

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ARACELY ACOSTA, *Applicant*

vs.

**MED-LEGAL;
INTERCARE, *Defendants***

**Adjudication Number: ADJ9855341
Pomona District Office**

**OPINION AND ORDER
AFTER RECONSIDERATION**

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

Applicant's attorney, Philip M. Cohen (Cohen) petitioned for reconsideration of the Findings and Award and Opinion on Decision (F&A) issued in this case by a workers' compensation administrative law judge (WCJ) on August 8, 2022. By the F&A, the WCJ divided \$9,000.00 in attorney's fees held in trust pursuant to an approved Compromise and Release Agreement (C&R) between: (1) Cohen, (2) applicant's former attorney, Ray Wang (Wang), and (3) applicant, acting in pro-per.

In his Petition for Reconsideration (Petition), Cohen contends that the WCJ erroneously awarded any attorney's fees to Wang.

We did not receive an answer to the Petition. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ.

We have considered the allegations in the Petition and the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, we will rescind the F&A and substitute new findings that applicant is not entitled to any attorney's fees, that Cohen is entitled to \$7,789.00 in attorney's fees, and that Wang is entitled to \$1,211.00 in attorney's fees; we will also substitute new orders that the attorney's fees be paid in accordance with these findings.

BACKGROUND

The WCJ's Opinion on Decision provides the following chronology, which, for ease of reference, is adopted and incorporated herein, as relevant:

Mr. Wang filed the initial application in this matter on February 25, [2015]. There is no signed attorney fee agreement between applicant and Mr. Wang. There is an unsigned version uploaded into File Net on February 25, 2015, which the court took judicial notice of. Mr. Wang has not been able to produce a signed copy of a Fee disclosure statement. Applicant testified that she cannot remember whether she signed one or not.

On August 11, 2015, applicant dismissed Mr. Wang as her attorney and represented herself....

On February 16, 2017 Mr. Cohen filed an Amended Application [for Adjudication], [and] although not filed as a separate document, there is a Fee Disclosure Statement which was signed in December of 2016....

The case settled by way of Compromise and Release on August 18, 2018, with an Amended Order approving [OACR] issuing on August 27, 2018 indicating that the sum of \$9,000.00 representing reasonable attorney's fees was to be held in trust.

* * *

The case from filing of the Application to Approval of the Compromise and Release had a lifespan of 1285 days. Dividing the \$9,000.00 by 1285 days results in a fee of approximately \$7.00 per diem.

Mr. Wang had the case for 173 days.

Ms. Acosta represented herself for 531 days.

Mr. Cohen had the case for 581 days.

(F&A, August 8, 2022, pp. 4-6.)

In the award, the WCJ split the attorney's fees between Cohen, Wang, and applicant "pro-rata" based upon the number of days that each person had applicant's case. The award thus provided as follows:

- a. Ray Wang to receive \$1,211.00 as his pro-rata share of the attorney's fees held in trust.

b. Aracely Acosta to receive \$3,717.00 from the attorney fees held in trust for the pro-rata period in which she represented herself.

c. Philip M. Cohen to receive \$4,067.00 for the pro-rata share of the attorney's fees held in trust. Additionally, Mr. Cohen is to further receive the remaining \$5.00 for being the last attorney on the matter.

(F&A, August 8, 2022, pp. 2-3.)

It is from this award that Cohen seeks reconsideration, arguing that Wang is not entitled to any attorney's fees.

DISCUSSION

The sole issue in this case is whether the WCJ reasonably divided the \$9,000.00 in attorney's fees between Cohen, Wang, and applicant.

As an initial matter, applicant was statutorily prohibited from receiving any attorney's fees in this case, as she is not an attorney, but rather a pro-per litigant. Pursuant to Labor Code section 4903(a), "[n]o fee for legal services shall be awarded to any representative who is not an attorney...." (Lab. Code, § 4903(a).)¹ As a result, we will rescind the WCJ's award of \$3,717.00 in attorney's fees to applicant and will consider this amount as part of the fees to be divided between Cohen and Wang, as the two attorneys in this case.

The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1149 (*Vierra*)). In calculating attorney's fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a) & (d).) Pursuant to section 4906, in determining what constitutes a "reasonable" attorney's fee, the 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:

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.)

¹ All future statutory references are to the Labor Code unless otherwise specified.

In the event where two attorneys have represented the applicant, the WCJ or the Board may apportion reasonable attorneys' fees between them based on the amount of work that each attorney provided. (*Lerer v. Workers' Comp. Appeals Bd.* (1978) 43 Cal.Comp.Cases 932 [writ denied].)

Upon review, we conclude that the WCJ's determination that Wang is entitled to \$1,211.00 was reasonable. The record demonstrates that, during the period of representation, Wang provided applicant with very few legal services, assumed minimal responsibility, and exercised little care. Specifically, Wang filed four documents on applicant's behalf that served only to open applicant's case, namely, an unsigned fee disclosure statement; an unsigned venue verification; applicant's original application for adjudication; and a Declaration of Readiness to Proceed, none of which contributed to the results obtained, including, but not limited to, the C&R, which, again, was negotiated by Cohen.

During trial, applicant expressed her dissatisfaction with Wang's representation. Applicant testified: "For the year that Mr. Wang represented her, she felt that he did not do any work for her, and that is why she terminated him." (Minutes of Hearing/Summary of Evidence (MOH/SOE), August 3, 2022, p. 2.) Applicant further testified that she had never met Wang, and that, despite multiple efforts, she was never given the opportunity to meet with, or speak to, Wang or any other attorney in his law office to discuss her case. (MOH/SOE, August 3, 2022, p. 3; see also App. Exh. 3.)

Based on the foregoing, we cannot say that the WCJ's calculation of Wang's \$1,211.00 fee award was unreasonable.

We now address the attorney's fees owed to Cohen. The record shows that, unlike Wang, Cohen spent a great deal of time on applicant's case, exercised ample care, assumed the bulk of the responsibilities, and obtained successful results for applicant. For instance, Cohen represented applicant for 581 days (over three times as long as Wang), during which time he addressed PQME/QME issues, prepared applicant to be deposed by defendant, analyzed files, including medical reports and utilization review files, addressed applicant's temporary disability (TD) benefits, requested a permanent disability (PD) advance, and engaged in ongoing communications with opposing counsel, as well as the insurance company, regarding applicant's treatment. (App. Exhs. 4, 7, 15-17, 20-22, 29, 30, 32.) Cohen also negotiated the C&R, thus obtaining a successful result for applicant.

As a result of Cohen's efforts, and as the final arbiter of reasonableness of attorney's fees, we conclude that Cohen is entitled to the remainder of the attorney's fees in this case, totaling \$7,789.00.

Based on the foregoing, we will rescind the F&A and substitute a new finding that Cohen is entitled to \$7,789.00 in attorney's fees; although we rescind the F&A, the WCJ's finding that Wang is entitled to \$1,211.00 in attorney's fees remains the same. In order for Wang to collect his fees, he must first submit a signed fee disclosure form in accordance with section 4906 within 10 days of this decision. (Lab. Code, § 4906.) If Wang fails to timely submit the signed fee disclosure form, Wang's fees of \$1,211.00 shall revert to Cohen.

The August 27, 2018 Amended Order Approving Compromise and Release identifies "Clarendon National Insurance as Successor in Interest by way of merger with Sussex Insurance Company formerly known as Companion Property & Casualty Company" as the liable party. Yet, the Minutes of Hearing and the WCJ identify "Intercare" as the defendant's insurer. Defendant is reminded that pursuant to *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 1466 (Appeals Bd. en banc) and WCAB Rules 10390, 10400, 10402 (Cal. Code Regs., tit. 8, §§ 10390, 10400, 10402), all parties must properly identify their full legal names, including third party administrators, and all attorney representatives. Moreover, all parties have an ongoing obligation to properly update the Official Address Record (OAR) if changes occur throughout the span of a case. (Cal. Code Regs., tit. 8, § 10205.5.) We issue our orders pursuant to the August 27, 2018 Amended Order. If a different entity is now liable to pay the \$9,000.00 held in trust, defendant Med-Legal and defendant's attorneys Jeremy S. Roach and Cipolla, Calaba, Marrone & Wollman shall immediately adjust the name so as to comply with our orders and correct the OAR forthwith. In the event of a dispute as to the proper name of defendant's insurer, jurisdiction is reserved to the Appeals Board.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 8, 2022 F&A issued by the WCJ is **RESCINDED** and the following is **SUBSTITUTED** therefore:

FINDINGS OF FACT

1. ARACELY ACOSTA employed during the period January 21, 2013 through March 7, 2014, as a special litigation collector at West Covina, California, by MED LEGAL, whose workers' compensation insurance carrier was

INTERCARE and/or CLARENDON NATIONAL INSURANCE AS SUCCESSOR IN INTEREST BY WAY OF MERGER WITH SUSSEX INSURANCE COMPANY FORMERLY KNOWN AS COMPANION PROPERTY & CASUALTY COMPANY sustained injury arising out of and occurring in the course of employment to her neck, right arm, right wrist, right hand, upper extremities, shoulders, psych, GI and sleep.

2. Applicant is not an attorney and represented herself in pro-per during the proceeding. Applicant is not entitled to an award of attorney's fees, as such are prohibited under Labor Code section 4903(a).
3. The attorney's fees in the amount of \$9,000.00 pursuant to the August 27, 2018 Amended Order Approving Compromise & Release held in trust by defendant Clarendon National Insurance as Successor in Interest by way of merger with Sussex Insurance Company formerly known as Companion Property & Casualty Company are divided pursuant to Labor Code section 4906(d) as follows:
 - a. \$7,789.00 to the Law Offices of Philip M. Cohen
 - b. \$1,211.00 to the Law Offices of Ray Wang
4. In order to collect the attorney's fees set forth in Finding of Fact No. 3(b), Ray Wang shall file a signed fee disclosure form in accordance with Labor Code section 4906 within ten (10) days of service of this decision. If Wang does not timely submit the form, Wang's portion of the fees of \$1,211.00 shall revert to Cohen.

ORDER

- A) Defendant Clarendon National Insurance as Successor in Interest by way of merger with Sussex Insurance Company formerly known as Companion Property & Casualty Company is ordered to pay the sum of \$7,789.00 of the attorney's fees held in trust to the Law Offices of Philip M. Cohen within thirty (30) days of service of this decision.

- B) Within ten (10) days of service of this decision, Ray Wang is ordered to file a signed fee disclosure form in accordance with Labor Code section 4906.

- C) Upon Ray Wang's timely compliance with subpart (B) of this Order, defendant Clarendon National Insurance as Successor in Interest by way of merger with Sussex Insurance Company formerly known as Companion Property & Casualty Company is ordered to pay the sum of \$1,211.00 of the attorney's fees held in trust to the Law Offices of Ray Wang. If Ray Wang fails to timely file the signed form, \$1,211.00 shall revert to the Law Offices of Philip M. Cohen. Payment of \$1,211.00 shall be within thirty (30) days of service of this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 8, 2023

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

**ARACELY ACOSTA
LAW OFFICES OF RAY WANG
LAW OFFICES OF PHILLIP M. COHEN**

AH/cs

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

CS