WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERTO MENDOZA, ***Applicant***

vs.

MITCH WILLIAMS CONSTRUCTION;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ1512286 (GOL 0095281)
Goleta District Office

OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION

Defendant, State Compensation Insurance Fund (SCIF) seeks reconsideration of the Findings and Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on July 28, 2026, wherein the WCJ found in pertinent part that applicant while employed on February 20, 2023, as a roofer, sustained injury arising out of and within the course of employment to his lumbar spine, cervical spine and psyche; that Ortiz Schneider Interpreting and Translation (cost petitioner) has established their market rate at $350.00 for half day; that cost petitioner is owed an additional $193.44 for dates of service of February 22, 2021 and April 14, 2021; that cost petitioner did not meet their burden for date of service February 23, 2021; that cost petitioner is entitled costs and attorney fees, the amount to be adjusted by the parties with the Board reserving jurisdiction over any disputed amount.

Defendant contends that cost petitioner did not meet its burden to prove the market rate of $350.00 as interpreter fees; that it is entitled to discovery on the actual cost of an interpreter; reimbursement for legal interpreting shall be based on the fee schedule; that SCIF's due process rights have been systematically violated; that cost petitioner did not carry its burden of proof on bad faith.

We received an Answer from cost petitioner.

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, the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed, we will deny reconsideration.

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 cases were transmitted to the Appeals Board on September 8, 2026, and 60 days from the date of transmission is Saturday, November 7, 2026. The next business day that is 60 days from the date of transmission is Monday, November 9, 2026. (See Cal. Code. Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, November 9, 2026, 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

[1] 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.

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 September 8, 2026, and the case was transmitted to the Appeals Board on September 8, 2026. 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 September 8. 2026.

II.

In addition to the WCJ's discussion in her Report, we observe the following.

WCAB Rule 10421(b) states:

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> (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.

We agree with the WCJ's analysis and her reference to the panel decision, *Bertha Valerio vs Kimco Staffing Services*, ADJ15329380. In *Valerio*, we rejected the defendant's extensive efforts to challenge the agency's established market rate on the basis of employment or contractor status of the interpreter and instead focused on compliance with AD Rule 9795.3 (Cal. Code Regs., tit. 8, § 9795.3) which governs market rate. In the instant matter, it is clear after reviewing the

record that defendant dragged this matter out by making arguments that are not supported by current law when they raised the arguments about discovery and questioned what the interpreter was paid in spite of this not being relevant. Defendant was unable to provide any explanation as to why what an employee or independent contractor was paid is relevant as to how market rates are set.

In sum, defendant's argument lacks merit and is not applicable, because cost petitioner provided market rate information for similar services and the information defendant is seeking regarding an interpreter's fee structure is proprietary and has no bearing on the external market rate.

Accordingly, we deny the Petition for Reconsideration.

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

KATHERINE A. ZALEWSKI, CHAIR
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 9, 2026

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

ALCALA ASSOCIATES, LLC
MEGAN MEYER, ATTORNEY AT LAW
ORTIZ SCHNEIDER
STATE COMPENSATION INSURANCE FUND

DLM/kl

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

REPORT AND RECOMMENDATION

ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMITTAL

INTRODUCTION

1.	Applicant's Occupation:	Roofer
	Date of birth:	xx-xx-xxxx
	Date(s) of Injury:	February 20, 2003
	Parts of Body Injured:	Lumbar spine, Cervical spine and Psyche
	Manner in Which Injury Occurred:	Not in Dispute.
2.	Identity of Petitioner:	Defendant
	Timeliness:	Defer to Appeals Board
	Verification:	The Petition for Reconsideration is verified
	Service:	The Petition was served on all parties.
3.	Date of Issuance of Order:	July 28, 2026

4. Petitioner's Contentions: 1) that the WCJ erred by finding the cost petitioner proved market rate, 2) that defendant was entitled to discovery on what was the actual cost of the interpreter 3) that reimbursement for legal interpreting shall be based on the fee schedule, 4) that defendant was denied due process, 5) that the cost petitioner did not carry its burden on proving bad faith.

FACTS

The issue involves a cost petition filed by Ortiz Schneider Interpreting and Translation (OSIT). Applicant sustained an admitted injury February 20, 2003, to her back, neck and psyche. An Award issued March 22, 2017, for 32%. The case was then resolved by Compromise and Release with an Order Approving Compromise and Release issuing April 16, 2021, for $125,000.00.

Through their attorney of record a Cost Petition was filed by Ortiz Schneider Interpreting and Translation (OSIT) (EAMS 47228164) dated July 12, 2023, titled Petition for fees, costs and sanctions per Labor Code §5811, 5813.

The Petition seeks payment involving three (3) dates of service.

1. February 22, 2021, billed at $350.00 their market rate. Defendant paid $156.56 with a balance owing of $193.44 for a lien conference.
2. February 23, 2021, billed at $350.00 their market rate. Defendant paid nothing for a settlement discussion at applicant attorney office.
3. April 14, 2021, billed at $350.00 their market rate. Defendant paid $156.56 with a balance owing of $193.44 for review and C&R signing.

During discovery, a Trial was held on November 14, 2023, on defendants' motion to compel the cost petitioner to answer questions from a deposition. A Finding and Order and Opinion on Decision was issued January 30, 2024. Defendant filed a Petition for Removal February 22, 2024, and an Opinion and Order denying Removal issued March 19, 2024.

Defendant then filed a Petition to Compel production of documents which proceeded to trial November 12, 2024. A Findings and Order issued December 16, 2024.

The cost petition then proceeded to trial over two days on May 7, 2025, and July 2, 2025. After submission, Defendant filed a Post Trial Motion to re-open the record to admit two additional documents into evidence. A third trial date was set August 28, 2025, and the case proceeded to trial and was submitted.

A Findings and Order and Award was issued on October 2, 2025,

Following the filing of defendants Petitions for Reconsideration, an Order rescinding Findings and Award of October 2, 2025, and vacating submission was issued dated October 31, 2025. The case was set for further hearing and was set back on trial on February 26, 2026, to allow for further questions from defendant. The Cost petitioner objected to the line of questioning and the trial was continued and trial briefs were submitted.
The case came back for trial on April 10, 2026, at which time the objection was sustained, the court being persuaded by the Appeals Board decision of Bertha Valerio vs Kimco Staffing Services ADJ15329380.

The case was set for further trial on June 30, 2026, at which time all issues were again submitted as to the cost petition and Exhibits R & U were admitted into evidence.

The Cost Petitioner (OSIT) is seeking payment for three (3) dates of services where two (2) were partially paid and one where no payment was made. They are also seeking payment of costs associated with the filing and litigation of the cost petition and attorney fees.

Defendant filed a Petition for Reimbursement dated August 2, 2023 (EAMS ID #47540484) and is seeking reimbursement in the amount of $313.12 for the two partial payments of $156.56 each, arguing the services were not reasonably and necessarily incurred, the fee was excessive and not based on actual time spent by the interpreter.

On July 28, 2026, the Finding of Fact and Orders and Opinion on Decision was issued. The Finding of Fact and Orders stated in part:

"3. It is found Cost Petitioner Ortiz Schneider Interpreting and Translation has established their market rate at $350.00 for half day.

4. It is found Cost Petitioner Ortiz Schneider Interpreting and Translation is owed an additional $193.44 for date of service February 22, 2021.

5. It is found Cost Petitioner Ortiz Schneider Interpreting and Translation is owed an additional $193.44 for date of service April 14, 2021.

6. It is found that Ortiz Schneider Interpreting and Translation did not meet their burden for date of service February 23, 2021.

7. It is found that Cost petitioner is entitled costs and attorney fees, the amount to be adjusted by the parties with the board reserving jurisdiction over any disputed amount.

ORDERS

a. Ortiz Schneider Interpreting and Translation is owed an additional $193.44 as provided in finding of fact number 4.

b. Ortiz Schneider Interpreting and Translation is owed an additional $193.44 as provided in finding of fact number 5.

c. Attorney fees and costs per finding of fact number 7.

Defendant filed their Petition for Reconsideration which states at page 2 …"Specifically State Fund seeks reconsideration of Finding of Facts to Nos. 4 - 5, & 7, and Orders a. – c., determining that Cost Petitioner Ortiz Schneider Interpreting and Translation (OSIT) established their market rate of $350; that State Fund owed OSIT additional money on two dates of service; February 22, 2021, and April 14, 2021; and that OSIT was entitled to attorney fees and costs."

DISCUSSION:

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to *Smales v. WCAB* (1980) 45 CCC 1026, the Report and Recommendation cures those defects.

MARKET RATE

8 CCR § 9795.3(b) states in pertinent part:

"(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…."

To establish the market rate, the interpreter shall include a list of recent similar services performed and the amount paid for those services which the cost petitioner did. Here, the Cost Petitioner testified credibly with due regard for her demeanor as a witness. She attaches to her bill the market rate documentation which lists services and amounts paid.

Her market rate analysis reflects payments received in 2020 and early 2021 and she does not accept less than $350.00 as her market rate. She updates her market rate analysis quarterly and compiles a list of 40 samplings and attaches it to the invoice. These are payments by various insurance companies for various interpreting services (5/7/2025 MOH/SOE at page 9).

For the date of service February 22, 2021, OSIT sent their written demand for payment, proof of market rate documentation. (Exhibit 1). For the date of service April 14, 2021, OSIT sent their written demand for payment, proof of market rate documentation and C&R signature pages. (Exhibit 3). These exhibits show that the documentation was sufficient to meet the requirements to establish market rate.

Defendant argues that OSIT's rate of $350 for a half day is excessive when in July 2018 OSIT and defendant had a contract for $275 for a half day. Defendant states that contract was terminated in 2020 so in 2021 a market rate of $350 significantly outpaces the corresponding inflation rate. (PFR at page 5-6)

8 CCR § 9795.3(b)(1) does not limit a market rate based on inflation. The perimeters established in that section were met by OSIT for a market rate of $350 for a half day on the dates of services.

ENTITLEMENT TO DISCOVERY

Defendant argues they are entitled to know the monetary amount OSIT paid the interpreter for any of the dates of services of legal interpreting. (PFR at page 6). Those questions were objected to by the cost petitioner and objections sustained as the court was persuaded by the decision in *Bertha Valerio vs Kimco Staffing Services*, ADJ15329380 where the Appeals Board stated:

> "…Defendant argues that since each of the certified interpreters working for lien claimant is an independent contractor, the evidence should be not what has been received by lien claimant, referencing the Petition, page 4. There is nothing within AD Rule 9795.3 which makes this distinction. Further, it has been established that interpreters seeking recovery for services may apply the principles outlined in the en banc decision of *Kunz v. Patterson Floor Covering* (2002) 67 CCC 1588."

Based on that decision, the questions as to what OSIT paid their interpreters did not appear relevant to the underlying issues of market rate in this case.

REIMBURSEMENT BASED ON FEE SCHEDULE

Defendant argues that …" the Division appears to have exceeded its regulatory authority." They appear to want this WCJ to declare California Code of Regulation 9795.3 invalid. They state:

> "In Labor Code Section 5811, the legislature instructed the Division to adopt a fee schedule. OSIT does not dispute that a fee schedule applies to each of the DOS of legal interpreting. The California Code of Regulation explicitly adopts a fee schedule in 9795.3, specifically $156.56 for a half-day of interpreting based on the Judicial Council fee schedule. State Fund acted in good faith when it issued a timely payment based on that fee schedule for each DOS of legal interpreting. What remains in dispute is the statutory authority of the Division to award an interpreter payment based on market rate considering that the legislature instructed the Division not to base payments on any methodology or legal standard other than a fee schedule." (PFR at page 7)

This WCJ will be following the regulations as written.

Further defendants Explanation of Review (EOR) (Exhibit 5) states:

"EOR Reduction Code E1:planatlon:

911: PerCAcocreofRegulations,Title 8 979S.3(bXI):

For appeals board hearings, arbitration and depositions, the interpreter fees must be billed and paid at the great« of:

1. The rate for one half day or one full day as defined in the Superior Court reschedule for interpreters in the county where th1' service was provided; or
2. The market rate.

We have paid you according to Superior Court rate ofS156.56 for half day or $282.23 for full day.

GS : This charge was adjusted for the reasons set forth in the attached letter."

Their own EOR states they pay at the greater of Superior court schedule or market rate. In this case the market rate is the greater rate.

OSIT established their market rate of $350.00 for a half day.

VIOLATION OF DEFENDANTS DUE PROCESS RIGHTS

Once again defendant argues that they should be entitled to the information as to what each individual interpreter was paid.

As stated above, this WCJ was persuaded by the decision in *Bertha Valerio vs Kimco Staffing Services*, ADJ15329380. Defendant claims that" … the Judge denied State Fund its due process right to call and cross-examine witnesses," (PFR at page 8). At no time did this WCJ not allow defendant to call a witness to rebut the market rate. That assertion is inaccurate. When calling those witnesses, objections were sustained regarding questions as to what each individual interpreter is paid versus what is billed. At no time did this WCJ not allow the defendant to call a witness. The line of questioning was at issue not whether they can call a particular witness. Of note, OSIT did testify that they pay each interpreter what that interpreter bills OSIT whether more or less than OSIT's market rate.

This WCJ allowed evidence presented by defendant to rebut market rate, including exhibits objected to by OSIT.

There has been no denial of due process to the defendant.

BAD FAITH

Defendant argues that OSIT did not carry their burden of proof on bad faith. This WCJ found:

8. "It is found that Cost petitioner is entitled costs and attorney fees, the amount to be adjusted by the parties with the board reserving jurisdiction over any disputed amount."

Defendant argues "Considering these legal axioms, the Judge erred in awarding OSIT attorney fees and costs without OSIT presenting substantial evidence of either a late or missing payment for a DOS of legal interpreting. In this case, the evidence shows that State Fund issued a timely fee schedule payment for each DOS of legal interpreting, specifically DOS February 22, 2021, and April 14, 2021. OSIT does not argue otherwise." (PFR at page 9).

What they fail to acknowledge is while they issued a timely payment, they then requested reimbursement for that payment. They argue payment should be made at fee schedule/superior court rate not market rate but even so they shouldn't have to pay even the superior court rate. That is not in good faith.

Defendant underpaid, on both dates of service. The third date of service was not awarded. The finding of costs and attorney fees are not just based on the timeliness or untimeliness of payment. Section 5813 sanctions must be based on "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813.)

As stated in *Guitron v. Santa Fe Extruder* (2011) 76 Cal. Comp. Cases 228 "…Of course, if a defendant has no reasonable basis for disputing an **interpreter**'s lien, or if a defendant frivolously asserts defenses, while possessing proof that its allegations are false, the defendant will expose itself to potential penalties under section 5814 and sanctions under section 5813."

Here as stated in the decision defendant argued they timely paid, then argue they shouldn't have to pay at market rate, next that they are entitled to reimbursement of the amounts paid as the amounts billed did not reflect the actual time spent. Their arguments are without merit and inconsistent with the law. Defendant argues the cost petitioner did not meet their burden on market rate as they cherry picked payments in their market rate summary. OSIT's evidence complied with what is necessary to prove market rate. The cost petitioner also credibly testified that they have previously been paid by this defendant at their market rate of $350.00 (MOH/SOE 5-7-2025 at page 9). Further the EOR of the defendant says they pay at the Superior court rate or market rate whichever is greater, yet they do not.

Based on the totality of the testimony and evidence the cost petitioner was awarded costs and attorney fees, the amount to be adjusted by the parties with the board reserving jurisdiction over any disputed amount.

RECOMMENDATION

It is respectfully recommended that Defendants' Petition for Reconsideration be denied in its entirety.

This case was transmitted to the Reconsideration Unit on September 8, 2026

DATE: September 8, 2026

Deborah Rothschiller
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE