

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

**ALEJANDRO ESPINOZA, *Applicant***

**vs.**

**PACIFIC INTERIORS ENTERPRISES;  
STAR INSURANCE COMPANY administered by MEADOWBROOK INSURANCE,  
*Defendants***

**Adjudication Number: ADJ7354270  
Oxnard District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

While we agree with the WCJ that the Petition should be denied, we add the following: Cost Petitioner's Petition For Reconsideration should also be examined under WCAB Rule 10545(h) which first requires a finding of bad faith and if bad faith is found, then the WCJ determines the amount of the attorney's fees, costs and sanctions payable. Here, we agree with the WCJ that there was no bad faith based on the existing record and the fact that it took cost petitioner years to seek payment further confirms that there was no bad faith.

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/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 3, 2024**

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

**ALEJANDRO ESPINOZA  
MISSION COLLECTIONS  
FLOYD SKEREN MANUKIAN**

**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*

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

I. INTRODUCTION

Applicant, Alejandro Espinoza, born xx-xx-xxxx, while employed on 05/05/2010 as a framer at Hesperia, California by Pacific Interiors Enterprises, sustained injury arising out of and occurring in the course of employment to his back, left shoulder, psyche, sexual dysfunction, wrists, elbows, teeth and bruxism.

II. CONTENTIONS

Petitioner herein, and cost petitioner below, Santana Lopez Interpreting contends that it was an abuse of discretion to fail to award costs of \$4,849.53 and \$13,927.50 in attorney fees for the services in recovering a \$60.00 balance (after a timely initial payment of \$190.00 against a \$250.00 invoice, and payment of the remaining \$60.00 some five years later upon the rebilling and the filing of a cost petition).

III. FACTS

This matter involves a claim by cost petitioner interpreter Santana Lopez for a \$60.00 balance for services at the 05/03/2018 expedited hearing herein. Cost petitioner served its billing of \$250.00 on 05/11/2018, at which point defendant had already paid \$190.00 (Defendant's Exhibit B). Defendant responded with an explanation of review allowing \$190.00 on 06/04/2018, indicating that a "network reduction" was taken "based on your contract with "Fast360" (apparently a bill review vendor for defendant). The EOR also reads that the charge exceeds the Official Medical Fee Schedule allowance for the service (Defendant's Exhibit A). Defendant's Exhibit B is a re-billing by lien claimant that does not bear a date, but which lien claimant asserts by Points and Authorities was "on or around 07/23/2018."

Cost petitioner and petitioner herein did not request second bill review in response to the EOR.

On 07/13/2023 a cost petition dated 06/26/2023 was filed by Santana (EAMS Doc. ID No. 47240368).

The parties stipulated at trial that defendant issued payment of \$60.00 on 08/04/2023.

Cost petitioner seeks costs of \$4,849.53 and attorney fees of \$13,927.50 for collection efforts regarding the \$60.00.

Defendant seeks \$8,415.00 for paraprofessional time in defending against the collection efforts of lien claimant.

#### IV. DISCUSSION

Petitioner herein (cost petitioner) herein contends that defendant's issuance of the EOR with citing a non-existent contract and an inapplicable fee schedule resulted in a failure to properly object to its billing under 8 Cal. Code of Reg. Sec. 9795.4. That much is acknowledged in the decision herein.

Petitioner however further alleges that the failure to properly object constitutes bad faith warranting the award of costs and imposition of sanctions.

Petitioner avers that defendant "willfully" failed to comply with Regulation 9795.3 by paying less than the interpreter's asserted market rate, and that that conduct shows bad faith as described in Regulation 10421.

Section 9795.3 does not require automatic payment of a market rate. It requires payment at *either* the rate in the Superior Court fee schedule for the county where services were rendered, *or* a market rate established by the interpreter by submitting documentation of amounts paid for recent similar services. There is no initial billing which led to the payment of \$190.00 in evidence, and perhaps there was none since the payment was issued within eight days of the services rendered.

Thus there is no evidence that defendant's conduct in immediately paying \$190.00 ignored any establishment by documentation of a market rate by petitioner.

Accordingly petitioner failed to prove that defendant *willfully* breached any statutory or regulatory duty.

Defendant did in fact issue a defective EOR (after making payment) and failed to pay the additional \$60.00 sought on 05/11/2018 and again (allegedly) "on or around 07/23/2018." But without proof that petitioner had established a market rate at the time of the billings, intent is not shown. Cost Petitioner's Exhibit 2 is a list of payment made by defendant herein for similar services, but it was "compiled" on 08/31/2023. Of the charges pre-dating the services herein (five in number, ending on 04/25/2018) three were paid at \$250.00 and two were paid at \$90.00, with the difference only made up on "2<sup>nd</sup> payment" upon "re-bill." There is no evidence of when the 2<sup>nd</sup> payments were made. In this case the 2<sup>nd</sup> payment came when the \$60.00 dispute ripened into a cost petition and declaration of readiness and a hearing date. These five dates of service,

including three paid in full and two at least initially reduced do not establish a market rate that was presented to defendant at the time of the billing.

Petitioner has not proven bad faith actions by defendant warranting the award costs of \$4,849.53 and attorney fees of \$13,927.50 and the imposition of sanctions against defendant in this case.

#### V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

DATE: 3/18/2024

WILLIAM M. CARERO  
WORKERS' COMPENSATION JUDGE