

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

DAMASO RUIZ, *Applicant*

vs.

**PHILLIPS 66/APRO;
G&M OIL COMPANY/ VISION INSURANCE GROUP,
ADMINISTERED BY GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ8646118
Marina del Rey District Office**

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

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) of May 1, 2024, wherein the workers' compensation judge (WCJ) found in relevant part that the attorneys for both defendant and cost petitioner violated WCAB Rule 10421(b) (Cal. Code Regs., tit 8., § 10421(b)) and ordered them to pay sanctions and that there was a mutual mistake of material fact that voided the contract for interpretation services. Defendant contends that it should not be subject to sanctions.

We have not received an Answer from any other party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), stating that the WCJ would defer to the Appeals Board regarding the imposition of sanctions.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant claimed industrial injury to his bilateral upper extremities, bilateral lower extremities, sleep, and psyche from November 1, 2011, to November 1, 2012, while employed by defendant G&M Oil Company. The case settled by way of a Compromise and Release Agreement (C&R) filed on April 16, 2016, and an Order Approving Compromise and Release issued on April 19, 2016. The C&R stated that defendant is relieved from all future lien conferences and lien liability. (C&R, p. 8.)

An interpreter, Romero Martin, provided interpretation services for the January 13, 2015, deposition to interpret for applicant and cost petitioner Santana Lopez and Associates petitioned for payment of this date of service in Petitions for Costs dated October 16, 2019, and September 30, 2022. Another interpreter provided interpretation services at a Qualified Medical Evaluator (QME) with Dr. Henry Bruce, MD, on April 15, 2015, and cost petitioner Santana Lopez and Associates petitioned for this date of service by Petition for Costs dated October 6, 2022.

Defendant and cost petitioner disagreed that defendant did business with Santana Lopez and Associates. (3/4/24 Minutes of Hearing/ Summary of Evidence (MOH/SOE), p. 2.) Cost petitioner asserts that it did business at Santana Lopez and Associates, LLC, dba Central Coast Interpreters, and defendant asserts cost petitioner Santana Lopez and Associates is not the genuine party in interest. (MOH/SOE, p. 2.) Defendant claimed that it did not contract with Santana Lopez and Associates for the interpretation services as Santana Lopez and Associates was not the real party in interest. (Def.'s Pre-Trial Brief, dated 10/16/23, pp. 10-19.)

The case proceeded to trial March 4, 2024, on issues pertaining to the cost petitions. Cost petitioner called translator Martin to testify. Martin testified that he had worked for Santana Lopez and Associates as a Spanish Language Interpreter since July 2010. (MOH/SOE, p. 4.) He did not identify himself as an employee of Santana Lopez and Associates while at the deposition on January 13, 2015. (MOH/SOE, pp. 4-5.) There were no other witnesses.

Following the trial, the WCJ found in relevant part that the issue of reasonable value of services is moot because defendants do not owe cost petitioner any Labor Code¹ section 5811 costs; that cost petitioner is not entitled to penalties and/or interest; and that each party bears its own costs of litigation. (F&O, p. 2.) The WCJ also found that the real party in interest should be

¹ All further statutory references are to the Labor Code unless otherwise noted.

Central Coast Interpreters, which did not and does not exist on its own with its own Tax ID number; that there was mutual mistake of material fact, and thus, the contracts for interpreting services rendered on January 13, 2015 and April 10, 2015 are voided; and that defendants did not owe cost petitioner any costs pursuant to section 5811. (F&O, p. 2.)

The WCJ further found that Santana, Lopez & Associates and its attorney George Corson, Esq., are in violation of WCAB Rule 10421(b)(6)(A)(i), and are ordered, jointly and severally, to pay sanctions in the sum of \$250 to the General Fund. (F&O, p. 2.) Finally, the WCJ found that Mark G. Stephens, Esq., attorney for defendant, is in violation of WCAB Rule 10421(b)(6)(A)(i), (7) and (8), and is ordered to pay sanctions in the sum of \$1,000 to the General Fund and to comply with all State Bar reporting requirements. (F&O, p. 3.)

DISCUSSION

Section 5813 authorizes the WCJ to impose sanctions and costs for “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) The order of sanctions can be made “after written application by the party seeking sanctions or upon the appeal board's own motion.” (Lab. Code, § 5813(b).) In order for the WCJ to impose sanctions and costs, the alleged offending party or attorney must be given notice and an opportunity to be heard. (Cal. Code Regs., tit. 8, § 10421(a); see also Cal. Code Regs., tit. 8, § 10832(a)(3); *Hidalgo (Abel) v. Roman Catholic Archbishop* (June 17, 2024) __ Cal.Comp.Cases __ [2024 Cal.Wrk.Comp. LEXIS 26, *21] (Appeals Bd. en banc).)

Here, the record reveals that the WCJ imposed sanctions upon attorneys for both defendant and cost petitioner without issuing a notice of intent. The WCJ imposed sanctions on defendant pursuant to the following rules:

Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include 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. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:

...

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

(A) That is:

(i) Indisputably without merit;

...

(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.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(Cal. Code Regs., tit. 8, § 10421 (b)(6)(A)(i), (7), (8).) The WCJ imposed sanctions against defendant's attorney for raising the issues of a lack of subject matter jurisdiction and the defense of laches. (Opinion on Decision, p. 10.) Defendant did not have any notice of these potential sanctions prior to the hearing and was not provided with the opportunity to provide its reasoning for raising these issues.²

The WCJ or the Appeals Board may issue a notice of intention for any proper purpose, including sanctioning a party. (Cal. Code Regs., tit. 8, § 10832 (Lexis Advance through Register 2024, No. 24, June 14, 2024).) All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing 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].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (McKernan) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Determining an issue without giving the parties

² Losing on an issue is not in and of itself sanctionable. (See, e.g. *Hershewe v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 1198, 1206 ["sanctions cannot be awarded based on actions that are colorable and arguably correct, even if it is extremely unlikely that they will win"]; *Singerman v. Nike, Inc.* (2021) 2021 Cal. Wrk.Comp.P.D.LEXIS 81, *12 ["Failing her burden of proof at trial in and of itself is not a ground for sanctions"].)

notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.) Although due process is "a flexible concept which depends upon the circumstances and a balancing of various factors," it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.) The WCJ imposed sanctions without appropriate notice and an opportunity to be heard and in violation of defendant's right of due process. (Lab. Code, § 5813(b); Cal. Code Regs., tit. 8, §§ 10421(a), 10832(a)(3).)

In addition to the sanctions, the WCJ also found that the real party in interest should be Central Coast Interpreters, which did not and does not exist on its own with its own Tax ID number; that there was mutual mistake of material fact, and thus, the contracts for interpreting services rendered on January 13, 2015 and April 10, 2015 are voided; and that defendants did not owe cost petitioner any costs pursuant to section 5811. (F&O, p. 2.) However, the parties did not enter the contract into evidence and defendant did not provide any evidence or testimony that there was a mutual mistake of fact.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is

submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] [“The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims.”]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

In the instant case, without a notice of intention that spells out the basis for sanctions, the WCJ imposed sanctions without appropriate notice and an opportunity to be heard and in violation of defendant’s right of due process. (Lab. Code, § 5813(b); Cal. Code Regs., tit. 8, §§ 10421(a), 10832(a)(3).) We do not have an adequate record to evaluate the imposition of sanctions. Additionally, with respect to the WCJ’s voiding the contracts for interpretation services and finding there was a mutual mistake of material fact, we also lack a sufficient record upon which to evaluate the issue.

Thus, we will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with the decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 1, 2024 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 1, 2024 Findings of Fact and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING, NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2024

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

**TOBIN LUCKS, LLP
SANTANA, LOPEZ & ASSOCIATES, LLC
LAW OFFICES OF GEORGE E. CORSON IV**

JMR/mc



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