

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

ROGER GONZALES, *Applicant*

vs.

SIG SYS, INC.;
ZENITH INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ15765586
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the Answer, the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on our review of the record, and for the reasons stated in the WCJ's report and opinion, which are both adopted and incorporated herein, we will deny reconsideration.

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

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

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

(§ 5909.)

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 November 14, 2024, and 60 days from the date of transmission is January 13, 2025. This decision is issued by or on January 13, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on November 14, 2024, and the case was transmitted to the Appeals Board on November 14, 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 November 14, 2024.

II.

Cost petitioner asserts that regulations and case law support their position with respect to entitlement of reasonable clerical costs to produce the medical legal reporting required in accordance with section 4628(d), and that the AD Rule 9795(b) (Cal. Code Regs., tit. 8, § 9795(b)) is inconsistent with the statutory language reflected in section 4628(d). In *Ameri-Medical Corp. v.*

Workers' Comp. Appeals Bd. (1996) 42 Cal.App.4th 1260, [61 Cal.Comp.Cases 149] the Court of Appeal explained that the purpose of section 4628 must govern the interpretation of subdivision (d). The Legislature enacted section 4628, an anti-ghostwriting statute, to ensure the reliability of the medical evaluation by controlling the quality of the medical-legal report. The statute enumerates the responsibilities of the physician signing the report, and lists the permissible charges that are reimbursable as fees. While subdivision (d) does not operate to limit or regulate the amount of legitimate fees a physician or medical clinic can charge to prepare a medical-legal report, or address the issue of profit; other statutes do. (*Ameri-Medical*, at p. 1265.)

With respect to the issue of fees and cost containment, the Legislature created a separate scheme. The amount that can be billed is limited by section 5307.6 and AD Rule 9795 (Cal. Code Regs., tit. 8, § 9795). Fee schedules, which determine the range of the physician's reimbursable charges depending on the type of examination performed and report written, were developed pursuant to sections 4624² and 5307.6. The schedule was based on fees charged by physicians performing similar services, and is revised on a regular basis.

Determination of the fee amount takes into consideration factors such as "the medical provider's training, qualifications, and length of time in practice; the nature of the services provided; . . . the fees usually charged in the general geographical area in which the services were rendered; [and] other aspects of the economics of the medical provider's practice that are relevant." (*Gould v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal.App.4th 1059, 1071 [57 Cal.Comp.Cases 157].) It would be unreasonable to assume these physicians did not include a percentage of profit margin in establishing their fees. (*Ameri-Medical, supra*, at p. 1284.)

The Appeals Board has the discretion to determine whether fees are reasonable, to decide what factors constitute direct physician charges and overhead expenses, and to promulgate necessary rules and procedures. (*Ameri-Medical, supra*, at p. 1266 (Citations omitted).)

In *Mission Hills Med. Group v. Workers Compensation Appeals Bd.*, (1997) 62 Cal. Comp. Cases 539, the Court of Appeal affirmed the decision of the Appeals Board that upheld a WCJ's denial of costs in the form of transcription fees over the fee schedule set forth in AD Rule 9795.

² Section 4624 was repealed on April 3, 1993, as part of Senate Bill (SB) 31. SB 31, effective immediately as urgency legislation, added section 5307.6, and required the Administrative Director (AD) of the Division of Workers' Compensation (DWC) to adopt a medical-legal fee schedule.

When discussing the issue of clerical fees, the Court stated:

The Board concluded section 9795 provided an "all inclusive" fee for the "preparation of a medical-legal report" including the clerical costs of preparing the report. Petitioner, on the other hand, takes the position that the fee for the preparation of the report refers only to those services that by law must be provided by the physician personally and not to clerical costs. There is nothing within the Labor Code that requires that clerical costs be billed and reimbursed separately. An administrative interpretation that such costs are separately recoverable predated the comprehensive legislative and regulatory changes of 1993. The Board has the discretion to decide what factors constitute physician charges and overhead expenses and to promulgate necessary rules and regulations. (*Ameri-Medical*, at p. 1266.) The Board interpretation is eminently reasonable. (*Mission Hills*, at P. 541.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 13, 2025

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

**JONATHAN MACY, M.D.
TAPPIN & ASSOCIATES
CHERNOW, PINE & WILLIAMS**

LAS/abs

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

OPINION ON DECISION
[Labor Code section 5313]

The matter was heard and submitted on August 27, 2024, regarding the Petition for a determination of a medical-legal expense dispute of Dr. Jonathan Macy, M.D., the ophthalmology panel QME (“panel QME” or “QME”).

Parties submitted post-trial briefs. Defendant filed theirs on September 13, 2024, asserting the additional charge of \$67.50 is inclusive with the medical-legal charge according to the regulations. Cost petitioner filed theirs on September 23, 2024, asserting the additional charge is allowable pursuant to statutory interpretations of the Labor Code.

STIPULATED FACTS

The parties stipulated to the following facts:

The applicant, Roger aka Marcos Ortez Flores aka Gonzales, age 28 at time of injury, while employed on February 1, 2022, as a Construction Worker, at Redlands, California, by Sig Sys, Inc., sustain injury arising out of and in the course of employment to his head, eye, and unclassified.

At the time of the injury, the employer’s workers’ compensation carrier was Zenith Insurance Company.

The employer has furnished all medical treatment, and the primary treating physician is Dr. Kakarla Chalam.

The case-in-chief resolved by way of a \$11,250.00 compromise and release agreement which was approved on February 28, 2024, by WCALJ Jeff Wilson.

The parties stipulated that Zenith Insurance issued a timely partial payment per MLFS to Steiner Medical Registry, Inc., for date of service October 4, 2022 by Dr. Jonathan Macy.

The parties further stipulated that the remaining balance at issue is \$67.50 in clerical costs, wherein cost petitioner asserts that sum is allowable per Labor Code sections 4620 and 4628(d). Defendant contends that this clerical cost is inclusive per Title 8 of the California Code of Regulations, section 9795(b) and ML-201, and therefore not allowed.

The issues are:

1. The \$67.50 balance of Dr. Macy’s pQME bill relating to reasonable costs of clerical expenses necessary to produce the report.
2. Penalties and interest.

3. Attorney fees, costs and sanctions pursuant to CCR 10786(i), 10421, and Labor Code section 5813.
4. Is the employer or employee liable for further payment where no request for IBR was made within 30 days following defendant's final written determination of the 14-day EOB per Labor Code section 4603.6.
5. Statute of limitations per Labor Code sections 4903.5 and 4903(b).
6. Whether or not the WCAB has jurisdiction over IBR disputes.

FACTS

Applicant was originally referred to Dr. Jonathan Macy, M.D. for a Panel Qualified Medical Evaluation in the field of Ophthalmology. Dr. Macy evaluated applicant on October 4, 2022, and submitted a report along with an invoice for services, billing Zenith the sum of \$2,082.50. (Exh "1" or "A".)

On November 16, 2022, within 60 days of receiving the invoice and report, Zenith issued an Explanation of Review (EOR) along with payment in the sum of \$2,015.00 and objected to the balance. (Exh "D".)

On January 6, 2023, Zenith received a timely objection to the EOR issued by Zenith seeking payment of an additional \$67.50. Additionally, Zenith received a Provider's Request for Second Bill Review from Dr. Macy dated January 6, 2023. (Exh 3, B or E.)

On January 17, 2023, within 14 days of receipt of the Provider's Request for Second Bill Review, Zenith issued a second EOR to Dr. Macy denying additional payment. (Exh 5 or C.)

On March 6, 2023, Zenith filed a Petition for Determination of Medical-Legal Expense Dispute, as well as a Declaration of Readiness to Proceed, in response to an objection submitted by Expedient Medicolegal Services on behalf of Dr. Jonathan Macy, M.D. (Exh "F".)

Dr. Macy, by and through his attorney, William Tappin, filed a Petition for a determination of medical-legal expense dispute on April 18, 2023 (EAMS ID 45993599).

It is undisputed that Dr. Macy provided services as the pQME in the field of ophthalmology (Exhibit 6), and he had issued the pQME report dated October 11, 2022, with the medical-legal bill of \$2,015 for ML-201 and an additional charge of \$67.50 for 99199 (Cost Petitioner's Exh. 1). This report consisted of 18 pages and page four of the report stated that 177 pages of records were reviewed.

The parties stipulated that Zenith Insurance issued a timely partial payment per MLFS to Steiner Medical Registry, Inc., for date of service October 4, 2022 by Dr. Jonathan Macy.

DISCUSSION

The statute that cost petitioner is relying on is a guide of the allowable charges when issuing a medical-legal report, but it does not specify any rates or sums that is reimbursable. On the other

hand, the regulation that defendant illustrates provides the allowable charges and states items that are inclusive. Cost petitioner is satisfied with the regulatory limitation of \$2,015, he but wants the court to allow the additional \$67.50 charge under the interpretation or phrasing of the statute.

Labor Code section 3202.5 states: “All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law.”

Labor Code section 5705 states: “The burden of proof rests upon the party or lien claimant holding the affirmative of the issue.”

Title 8 of the California Code section 9795 et seq. provides level of fees for medical-legal expenses including evaluations. Subsection (b) states:

The fee for each evaluation is calculated by multiplying the relative value by \$16.25, and adding any amount applicable because of the modifiers permitted under subdivision (d). The fee for each medical-legal evaluation procedure includes reimbursement for the history and physical examination, review of records, preparation of a medical-legal report, including typing and transcription services, and overhead expenses. The complexity of the evaluation is the dominant factor determining the appropriate level of service under this section; the times to perform procedures is expected to vary due to clinical circumstances, and is therefore not the controlling factor in determining the appropriate level of service.

Effective April 1, 2021, medical-legal evaluations are billed according to ML-201, allowing \$2,015.00 for a Comprehensive Medical-Legal Evaluation. Records over 200 pages shall be reimbursed at \$3.00 per page. The physician must include a verification of number of pages reviewed. (See CCR 9795(c).)

Labor Code section 4628(d) states:

No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

Labor Code section 5307.1(i) states:

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

Applicant and defendant agreed to refer applicant to Dr. Jonathan Macy, M.D. for a Panel Qualified Medical Evaluation in the field of Ophthalmology. Dr. Macy evaluated applicant on October 4, 2022, and submitted a report along with an invoice for services billing Zenith the sum of \$2082.50. (Exh “1” or “A”.)

On November 16, 2022, within 60 days of receiving the invoice and report, Zenith issued an Explanation of Review (EOR) along with payment in the sum of \$2,015.00 and objected to the balance. (Exh “D”).

On January 6, 2023, Zenith received a timely objection to the EOR issued by Zenith seeking payment of an additional \$67.50, billed as CPT code 99199. Additionally, Zenith received a Provider’s Request for Second Bill Review from Dr. Macy dated January 6, 2023. (Exh 3, B or E.)

On January 17, 2023, within 14 days of receipt of the Provider’s Request for Second Bill Review, Zenith issued a second EOR to Dr. Macy denying additional payment. (Exh 5 or C.)

On March 6, 2023, Zenith filed a Petition for Determination of Medical-Legal Expense Dispute, as well as a Declaration of Readiness to Proceed, in response to an objection submitted by Expedient Medicolegal Services on behalf of Dr. Jonathan Macy, M.D. (Exh “F”).

Dr. Macy, by and through his attorney, William Tappin, filed a Petition for a determination of medical-legal expense dispute on April 18, 2023 (EAMS ID 45993599).

It is undisputed that Dr. Macy provided services as the pQME in the field of ophthalmology (Exhibit 6), and he had issued the pQME report dated October 11, 2022, with the medical-legal bill of \$2,015 for ML-201 and an additional charge of \$67.50 for 99199 (Cost Petitioner’s Exh. 1). This report consisted of 18 pages and page four of the report stated that 177 pages of records were reviewed.

The parties stipulated that Zenith Insurance issued a timely partial payment per MLFS to Steiner Medical Registry, Inc., for date of service October 4, 2022 by Dr. Jonathan Macy.

The additional \$67.50 charge pertains to clerical costs which is inclusive of the medical-legal report as stated in the regulation and ML-201. That is, CPT code 99199 is not reimbursable because the flat fee of \$2,015.00 for an ML 201 evaluation includes clerical costs associated with preparing the comprehensive medical-legal report. As a result, Dr. Macy’s reliance on Labor Code section 4628(d) as a fee regulation statute which allows for additional payment above MLFS is misplaced.

OTHER ISSUES

All other issues are deemed moot based on the determination denying cost petitioner’s reimbursement of \$67.50.

DATE: October 7, 2024

Eric Yee
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

<u>Dates of Injury:</u>	February 1, 2022
<u>Age on DOI:</u>	28
<u>Occupation:</u>	Construction worker
<u>Parts of Body Injured:</u>	Head, eye, and unclassified
<u>Identity of Petitioner:</u>	Cost Petitioner
<u>Timeliness:</u>	The petition was timely filed on 11/1/2024
<u>Verification:</u>	The petition was verified
<u>Date of Award and Order:</u>	October 7, 2024
<u>Petitioner's Contention(s):</u>	Petitioner contends the WCJ erred by not determining that: 1. The QME should be entitled to the additional charge of \$67.50.
<u>File Transmitted to WCAB:</u>	November 14, 2024

Petitioner, Dr. Jonathan Macy, the Panel Qualified Medical Examiner (“QME”) in the field of ophthalmology, by and through his attorney of record, Tappin & Associates, has filed a Petition for Reconsideration on November 1, 2024. The Petition exceeds the 25-page limitation of Title 8 of the California Code of Regulations, section 10940, subsection (d), because the body of the document is 26 pages. The court is unaware that Petitioner had filed a verified requested to exceed this page limitation.

Petitioner argues that this Workers’ Compensation Administrative Law Judge (“WCJ”) acted without or in excess of its powers, the evidence does not support the Findings of Fact and the Findings of Fact do not support the Order, Decision or Award.

Defendant filed an answer on November 8, 2024, agreeing that the decision was proper, defendant complied with the rules and regulations, and Petitioner’s assertion that they should be entitled to additional costs is improper.

It is recommended that reconsideration be denied.

II

MATERIAL FACTS AND PROCEDURAL HISTORY

The applicant, Roger aka Marcos Ortez Flores aka Gonzales, age 28 at time of injury, while employed on February 1, 2022, as a Construction Worker, at Redlands, California, by Sig Sys, Inc., sustain injury arising out of and in the course of employment to his head, eye, and unclassified.

At the time of the injury, the employer's workers' compensation carrier was Zenith Insurance Company.

The employer has furnished all medical treatment, and the primary treating physician is Dr. Kakarla Chalam.

The case-in-chief resolved by way of a \$11,250.00 compromise and release agreement which was approved on February 28, 2024, by the Honorable Jeffrey Wilson. Petitioner erroneously stated that the case was resolved for \$82,790. (Petition for reconsideration dated 11/1/24, p. 2:18.)

The parties stipulated that Zenith Insurance issued a timely partial payment per the medical-legal fee scheduled ("MLFS") to Steiner Medical Registry, Inc., for date of service on October 4, 2022 by Dr. Jonathan Macy.

The parties further stipulated that the remaining balance at issue is \$67.50 in clerical costs, wherein cost petitioner asserts that sum is allowable per Labor Code sections 4620 and 4628(d). Cost petitioner asserts the additional charge is allowable pursuant to statutory interpretations of the Labor Code. Defendant contends that this clerical cost is inclusive per Title 8 of the California Code of Regulations, section 9795(b) and ML-201, and therefore not allowed.

On October 7, 2024, the court issued a Take Nothing order, denying the \$67.50 balance.

Dr. Macy filed the Petition for Reconsideration on November 1, 2024.

III

DISCUSSION

Petitioner has the initial burden of proof according to Labor Code section 3202.5. This statute states: "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law." And Labor Code section 5705 states: "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue."

In this case, Petitioner's argument that the court should allow the additional charge of \$67.50 based on the interpretation of the statutes is neither compelling nor persuasive.

It is undisputed that Dr. Macy provided services as the pQME in the field of ophthalmology (Exhibit 6), and he had issued the pQME report dated October 11, 2022, with the medical-legal bill of \$2,015 for ML-201 and an additional charge of \$67.50 for 99199 (Cost Petitioner's Exh. 1). This report consisted of 18 pages and page four of the report stated that 177 pages of records were reviewed.

Defendant, Zenith Insurance, issued a timely partial payment of \$2,015.00 per MLFS to Steiner Medical Registry, Inc., for date of service of October 4, 2022 by Dr. Jonathan Macy. This payment was according to ML-201 and Title 8 of the California Code of Regulations, section 9795.

The amount that can be billed for medical-legal services is limited by Labor Code §5307.6 and Title 8 of California Code of Regulations §9795 only. The fee schedule determines the range of the physician's reimbursable charges depending on the type of examination performed and report written. In this case, Zenith issued payment to Dr. Macy in accordance with the Medical Legal Fee Schedule for a flat fee of \$2,015 for an ML 201, as required by Labor Code § 5307.6 and Title 8, California Code of Regulations § 9795(b).

Petitioner asserts the doctor should be allowed the additional charge of \$67.50 based on the interpretation of Labor Code section 4628(d) and 5307.1(i). However, the additional \$67.50 charge pertains to clerical costs which is inclusive of the medical-legal report as stated in the regulation and ML-201. That is, CPT code 99199 is not reimbursable because the flat fee of \$2,015.00 for an ML 201 evaluation includes clerical costs associated with preparing the comprehensive medical-legal report. As a result, Dr. Macy's reliance on Labor Code section 4628(d) as a fee regulatory statute to allow additional payment above MLFS is unfounded.

IV

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

DATE: November 14, 2024

Eric Yee
Workers' Compensation
Administrative Law Judge