

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

NATASHA LOEFFLER, *Applicant*

vs.

**UCSD MEDICAL CENTER,
Permissibly Self-Insured, Administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ11757061
San Diego District Office**

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

Applicant's attorney, Philip M. Cohen, seeks reconsideration of the Findings and Award (F&A) issued on March 19, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a senior business analyst during the period October 9, 2017 through June 5, 2018, applicant sustained injury to her bilateral hands, bilateral forearms, bilateral arms, bilateral shoulders and cervical spine; (2) applicant's earnings at the time of injury were \$1,273.60 per week producing a temporary disability rate of \$830.40 per week and a permanent disability indemnity rate of \$290.00 per week; (3) the injury caused temporary disability for the period December 19, 2018 to and including December 18, 2020, at the rate of \$830.40 per week; (4) the permanent and stationary date is January 10, 2023; (5) the injury caused permanent disability of 16%, entitling applicant to 55.5 weeks of permanent disability indemnity at the rate of \$290.00 per week, in the sum of \$16,095.00, less credit to defendant for sums paid and less attorney's fees; (6) the permanent disability is found after consideration of apportionment; (7) applicant requires further medical treatment; (8) the Employment Development Department (EDD) paid applicant unemployment compensation disability benefits during the period January 5, 2019 through and including May 14, 2019, at the rate of \$197.00 per week, and defendant has reimbursed it, entitling it to a credit against any temporary disability indemnity due applicant; and (9) the reasonable value of the services and disbursements of applicant's attorney is \$2,414.25.

The WCJ awarded applicant (1) temporary disability indemnity at the rate of \$830.40 per week beginning December 19, 2018 to and including December 18, 2020, less credit to defendant for sums paid to applicant and EDD; (2) permanent disability of 16%, entitling applicant to 55.5 weeks of disability indemnity at the rate of \$290.00, in the sum of \$16,095.00, less credit to defendant for sums paid, and less \$2,414.25 payable as attorney's fees; and (3) future medical treatment reasonably required to cure or relieve from the effects of injury.

Cohen contends that the WCJ erred by failing to assess attorney's fees on the temporary disability indemnity and that he is entitled to a fee of 18% thereon.

We did not receive an Answer.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

Cohen filed a supplemental pleading seeking to clarify that the Petition seeks an attorney's fee of 18% of the temporary disability indemnity but not any additional fee on the permanent disability indemnity.¹

We have considered the allegations of the Petition and the contents of the Report. Based upon our review of the record, and for the reasons expressed below, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&A and substitute findings that defer the issue of attorney's fees and that applicant's earnings were \$1,245.60 per week at the time of injury; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On December 11, 2018, Cohen filed applicant's fee disclosure statement. It states:

Attorney's fees normally range from 9% to 12% of the benefits awarded however, our firm charges a fee of 15% of the benefits awarded. In cases of average and above average complexity . . . the increase in our fee is adverse to your interest, and

¹ We accept Cohen's papers supplemental pleading pursuant to WCAB Rule 10964, which provides as follows:

(a) When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board.

(b) A party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.

(c) Supplemental petitions or pleadings or responses other than the answer shall neither be accepted nor deemed filed for any purpose except as provided by this rule.

(Cal. Code Regs., tit. 8, § 10964.)

you have the right to seek independent counsel. In cases of above average complexity . . . this firm will also request an attorney's fee between 15% and 30%.

(Fee Disclosure Statement, December 11, 2018.)

On January 29, 2025, the matter proceeded to trial of the following relevant issues: (1) earnings, with applicant claiming \$1,273.60 per week and defendant claiming \$1,245.60; (2) temporary disability; and (3) attorney's fees. (Minutes of Hearing and Summary of Evidence, January 29, 2025, pp. 2:19-3:5.)

In the Opinion on Decision, the WCJ states:

Based upon applicant's wage statement prepared by the employer, it is found that applicant's earnings were \$1,245.60 producing a temporary disability rate of \$830.40 per week and a permanent disability rate of \$290.00 per week.

(Opinion on Decision, p. 1.)

In the Report, the WCJ states:

The underlying case involved an initially denied continuous trauma injury that was allegedly sustained by the Petitioner while in the employ of Defendant UCSD Medical Center. A claim was presented by Petitioner while she was in pro per alleging injuries to her bilateral hands, bilateral forearms, bilateral arms, bilateral shoulders and cervical spine. The cause of the injury was due to the repetitive nature of the Petitioner's job as a Senior Business Analyst.

...

It is important to note that the Petitioner's attorney was hired in 2018. Issues at that time included injury AOE/COE, temporary disability, permanent disability and the need for medical care.

...

The matter then came to trial on January 29, 2025, before this WCJ.

...

There was no evidence presented that the Petitioner's attorney followed the P&P Manual, the Regulations or the Labor Code in justifying such an extraordinary fee request. Disclosures were never made to the Petitioner by Petitioner's attorney to properly request an extraordinary fee in the first place.

...

Labor Code Section 4906(e) in pertinent part requires that at the initial consultation, that the attorney furnish the employee a written disclosure form DWC Form 3 promulgated by the Administrative Director. The altered form is filed in EAMS.

It is clear that the altered form implies the 15% to 30% request is pursuant to Regulation 10778 which is now renumbered to Regulation 10842. A compliant Supplemental Form should have been prepared and executed by the parties. The language in the altered form is incomplete and misleading. The Petitioner's attorney should be required to utilize a form promulgated by the Appeals Board and law.

...

The Petitioner's attorney not only utilized an altered State of California form as his Fee Disclosure Statement but he failed to comply with Regulation 10842. It makes no sense that he claims the WCJ abused his discretion when he . . . failed to follow the procedures as required by the Regulations.
(Report, pp. 2-6.)

DISCUSSION

I.

Former Labor Code section 5909² 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

- (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 April 23, 2025 and 60 days from the date of transmission is June 22, 2025. The next business day that is 60 days from the date of transmission is Monday, June 23, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on June 23, 2025, so that we have timely acted on the petition as required by section 5909(a).

² Unless otherwise stated, all further statutory references are to the Labor Code.

³ 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.

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 April 23, 2025, and the case was transmitted to the Appeals Board on April 23, 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 April 23, 2025.

II.

Cohen contends that the WCJ erred by failing to assess attorney's fees on the temporary disability indemnity and that he is entitled to a fee of 18% thereon.

Before we address Cohen's argument, we turn to the WCJ's statement in the Report that the fee disclosure filed by Cohen's office is incomplete and implies that he is allowed an attorney's fee of at least 15% and up to 30% of benefits awarded.

Under section 4906(e), an applicant's attorney "shall furnish the employee a written disclosure form promulgated by the administrative director which shall . . . describe . . . the range of attorney's fees customarily approved by the appeals board." (§ 4906(e).)

Here, the fee disclosure states that attorney's fees normally range from 9% to 12% without referring to the statutory requirement that the appeals board approve the amount of the fee. (Fee Disclosure Statement, December 11, 2018.) The fee disclosure is thus incomplete.

The fee disclosure further states that Cohen's firm "charges a fee of 15% of the benefits awarded." (*Id.*) This deviates from the content required by section 4906(e) and implies that applicant is bound to a minimum fee of 15%.

Hence we agree with the WCJ that the disclosure form is incomplete and misleading—and fails to comply with section 4906(e).

Accordingly, we admonish Cohen to file the correct fee disclosure herein and to ensure that the parties he represents in future receive disclosure statements in compliance with section 4906(e).

Under WCAB Rule 10842, all requests for an increase in attorney's fee shall be accompanied by proof of service on the applicant of written notice of the attorney's adverse interest and of the applicant's right to seek independent counsel—and any failure to so notify the applicant constitutes grounds for dismissal of the request for increase in fee. (Cal. Code Regs., tit. 8, § 10842.)

Here, as stated in the Report, Cohen's Petition seeks a fee increase without pleadings or proof that he provided written notice to applicant of his adverse interest as required by Rule 10842.

Accordingly, we admonish Cohen to provide applicant with the requisite notice and that failure to do so may serve as grounds for dismissal of his request.

As to the issue of whether the WCJ erred by failing to assess attorney's fees on the temporary disability indemnity, we observe that section 4903(a) authorizes liens for reasonable attorney's fees against any sum to be paid as workers' compensation, including sums to be paid as temporary disability. (See *Cooper v. Recording Indus. Ass'n of America* (June 8, 2009, ADJ870919, ADJ2721302) [2009 Cal. Wrk. Comp. P.D. LEXIS 254] [attorney's fees awarded from temporary disability indemnity to applicant]; *Lopez v. State* (September 4, 2015, ADJ7995938) [2015 Cal. Wrk. Comp. P.D. LEXIS 530] [attorney's fees should be calculated on any additional temporary disability awarded, if any, after development on the record on the issue of temporary disability].)

Given that the issue of temporary disability was contested for the entire time Cohen represented applicant, and given that the F&A awarded temporary disability indemnity, we conclude that an attorney's fee lien is attached to the temporary disability indemnity.

Accordingly, we will grant the Petition.

WCAB Rule 10844 provides that the WCJ shall consider the responsibility assumed by the attorney, the care exercised in the representation, the time involved, and the results obtained in establishing a reasonable attorney's fee. (Cal. Code Regs., tit. 8, § 10844.)

Since the WCJ did not conclude that Cohen is entitled to an attorney's fee on the temporary disability indemnity, there is no record regarding how Cohen's representation meets these criteria.

Accordingly, we will substitute a finding that defers the issue of attorney's fees so that the record may be developed as to the attorney's fee on the temporary disability indemnity.

Lastly, we note that the F&A includes a finding that applicant's earnings at the time of injury were \$1,273.60 per week, producing a temporary disability rate of \$830.40 per week, but the Opinion on Decision states that applicant's earnings were \$1,245.60 per week, producing the same rate of temporary disability indemnity.

Because the finding as to applicant's earnings appears to misstate the WCJ's conclusion in the Opinion and Decision, we conclude that a clerical error occurred in the F&A regarding the amount of applicant's earnings. Accordingly, we will substitute a finding that applicant's earnings were \$1,245.60 per week at the time of injury. (See *Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543 [180 Cal. Rptr. 427, 47 Cal.Comp.Cases 145, 154-155] (stating that the Appeals Board may correct a clerical error at any time without the need for further hearings); *In re Candelario* (1970) 3 Cal.3d 702, 705, 91 Cal. Rptr. 497, 477 P.2d 729 (stating that the term "clerical error" includes all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. In determining whether an error is clerical or substantive, it must be determined whether the mistake was made in rendering the judgment or in recording the judgment which was rendered).)

Accordingly, we will grant reconsideration, and, as Our Decision After Reconsideration, we will rescind the F&A and substitute findings that defer the issue of attorney's fees and that applicant's earnings were \$1,245.60 per week at the time of injury; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Award issued on March 19, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on March 19, 2025 is **RESCINDED** and **SUBSTITUTED** as set forth below.

FINDINGS OF FACT

1. Natasha Loeffler, born on _____, while employed during the period October 9, 2017 through June 5, 2018, as a Senior Business Analyst, Occupational Group No. 112, at San Diego, California, by UCSD Medical Center, who was permissibly self-insured and is

administered by Sedgwick CMS, sustained injury arising out of and occurring in the course of employment to her bilateral hands, bilateral forearms, bilateral arms, and bilateral shoulders and cervical spine.

2. Applicant's earnings at the time of injury were \$1,245.60 per week producing a temporary disability rate of \$830.40 per week and a permanent disability indemnity rate of \$290.00 per week.
3. Applicant's injury caused temporary disability for the period December 19, 2018 to and including December 18, 2020 at the rate of \$830.40 per week.
4. The permanent and stationary date is January 10, 2023.
5. Applicant's injury caused permanent disability of 16%, entitling applicant to 55.5 weeks of disability indemnity payable at the rate of \$290.00 per week, in the total sum of \$16,095.00, less credit to Defendant for all sums, if any, heretofore paid on account thereof, and less reasonable attorney fees, which are deferred, payable forthwith.
6. The permanent disability found is after taking in consideration any factors of apportionment.
7. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
8. The Employment Development Department (EDD) has paid applicant Unemployment Compensation Disability Benefits during the period January 5, 2019 through and including May 14, 2019 at the rate of \$197.00 per week. Defendant has reimbursed EDD. As discussed herein, Defendant is entitled to a credit for sums paid to EDD as a credit against any temporary disability due and payable to Applicant.
9. The issue of the reasonable value of the services and disbursements of applicant's attorney is deferred.

AWARD

AWARD IS MADE in favor of NATASHA LOEFFLER against UCSD MEDICAL CENTER of:

- a. Temporary disability indemnity at the rate of \$830.40 per week beginning December 19, 2018 to and including December 18, 2020, less credit to Defendant for any sums heretofore paid on account thereof as well as the amounts paid to reimburse EDD, and less reasonable attorney fees, in an amount which is deferred, on the unpaid amounts;

- b. Permanent disability of 16%, entitling applicant to 55.5 weeks of disability indemnity at the rate of \$290.00, in the total sum of \$16,095.00, less credit to Defendant for all sums heretofore paid on account thereof, if any, and less reasonable attorney fees, in an amount which is deferred, the balance payable forthwith;
- c. Attorney's fees in an amount deferred; and
- d. Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 23, 2025

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

**NATASHA LOEFFLER
LAW OFFICE OF PHILIP M. COHEN
DIETZ, GILMOR & CHAZEN**

SRO/bp

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