

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

AMALIA HERNANDEZ, *Applicant*

vs.

**MARIANNA ENTERPRISES, INC; SOUTHERN INSURANCE DALLAS,
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ10371658
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ Having completed our review, we now issue our Decision After Reconsideration.

Cost petitioner seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 27, 2021, wherein the WCJ found in pertinent part that cost petitioner was entitled to payment for interpreting services for translation of a Compromise and Release (C&R) and that it was entitled to payment under AD Rule 9795.3(b)(1) (Cal. Code Regs., tit. 8, § 9795.3(b)(1)) but that defendant's denial of liability for the interpreting services was not the result of bad-faith actions or tactics that were frivolous or solely intended to cause delay.

Cost petitioner contends that even if the proper rate of payment for the interpreting services was ambiguous, defendant's position that it did not owe for any services was unfounded so that there is a sufficient basis to find that sanctions were appropriate and for the award of attorney fees in this matter.

We have not received an Answer from defendant.

¹ Commissioner Deidre Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

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. Based on our review of the record, and as discussed below, we will affirm the F&O.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed to have sustained injury arising out of and in the course of employment to her hand, wrist, back, knee, and stress while employed by defendant as a housekeeper, during the period from March 21, 2015 to March 21, 2016.

The matter was resolved by way of a C&R, and on October 21, 2016, interpreter Raphael Arrieta (Certification Number 500202) translated the settlement documents for applicant.

On October 27, 2016, cost petitioner issued invoice number 1229 in the amount of \$270.00 to defendant for the translation services provided. (Exhibit 1, 10/27/2016.)

On November 1, 2016, a WCJ issued an Order Approving Compromise and Release (OACR.)

On August 13, 2020, cost petitioner filed the cost petition seeking reimbursement for services, penalties, interest, and attorney fees.

On August 17, 2021, this matter came on for trial.

DISCUSSION

We first highlight some of the legal principles that are 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 or appear at an English only proceeding such as an Appeals Board hearing, the worker must be able to understand the information provided and the questions asked in order to meaningfully appear at the proceedings.

Similarly, 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. (Lab. Code §§ 5000-5003; *Camacho v. Target* (2018) 24 Cal.App.5th 291, 301-302

[83 Cal.Comp.Cases 1014 [“These safeguards against improvident releases place a workmen's compensation release upon a higher plane than a private contractual release; it is a judgment, with ‘the same force and effect as an award made after a full hearing.’” (Citation)].) It is imperative that the injured worker comprehend the meaning of the proceedings, including any 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 and for the reading of a C&R.

As we reiterated in our recent en banc opinion in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 836 (Appeals Board en banc), in workers’ compensation proceedings, all parties retain the fundamental right to due process under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].)

Section 5811 states in pertinent part that:

“... 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 stated by the WCJ in his Report:

Subsection (7) of Section 9795.3(a) provides for interpreter fees in “[o]ther 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,” and the setting of interpreting a settlement document seems to be similar to the other settings in which an interpreter is expressly required under Section 9795.3(a)(1) through (6). In both the reading of a compromise and release agreement for presentation to the Workers’ Compensation Appeals Board for approval, and in the situations described in enumerated subsections 1 through 6 of Section 9795.3(a) (e.g., medical evaluations, depositions, and hearings), there appears to be a similar need for the injured worker to receive, understand, and respond to information that will be relied upon by the Board to make determinations within its jurisdiction.

Furthermore, as reasoned in the opinion on decision, a workers’ compensation judge does in fact use a compromise and release agreement, together with any other available information, to “determine the validity and extent of injury to an

employee.” The compromise and release in this case expressly raised issues involving the validity, or compensability, of applicant’s injury claim in order to obtain Judge Keyson’s approval of the adequacy of the settlement. Specifically, defendants alleged in paragraph 9 of the compromise and release that applicant’s supervisor would testify that the injury was not reported prior to termination. By questioning the compensability of the injury in the compromise and release agreement, defendants were asking Judge Keyson to consider “the validity and extent of injury to an employee” in deciding whether to approve the settlement. Because the injured worker had a right to be apprised of these contentions before indicating that he agreed to present them to a workers’ compensation judge, the provision of certified interpreting services to applicant were clearly “reasonable and necessary to determine the validity and extent of injury to an employee” under California Code of Regulations, Title 8, Section 9795.3(a)(7). This interpretation of Section 9795.3(a)(7) is consistent with reasoning of the Appeals Board in various non-binding panel opinions, including *Jose Hernandez v. Alba Construction Company, et al.* (2018) ADJ8543406, *Martha Amavizca v. Universal Logistics Group West, et al.* (2019) ADJ9545376, and *Eloisa Becerra Quezada v. Marriott Hotel Services, LLC, et al.* (2020) ADJ12140628 and ADJ13210903, but no binding authority was cited by either side of this disputed issue in the instant case.

(Report, pp. 4-5.)

AD Rule 9795.3(b)(1) provides:

(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. (bold and italics added for emphasis.)

In sum, we agree with the WCJ that due process requires that services for translation of a C&R must be provided to a non-English speaking worker and are subject to payment under AD Rule 9795.3(b)(1).

Pursuant to section 5813(a), the Workers’ Compensation Appeals Board has the discretionary power to order the payment of sanctions for “bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) Bad-faith actions

or tactics are defined as “actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) Such actions or tactics include:

(6) Bringing a claim, conducting a defense or asserting a position:

(A) That is: (i) Indisputably without merit; (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation....

...

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a “chilling effect” on a party’s ability to raise and pursue legal arguments that reasonably can be regarded as not settled. . . .

(Cal. Code Regs., tit. 8, § 10421(b)(6), (7).)

Under section 5813 and WCAB Rule 10421, sanctions are discretionary; under no circumstances is a WCJ required to order costs or sanctions. (Lab. Code, § 5813 (a) [the WCJ “may order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs...” and a WCJ “in its sole discretion, may order additional sanctions...” (emphasis added)]; Cal. Code Regs., tit. 8, § 10421(a); *Runnion v. Workers’ Comp. Appeals Bd.* (1997) 59 Cal.App.4th 277, 287 [62 Cal.Comp.Cases 1511] (*Runnion*) *Avance v. Workers’*

Compensation Appeals Bd. (2004) 69 Cal.Comp.Cases 1, 5 [“The WCAB also reasonably exercised its discretion under section 5813 in choosing not to impose sanctions...”].)

In his Report, the WCJ further stated that:

Although defendants’ arguments were ultimately found to be incorrect, there is reasonable ambiguity in the regulations with respect to both whether settlement interpreting costs are allowed at all, as well as the amount. There is no binding en banc or appellate opinion to make defendants’ position on this issue unwarranted. . . . Section 10421(6)(7), which defines sanctionable “bad faith actions or tactics” under Labor Code section 5813 as including presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law. Also mitigating against a finding of sanctionable conduct are the reasonable ambiguities in the law, which are to be considered under Section 10421(6)(7)(A), and the impression that defendants have preserved and raised this issue in good faith for the purpose of adjudication, which is to be considered under Section 10421(b)(7)(B). Looking also at subsection (b)(6) of Section 10421, it cannot be said that defendants’ arguments were indisputably without merit, or solely or primarily for the purpose of harassing or maliciously injuring any person or causing unnecessary delay or a needless increase in the cost of litigation.

(Report, pp. 6-7.)

We agree with the WCJ that under section 10421(b)(6)(7), defendant had a reasonable belief that ambiguities existed, and thus, we are persuaded that the WCJ did not abuse his discretion in declining to impose sanctions and attorney fees in this matter. Therefore, we do not disturb the WCJ’s decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on September 27, 2021 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 24, 2026

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

**CYRUS A. JAMEHDOR
EMPLOYMENT DEVELOPMENT DEPARTMENT
GEORGE CORSON
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN
QBC
SIBTF**

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