

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

JAMES GUNCHES, *Applicant*

vs.

**BASILE CONSTRUCTION,
INCORPORATED; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA
AND ITS PROPERTY CASUALTY AFFILIATES AND SUBSIDIARIES, *Defendants***

**Adjudication Number: ADJ17735002
San Diego 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, and for the reasons stated below, we will deny reconsideration.

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.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 the Electronic Adjudication Management System (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 21, 2025 and 60 days from the date of transmission is Saturday, December 20, 2025. The next business day that is 60 days from the date of transmission is Monday, December 22, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on December 22, 2025, 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 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 21, 2025, and the case was transmitted to the Appeals Board on October 21, 2025. 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 21, 2025.

II.

Attorney fees are discretionary. (Lab. Code, § 5710(b)(4).) Based on our review of the record we are persuaded that the WCJ properly acted within his discretion. Moreover, we have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d

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.

312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 22, 2025

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

**JAMES GUNCHES
NYMAN TURKISH, PC
AZIZ AND ASSOCIATES**

PAG/bp

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

**Report and Recommendation
on
Petition For Reconsideration
Transmission Date: 10/21/25**

Nyman Turkish PC
By Erik Stenberg, Esq.
Attorney for Applicant

Aziz & Associates
By Matthew Crowe, Esq.
Attorney for Defendant

**I.
Introduction**

On October 2, 2025, applicant attorney Erik Stenberg, Esq. (hereinafter referred to as “Petitioner”) filed a timely, verified, Petition for Reconsideration on recognized statutory grounds. Specifically, applicant attorney asserts the WCJ’s Finding & Order dated September 8, 2025 failed to address 5814 penalties and costs due to an asserted unreasonable delay in the payment of 5710 fees.

**II.
Discussion**

This case involves a dispute regarding applicant attorney (Petitioner) demand for additional 5710 fee payment. Specifically, over multiple days of trial, the issue presented to the WCJ was whether applicant’s attorney was entitled to an additional payment for unpaid preparation time over the course of applicant’s two depositions.

Although applicant’s attorney/petitioner was paid by the defendant, the applicant’s attorney asserted additional entitlement tantamount to a half hour for “prep time” for both depositions.

The applicant attorney/petitioner also asserted the deposition fees were paid untimely and therefore sought additional attorney fees associated with the litigation of this issue at trial; fees for what was perceived as a delay in payment as well as sanctions and penalties.

The Parties did Not Stipulate that the payments were late

At the onset, the WCJ will identify a misrepresentation in petitioner’s verified petition. Although the Petitioner (applicant’s attorney) asserts in his Petition for Reconsideration that the parties “stipulated the payments were late” this is incorrect. According to the stipulations at the first trial, the parties stipulated that the first deposition was taken on December 7, 2023; that the applicant’s attorney sent a request for payment on December 15, 2023; and that the defendant made payment on May 29, 2024 in the amount of \$840.00. *At no time did the parties stipulate the payment made by the defendant was late.* (See Stipulations MOH-SOE dated December 24, 2024, page 2, lines 9-11).

The parties further stipulated that the second deposition occurred on February 13, 2024. With regards to this deposition, the parties stipulated the applicant’s attorney sent a request for

attorney fees on February 21, 2024; and on May 29, 2024 the defendant made payment in the amount of \$952.00

At no time did the parties stipulate that the defendant's payment was late. (See Stipulations MOH-SOE dated December 24, 2024, page 2, lines 12-14).

Pursuant to the MOH-SOE dated December 24, 2024, the parties raised the following issues: (1) 5710 attorney fees, (2) costs and penalties associated with defendant's delay in payment and (3) the reasonableness of the applicant attorney 5710 fee demand, hourly rate, prep time as testified to by the applicant under penalty of perjury, costs, attorney fees and sanctions.

The WCJ notes that it appears the applicant attorney is attempting to argue that phrasing of issue number (2) which states "costs and penalties associated with defendant's delay in payment" is a stipulation or admission that the payment was untimely. However, this is not stipulation of the parties designed to expedite the issues before the WCJ, rather *it is one of the issues requiring the WCJ to render a finding of fact.* The WCJ acknowledges that she could have phrased the issue more succinctly, but the intent was clear. This was an issue for trial.

The parties spent two days of in-person trial with testimony of the applicant. The applicant's testimony is summarized at length in the WCJ's Finding & Order dated September 8, 2025 and is incorporated herein by reference. However, the WCJ briefly summarizes the applicant's relevant trial testimony below.

Testimony of Applicant James Gunches

The applicant truthfully and credibly testified he had his deposition taken two times. Before both depositions, he spoke on the phone with his attorney. The applicant testified that he recalled being sworn under oath and understood the instruction that he was obligated to tell the truth. The applicant testified that he told the truth at both depositions and his testimony at each of the depositions was accurate. (See MOH-SOE, dated December 24, 2024, page 4, lines 1-3).

The applicant truthfully testified that although he recalled having a discussion with his attorney before the depositions, he did not presently recall how much time he spent with his attorney preparing for the depositions. *At trial, the applicant testified that if he previously testified at his depositions that he spent 10 to 12 minutes in preparation, then he stands by his answers he gave at the time of his depositions.* (See MOH-SOE, dated December 24, 2024, page 3, lines 9-12).

The applicant also recalled having his deposition taken on February 13, 2024. The applicant truthfully testified that he recalled being asked by defense attorney "how long he prepared with his attorney prior to the deposition." The applicant testified that he answered this question truthfully (see MOH-SOE, dated August 26, 2025, page 3, lines 11-13).

The applicant truthfully testified that he did not recall being told or advised by his attorney that he could make changes to his deposition transcripts. (See MOH-SOE, dated August 26, 2025, page 3, lines 14-16).

Regarding the deposition that occurred on December 7, 2023, *the applicant testified he was truthful at the time of his deposition, and he stands by his answers.* The applicant testified that he did not specifically recall how long he spent with his attorney however, he guessed approximately 10 minutes. (See MOH-SOE, dated August 26, 2025, page 4, lines 1-11).

The applicant did not recall his attorney ever advising him he would have an opportunity to make changes to his deposition transcripts. The applicant has never reviewed nor signed either deposition transcript. (See MOH-SOE, dated August 26, 2025, page 3, lines 16-20). However, of importance, the applicant testified even if given the opportunity to make changes to his deposition

transcripts, *he would not have made any changes because his testimony at the time of each deposition was accurate.* (See MOH-SOE, dated August 26, 2025, page 3, lines 23-25).

This issue(s) before the Court was whether the applicant attorney is entitled to any additional funds beyond that already paid by defendant for attorney deposition fees. This issue broadly includes the applicant attorney's claim that he is entitled to additional money for deposition preparation time, as well as additional money for what he perceived as a delay in payment, costs and sanctions.

The WCJ found the applicant's attorney was not entitled to any additional fees. This finding *includes* that no additional money is owed for deposition preparation time, or what applicant attorney perceived as an unreasonable delay in payment. Consequently, applicant's attorney was not entitled to additional money for costs, sanctions or penalties as he was not entitled to an additional deposition fee.

In this case, the applicant's first deposition was taken via videoconference on December 7, 2024 (See applicant Deposition transcript dated December 7, 2023, Court Exhibit 1, EAMS). The applicant was given the oath and sworn in by the court reporter.

After being sworn and after confirming the applicant's identity via his driver's license, the defense attorney specifically asked the applicant; "Did you have an opportunity to prepare for this deposition with your attorney today?" (See Depo transcript dated December 7, 2023, Page 9, line 25, page 10, line 1). The applicant responded: "Yes." (Court Exhibit 1, Page 10, line 2). The defense attorney followed up and asked the applicant: "how long did you spend preparing?" (See Court Exhibit 1, page 10, line 3). The applicant responded: "I don't know, ten minutes." (See Court Exhibit 1, page 10, line 4).

After the question regarding the preparation, the defense counsel reminded the applicant of his oath and reminded the applicant that his testimony was the same as if he were in a court of law, before a Judge. The applicant testified that he understood that he was under oath and understood he was obligated to provide true and accurate testimony. (See Court Exhibit 1, page 10, lines 16-23).

At some point during the deposition, the applicant attorney advised defense counsel that he had a scheduling conflict and as a result, the parties stipulated to a part-two deposition as the defense attorney had not completed his questions. (See Court exhibit 1, page 72, lines 8 through 15). The parties stipulated to relieve the court reporter of her duties and defense counsel stated:

"Upon receipt of the original transcript the applicant attorney will have the applicant review his answers, make any changes if necessary and have the applicant sign the last page under penalty of perjury if the applicant so chose. The parties stipulated that the applicant attorney would notify the defense counsel of any changes within 30 days." (See Court Exhibit 1, page 72, lines 23-25, page 73, lines 1-4).

At no time did the applicant attorney attempt to clarify or correct how much time he had spent with the applicant in preparation for the deposition.

On February 13, 2024, the applicant appeared for part two of his deposition. After being sworn in by the court reporter, the defense attorney specifically asked the applicant; "How long did you spend preparing with your attorney?" (See Court Exhibit 2, page 83, lines 2-3). The applicant responded: "20-25 minutes, maybe" (See Court Exhibit 2, Page 83, line 4). The applicant

was again reminded and advised he was still under oath and that he was sworn to tell the truth and asked if he understood this.

The applicant testified that he understood the oath. (See Court Exhibit, 2, page 83, lines 5-11). The applicant was also asked if he had made any changes to his testimony from deposition part one that took place on December 7, 2023. The applicant testified "No." (See Court Exhibit 2, page 83, lines 12-15) Upon the conclusion of his questions, the defense attorney specifically asked the applicant if he had any follow up questions. To which the applicant attorney replied: "No." (See Court Exhibit 2, page 152, lines 10-12).

The attorneys again stipulated to relieve the court reporter of her duties and defense counsel stated: "Upon receipt of the original transcript the applicant attorney will have the applicant review his answers, make any changes if necessary and have the applicant sign the last page under penalty of perjury if the applicant so chose. The parties stipulated that the applicant attorney would notify the defense counsel of any changes within 30 days." (See Court exhibit 2, page 152, lines 13-25, page 153, lines 1-7).

Opinion

I.

Petitioner's demands for payment were defective thus waiving the argument they were delayed

Applicant attorney/petitioner asserts there was a delay in the 5710 fee payments by defendant. The applicant attorney/Petitioner relies upon and refers to Exhibit 1, (Amended Petition for Attorney Fees Pursuant to 5710, 5814, and 5813, dated December 24, 2024 EAMS 55241198). However, procedurally, applicant attorney's demand for payment is defective and as such, he has waived the untimely payment argument.

10547. Petition for Labor Code Section 5710 Attorney's Fees

- (a) A petition for attorney's fees pursuant to Labor Code section 5710 is a petition seeking attorney fees for representation of the applicant at a deposition allowable under Labor Code section 5710(b) as well as any other benefits listed under Labor Code section 5710(b)(1)-(5).
- (b) The caption of the petition shall identify it as a "Petition for Attorney's Fees Pursuant to Labor Code Section 5710."
- (c) A petition for attorney's fees pursuant to Labor Code section 5710 shall be verified upon oath in the manner required for verified pleadings in courts of record.
- (d) A petition for attorney's fees pursuant to Labor Code section 5710 shall not be filed or served until at least 30 days after a written demand for the fees has been served on the defendant(s). The petition shall append:
 - (1) A copy of the written demand, together with a copy of the proof of service;
 - (2) A copy of the response, if any;
 - (3) A proof of service showing service on the injured worker and the defendant alleged to be liable for paying the fees; and
- (e) Failure to comply with subdivisions (c) and (d)(1)-(3) of this rule shall constitute a valid ground for dismissing the petition.
- (f) The petition shall contain the name of the attorney who attended the **deposition along with the attorney's State Bar number.**

In this case, the applicant attorney/Petitioner's Exhibit 1 include letters dated December 13, 2023 and February 15, 2024 which make demands for payment for the depositions that occurred

on December 7, 2023 and February 13, 2024. However, the applicant attorney's demand for payment is defective. Specifically, the law *requires* that the applicant attorney's 5710 fee demand letter include the applicant attorney state bar number. In this case, the applicant/attorney/Petitioner's demand letters did not. Thus, any argument of a delay in payment is waived as the applicant attorney/Petitioner's demand for payment was in and of itself, defective and failed to follow proper procedure.

II.

Petitioner failed to substantiate the request for additional fees and costs

In this case, the Petitioner filed a Petition for 5710 attorney fees in which he declared under penalty of perjury that the information contained therein was true and accurate. The Petitioner declared under penalty of perjury that he spent .67 hours in preparation with his client. (See Exhibit 1, Amended Petition dated December 4, 2024, EAMS 55241198). However, the Petitioner has provided no evidence to support this claim. In fact, the evidence in this matter supports just the opposite. First, the applicant himself has now testified under oath on four separate occasions that he spent substantially less time with his attorney in preparing for the depositions. The WCJ finds the applicant to be both truthful and credible.

Specifically, applicant testified at both depositions, deposition testimony that has been corroborated now by trial testimony, that he spent 10-15 minutes with the applicant attorney prior to his two Depositions.

The WCJ finds that the applicant was both credible and truthful when he testified at his two depositions and on both dates of trial. The applicant testified that he stands by his testimony at the time of his depositions. Based upon the evidence provided and the testimony of the applicant, the applicant spent approximately ten minutes in preparation with his attorney of the first date of the deposition and approximately 15-20 minutes with his attorney in preparation for the second deposition.

There is no evidence to support the applicant attorney's assertion that he spent more time. The applicant attorney had multiple opportunities at the end of each deposition to ask the applicant to clarify or correct his testimony. He did not. The applicant attorney also had several opportunities to have the applicant review his deposition transcripts to make changes. He did not. No additional monies are owed for the deposition preparation time.

The first deposition lasted from 10:22 AM to 12:18 AM with ten minutes of preparation time. The total time then is two hours and 6 minutes or 126 minutes. At an hourly rate of \$400.00 per hour (the appropriate rate in San Diego), applicant would be entitled to \$840.00 which he was paid. There is no additional money due and owing applicant's attorney for deposition fees.

The second deposition lasted from 1:58 PM to 3:56 PM with 20 or 25 minutes of preparation time as identified by applicant in his deposition testimony. At 25 minutes preparation, the total is 143 minutes at 20 minutes the total is 138 minutes.

With 25 minutes preparation time, applicant's counsel would be entitled to \$953.33 and at 20 minutes preparation time, applicant's counsel would be entitled to \$920.00. As the applicant provided essentially a range and not an exact figure, the WCJ finds that the \$952 (which is closer to the 25 minutes preparation time) is sufficient. Again, no additional money is due and owing applicant's attorney for deposition fees.

The WCJ would further add that it is unclear why any additional time would have been necessary to "prepare" the applicant for a second deposition when applicant had already been properly prepared for the first. Therefore, the preparation time for the second deposition when combined with the first is approximately 35 minutes total preparation time.

To sum up then, when taken together, it appears that applicant's counsel has been sufficiently compensated for preparing the applicant. The applicant attorney also asserts costs, fees and sanctions. There is no evidence to support this argument.

Recomendation

The WCJ respectfully requests that the Petition for Reconsideration be denied.

October 21, 2025

WADE DICOSMO
WORKERS' COMPENSATION JUDGE