writ of review. However, the time itemization submitted by applicant's attorney is verified and there is no basis in the record to question it. Defense counsel's personal opinion that applicant's attorney should have taken less time to render each of his services is not a persuasive basis to conclude that he engaged in any "inefficient or duplicative efforts."

In summary, 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, as discussed above, we conclude that a fair and reasonable amount for all "services rendered in connection with the petition for writ of review" by applicant's attorney is \$23,400.00.

For the foregoing reasons,

AWARD IS MADE in favor of Douglass F. Penney, and against State Farm Insurance Company, of appellate attorney's fees in the amount of \$23,400.00, in addition to any compensation otherwise paid or payable to the applicant.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER



/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 29, 2021

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

**PAUL PARSONS
TWEEDY PENNEY & CRAWFORD
FAMIGLIETTI & VOLPE**

JTL/bea

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