WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE PEREZ, *Applicant*

vs.

LA GONDOLA RESTAURANT;
PREFERRED PROFESSIONAL INSURANCE COMPANY,
administered by Omaha National Underwriters, LLC, *Defendants*

Adjudication Number: ADJ17425906, ADJ17425907
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

LRA Interpreters, Inc., (cost petitioner) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on June 12, 2025, and amended on June 19, 2025 for a scrivener's error, wherein the WCJ found in pertinent part that: the June 7, 2023 date of service for the interpretation of the compromise and release (C&R) falls under AD Rule 9795.3(b)(2) (Cal. Code Regs., tit. 8, § 9795.3(b)(2))[1] and cost petitioner was adequately compensated by defendant; the June 6, 2024 date of service for deposition preparation does not fall under AD Rule 9795.3(7)(b)(1), but under AD Rule 9795.3(b)(2); cost petitioner did not meet its burden in establishing market rate; the existing certification of the interpreter is deemed insufficient; and the billing is deemed satisfied.

Cost petitioner contends its invoices should have been paid in full for the amounts billed for the services provided on June 6 and 7, 2023.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

[1] Unless otherwise stated, all further references to regulations are to California Code of Regulations, title 8. We note that here, the WCJ in his Findings & Orders (F&O) and Amended Findings and Orders and defendant's non-attorney representative in his Answer refer to regulations from the California Code of Regulations as the "Labor Code." This is incorrect.

Based on our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[2] section 5950 et seq.

BACKGROUND

We highlight the following facts that may be relevant to our review of this matter. Applicant, while employed by defendant as a dishwasher on January 11, 2023, claimed to have sustained an injury arising out of and in the course of employment to his left hand, left arm, and left shoulder. (ADJ17425906). Applicant, while employed by defendant as a dishwasher from February 20, 2022 to February 20, 2023 claimed to have sustained a cumulative injury arising out of and in the course of employment to neck, back, shoulders, hips, and knees. (ADJ17425907).

On June 6, 2023, cost petitioner issued Invoice #70615 addressed to defendant and re-issued the invoice stamped past due on August 8, 2023. The invoice lists June 6, 2023, as the date of service where Spanish language translation services were provided for applicant immediately prior to being deposed. (Exhibit 2, 6/8/2023.)

On June 8, 2023, cost petitioner issued Invoice #70646 addressed to defendant and re-issued the invoice stamped past due on August 8, 2023. The invoice lists June 7, 2023, as the date of service where Spanish language translation services were provided to applicant for the reading of the Compromise & Release (C&R). (Exhibit 1, 6/8/2023.).

Both cases were resolved by a C&R, and the WCJ issued a Joint Order Approving the C&R (OACR) on June 13, 2023.

On July 14, 2023, defendant issued an Explanation of Review, setting forth the reasons for the amount of payment for the deposition translation services (Exhibit C, 7/14/2023) and an Explanation of Review setting forth the reasons for the amount of payment for the deposition translation services (Exhibit D, 7/14/2023).

[2] All further statutory references are to the Labor Code unless otherwise noted.

On August 7, 2023, cost petitioner sent defendant a letter demanding full payment for its services provided. (Exhibit 3, 8/7/2023.)

On October 23, 2023, defendant issued letters responding to the request for a second review with respect to both invoices. (Exhibit E, 10/23/2023; Exhibit F, 10/23/2023.)

On December 8, 2023, cost petitioner issued a Final Demand Letter to defendants requesting that Invoices 70615 and 70646 are paid in full. (Exhibit 4, 12/8/2023).

On February 24, 2025, this matter came on for hearing.

DISCUSSION
I.

Former 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 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 July 21, 2025, and 60 days from the date of transmission is September 19, 2025. This decision is issued by or on September 19, 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 July 21, 2025, and the case was transmitted to the Appeals Board on July 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 July 21, 2025.

II.

We will highlight a few of the legal principles that might be relevant to our review of this matter. Workers' compensation proceedings are conducted in English, and with respect to non-English speaking individuals, their due process rights may be violated if the information is not presented in a language they understand. Specifically, we believe that where a non-English speaking injured worker must give testimony at an English only proceeding such as a deposition, the worker must be able to understand the information provided in preparation for the deposition in order to effectively testify, and when a C&R is presented, which is a contract to settle a disputed claim, the worker must be able to understand the provisions of the C&R in order for the C&R to be a valid agreement. It is imperative that the injured worker comprehend the meaning of the questions that will be asked at a deposition and of documents that they review and sign. Otherwise, an injured worker's due process rights may be violated if a translator is not provided to translate documents for deposition preparation and the reading of a C&R.

We previously addressed the issue of interpreter services in connection with medical treatment in *Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, 243 (Appeals Bd. En banc),[3] wherein we held that in order "to recover its charges for interpreter services, the interpreter

[3] En banc decisions of the Workers' Compensation Appeals board are binding precent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, §1032(a); *City of Long Beach v. Workers' Comp. Appeals Bd.* (*Garcia*) (2005) 126 Cal.App.4th 298, 313, fn.5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App 4th 1418, 1425, fn. 6[67 Cal.Comp.Cases 236]; see Govt. Code, § 11425.60(b).)

lien claimant has the burden of proving, among other things, that the services were reasonably required, that the services were actually provided, that the interpreter was qualified to provide the services, and that the fees charged were reasonable." (*Id.* at p. 243.) *Guitron* goes on to state,

> When the setting is not "an appeals board hearing, arbitration, or formal rehabilitation conference," and when a certified interpreter cannot be present, a "provisionally certified" interpreter is one qualified to perform interpreting services by agreement of the parties. (Cal. Code Regs., tit. 8, §9795.1(e)).
>
> One element of an interpreter lien claimant's burden is to show that the injured worker required an interpreter. If an injured worker used an interpreter, but did not need one, the defendant would not be obligated to pay for the interpreter services. The statutes governing interpretation services in settings other than medical treatment provide guidance as to when an interpreter is needed. Section 5710(b)(5) authorizes payment for interpreter's services for the deposition of a "non-English-speaking injured worker." Section 5811 allows interpreter services "which are reasonably, actually, and necessarily incurred" for "an employee who cannot communicate in English" during a deposition, an appeals board hearing, and those settings the AD determines are reasonably necessary to ascertain the validity or extent of injury.

(*Id* at p. 243.)

Here, cost petitioner provided translation for applicant, a Spanish speaker, at the reading of the C&R.

> Section 5811 states: …
>
> 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: … (D) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who does not proficiently speak or understand the English language.

(Lab. Code, § 5811(b)(2).)

As to the actual amount to be paid for interpreter services, the provisions of AD Rule 9795.3 are relevant to the issues herein.

> AD Rule 9795.3(a) states,
>
> 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:

> ***
> (4) A deposition of an injured employee or any person claiming benefits as a dependent of an injured employee, at the request of the claims administrator, including the following related events:
>
> (i) Preparation of the deponent immediately prior to the deposition,
>
> ***
>
> (7) Other similar settings determined by the Workers' Compensation Appeals Board to be reasonable and necessary to determine the validity and extent of injury to an employee.

(§ 9795.3, bold and italics added for emphasis.)

A determination must be made as to the type of certification that the interpreter possessed at the time the interpretation services were provided in order to determine if the interpreter was qualified to provide the services. The fee that an interpreter is permitted to charge must be also examined since it is relevant to our review, and AD Rule 9795.3 (b) sets forth the reasonable amounts for fees for interpreter services provided by a certified or provisionally certified interpreter. (§ 9795.3.)

In *Magallon v. Ameri-Kleen Bldg Services* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 283, we affirmed a WCJ's finding that cost petitioner met its burden of proof under 9795.3(b) where it provided translation services for applicant during settlement discussions at applicant's attorney's office and on a second occasion for the C&R signing. *Magallon* discusses *Cruz v. Benu LLC*, 2023 Cal. Wrk. Comp. P.D. LEXIS 45, cited by the WCJ for defendant's contention that cost petitioner must provide evidence of what other interpreters accepted as payment for similar services in the same geographic area, and that cost petitioner failed to provide sufficient evidence to establish a market rate.

Regarding the issue of establishing a valid market rate, defendant asserts that *Maria Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 citing *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 which was a medical lien claimant wherein,

> (1) an outpatient surgery center cost petitioner had the burden of proving that its charges are reasonable and (2) the outpatient surgery center lien claimant's billing, by itself does not establish that the claimed fee is "reasonable"; therefore, in the absence of rebuttal evidence, the lien need not be allowed in full if it is unreasonable on its face; and (3) any evidence relevant to reasonableness may be offered to support or rebut the lien; therefore, evidence is not limited to the fees accepted by

other outpatient surgery centers in the same geographic area for the services provided.

Next, we must also examine the application of the definition of "market rate" in AD Rule 9795.1(e): "Market rate means ***that amount*** an interpreter ***has actually been paid*** for recent interpreter services provided in connection with the preparation and resolution of an employee's claim. (§ 9795.1(e).

In addition, we may need to examine who qualifies as an interpreter and the type of certification the interpreter needs to provide interpretation services at deposition preparation and for a C&R signing. (§ 9795.1.5; see also §§ 9795.5; 9795.1.6.)

Based on our preliminary review of this matter, we are unable to discern if these considerations have been adequately addressed, necessitating that we issue this preliminary order granting the petition to allow us to further study the issues presented.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor."].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650]) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

IV.

Accordingly, we grant cost petitioner's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for

Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the Findings and Order issued by the workers' compensation administrative law judge on June 12, 2025 (amended on June 19, 2025 for a scrivener's error) is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2025

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

LAW OFFICES OF ANTHONY CHOE
AM LIEN SOLUTIONS

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