

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

SUSANA DELGADILLO, *Applicant*

vs.

**CONTRACT SERVICES GROUP, INC.; ZURICH,
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ17669984
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Cost petitioner, Suzie Jimenez Interpreting Services, Inc., seeks reconsideration of the September 24, 2024 Findings and Order (F&O) wherein a workers' compensation administrative law judge (WCJ) found in pertinent part that cost petitioner failed to sustain its burden that it was entitled to further payment and that defendant and cost petitioner each failed to sustain their burden that they were entitled to costs, fees, or sanctions.

Cost petitioner contends that pursuant to Labor Code sections 5811 and 5813, an award of costs is warranted and it is entitled to costs, fees and/or sanctions.

We have not received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based upon our review of the record, and for the reasons discussed below we will grant reconsideration, rescind the F&O, and return the matter to the WCJ further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

On May 8, 2023, applicant filed an Application For Adjudication of Claim (Application) wherein applicant claimed cumulative injuries to various body parts while employed by defendant as a housekeeper, during the period from August 1, 2022 to March 28, 2023.

On June 14, 2023, defendant filed an Answer denying applicant's claim and a petition to change venue from the district office in Los Angeles to the district office in Santa Ana.

On July 12, 2023, defendant filed a Declaration of Readiness (DOR), seeking a mandatory settlement conference (MSC). It states, "Defendant Seeks An Order Changing Venue To The Santa Ana WCAB Pursuant to Its Petition dated June 13, 2023." The date selected for the hearing is September 14, 2023 at 8:30 a.m. According to Communications in the Electronic Adjudication Management System (EAMS), the notice of hearing for the MSC was served on July 13, 2023.

On July 12, 2023, the PWCJ of the Los Angeles district office issued an order changing venue to the Santa Ana district office.

On September 14, 2023, an MSC was held via the conference line before a WCJ at the Los Angeles district office. According to the minutes, applicant was available by phone, and a hearing representative on behalf of applicant, defendant's attorney, and an interpreter, Jesus Sanchez-SJIS-#301556 were all present via the conference line. The parties made a joint request for an order taking the matter off calendar (OTOC). The OTHER/COMMENTS section of the minutes states: "VENUE CHANGED PRIOR TO TODAY, TO SANTA ANA. OTOC OK. PARTIES MAY RE-FILE IN ANA. OTOC GRANTED. (Minutes of Hearing, 9/14/2023.)"

On November 9, 2023, the parties executed a Compromise and Release (C&R), which resolved the case and chief, and on December 27, 2023, the parties submitted an Amended Compromise and Release. A WCJ issued an Order Approving Compromise and Release (OACR) dated January 8, 2024.

On January 22, 2024, cost petitioner filed a petition for costs for interpreting services provided on September 14, 2023 for the MSC. Cost petitioner sought payment for the cost of the interpreting services, costs, interest, and attorneys' fees. Pursuant to the petition, petitioner served billing on September 21, 2023 for services provided on September 14, 2023, and according to the invoice, billing was for a minimum of two hours plus travel time at \$230.00 per hour for a total of \$690.00.

On June 3, 2024, defendant issued payment to cost petitioner of \$265.00. (Exhibit 8.)

On August 9, 2024, defendant filed a petition for costs, fees and sanctions.

On August 28, 2024, the parties proceeded to trial on the issues of cost petitioner's petition and defendant's petition. The parties stipulated that cost petitioner provided services on September 14, 2023, and that defendant paid \$265.00 on June 3, 2024.

DISCUSSION

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in EAMS. Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on October 23, 2024 and 60 days from the date of transmission is Sunday, December 22, 2024. The next business day that is 60 days from the date of transmission is Monday, December 23, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, December 23, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:
Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 23, 2024, and the case was transmitted to the Appeals Board on October 23, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 23, 2024.

II.

We will now address the issue of whether cost petitioner is entitled to payment for its services on September 14, 2023 at the MSC.

Section 5811(b) states in relevant part that:

. . . (2) A qualified interpreter is a language interpreter who is certified, or deemed certified, . . . The duty of an interpreter is to accurately and impartially translate oral communications and transliterate written materials, and not to act as an agent or advocate.

Interpreter fees that are reasonably, actually, and necessarily incurred shall be paid by the employer under this section, provided they are in accordance with the fee schedule adopted by the administrative director.

A qualified interpreter may render services during the following:

- (A) A deposition.
- (B) An appeals board hearing.

. . .

As to the actual amount to be paid for interpreter services, AD Rule 9795.3 states in relevant part that:

(a) Fees for services performed by a certified or provisionally certified interpreter, upon request of an employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events:

- . . . (5) An appeals board hearing, or arbitration.

(b) The following fees for interpreter services provided by a certified or provisionally certified interpreter shall be presumed to be reasonable:

(1) For an appeals board hearing, arbitration, or deposition: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county where the service was provided, or (ii) at the market rate. The interpreter shall establish the market rate for the interpreter's services by submitting documentation to the claims administrator, including a list of recent similar services performed and the amounts paid for those services. Services over 8 hours shall be paid at the rate of one-eighth the full day rate for each hour of service over 8 hours.

(Cal. Code Regs., tit. 8, § 9795.3.)

As to the actual time for payment of interpreter services, AD Rule 9795.4(a) states in relevant part that:

All expenses for interpreter services shall be paid within 60 days after receipt by the claims administrator of the bill for services unless the claims administrator, within this period, contests its liability for such payment, or the reasonableness or the necessity of incurring such expenses. A claims administrator who contests all or part of a bill for interpreter services shall pay the uncontested amount and notify the interpreter of the objection within 60 days after receipt of the bill. Any notice of objection include all of the following:

- (1) An explanation of the basis of the objection.
- (2) If additional information is needed in a prerequisite to payment of a contested bill or portions thereof, a clear description of the information of the information of the information required.
- (3) The name, address, and telephone number of the person or office to contact for additional information concerning the objection.
- (4) A statement that the interpreter may adjudicate the issue of the contested charge before the Workers Compensation Appeals Board.

(Cal. Code Regs. tit. 8, § 9795.4)

WCAB Rule 10752(a) requires that each applicant and each defendant must appear at all hearings "pertaining to the case in chief," and subdivision (e) states that: "Any appearance required by this rule may be excused by the Workers' Compensation Appeals Board. Any appearance not required by this rule may be ordered by the Workers' Compensation Appeals Board." (Cal. Code Regs. tit. 8, § 10752 (a)(e).) When a required party with notice fails to appear at an MSC, the WCJ may issue a notice of intention for sanctions. (Cal. Code Regs. tit. 8, §§ 10832, 10755.) When a party believes that a hearing should be cancelled, continued, or taken off calendar, the party must

affirmatively seek relief from the WCAB. Otherwise, unless parties receive notice from the WCAB that a hearing is cancelled, continued, or taken off calendar, **they must appear at the hearing.**

On July 12, 2023, defendant filed a DOR seeking an MSC, and selected September 14, 2023 as the date for the MSC. According to Communications in EAMS, the notice of hearing for the MSC was served on July 13, 2023. Yet, according to the record, defendant took no action to ensure that the matter was taken off calendar, and the WCAB issued no notice that the MSC was taken off calendar. **Thus, the parties were required to appear.**

As we observed in our en banc order imposing sanctions in *Alfredo Ledezma et al. v. Kareem Cart Commissary and Mfg. et al.* (2024) 89 Cal.Comp.Cases 549, 556-57: “[T]rial judges reserve time for hearings that then must be taken off calendar. In addition, wasting the time reserved for the cancelled hearings impacts other litigants because it impacts their access to the trial calendar.” Here, since defendant filed the DOR and selected the date for the MSC, it was defendant’s responsibility to ensure that the MSC was taken off calendar after venue was changed. Defendant’s failure to do so wasted the scarce resources of the WCAB, and wasted the time of applicant, applicant’s representative, the interpreter, and the WCJ. Under these circumstances, defendant’s explanation for its behavior in failing to timely pay cost petitioner is disingenuous at best and appears to be frivolous and without merit.

The WCJ’s focus on the reasonableness of the conduct of applicant’s representative in scheduling an interpreter for the MSC is misplaced. Appearance at the MSC was required, and when an applicant requires an interpreter so that the applicant may meaningfully participate, the interpreter is necessary, and a diligent representative should ensure that an interpreter is available. As stated above, section 5811 and AD Rules 9797.3 and 9795.4 provide the framework for consideration of payment to interpreters who appear for WCAB proceedings, and it is reasonably contemplated that even if the interpreter does not actually provide services, the interpreter is still entitled to payment. Here, defendant could have avoided liability for payment to the interpreter by making sure ahead of time that the MSC was taken off calendar. It did not.

Thus, we will return this matter to the trial level for the WCJ to determine a reasonable amount to pay cost petitioner for their services in connection with the services it provided in connection with the MSC on September 14, 2023, and consideration of whether cost petitioner is entitled to interest, costs, sanctions, and attorney’s fees.

Thus, we grant the Petition for Reconsideration, rescind the F&O and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration is **GRANTED** .

IT IS FURTHER ORDERED as the Decision After Reconsideration that the Findings and Order issued by the WCJ on September 24, 2024, is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2024

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

**OMAR G. ESCALANTE AND ASSOCIATES
DIETZ, GILMOR & CHAZEN**

DLM/oo

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