

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

**FELIX VASQUEZ, *Applicant***

**vs.**

**MILLWORK BROTHERS, INC., PALOMAR  
SPECIALTY INSURANCE COMPANY, administered by  
OMAHA NATIONAL UNDERWRITERS, Defendants**

**Adjudication Number: ADJ17237792  
Van Nuys District Office**

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

Cost petitioner, Tony Barriere Interpreting Service, Inc., seeks reconsideration of the July 11, 2024 Findings & Order (F&O), wherein a workers' compensation administrative law judge (WCJ) found in pertinent part that: cost petitioner is not entitled to attorney fees and costs; payment of interpreting services in this case is not subject to the provisions of AD Rule 9795.3(b)(1) (Cal. Code Regs., tit. 8, § 9795.3(b)(1)), but instead is subject to the provisions of AD Rule 9795.3(b)(2) (Cal. Code Regs., tit. 8, § 9795.3(b)(2)); and that defendant did not act in bad faith in denying the additional payment sought by cost petitioner. Cost petitioner asserts that the interpreting services are subject to the provisions of AD Rule 9795.3(b)(1), and that he is entitled to attorneys fees and costs because defendant acted in bad faith when it denied the additional payment.

Defendant contends in its Response (Answer) that although its administrator Omaha National Underwriters (Omaha) and its former attorneys CW Law were served with the Petition for Reconsideration, the Petition should be dismissed because its legal representative Am Lien Solutions, LLC, (Am Lien) was not served with it.

We received a Report<sup>1</sup> and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations of the Petition, the Answer, and the contents of the Report and First Amended Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and for a new decision from which any aggrieved person may timely seek reconsideration.

## **BACKGROUND**

Applicant, while employed as a fabricator by defendant during the period from January 17, 2017 through January 6, 2023, claimed injury arising out of and in the course of employment. (Minutes of Hearing and Summary of Evidence (MOH&SOE), April 2, 2024, 2:3-2:6.)

On February 16, 2023, cost petitioner, “. . . translated settlement documents [Spanish language translation services for the reading of the Compromise and Release (C&R)] for applicant. . . .” (MOH&SOE, April 2, 2024, 2:9-2:10.)

The case in chief was resolved by way of a C&R, and an Order Approving Compromise & Release (OACR) dated February 24, 2023, issued on February 27, 2023.

On February 27, 2023, cost petitioner billed defendant \$270.00 for the interpreting services provided on February 16, 2023. The invoice states that it serves as a formal demand for payment in full pursuant to WCAB Rule 10451.13 (Cal. Code Regs., tit. 8, § 10451.3. (Exh. 1, Cost Petitioner, Tony Barriere Interpreting original bill submission for date of service 2/16/2023, dated 2/27/2023, and Proof of Service 2/27/2023.)

On March 30, 2023, defendant issued an Explanation of Review (EOR) for the February 16, 2023, C&R translation services. Defendant reduced the \$270.00 charge by \$95.00 and issued a partial payment of \$175.00. The EOR states the reason for the reduction is that the charge has been adjusted to allow payment based on AD Rule 9795.1.5(a) (1)&(2) and reflects the fees for interpreter services as outlined in AD Rule 9795.3. (Exh. B, Defendant, EOR for Tony Barriere Interpreting for date of service 2/16/2023, dated 3/30/2023, p. 1.)

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<sup>1</sup> The WCJ states in his Report that defendant’s legal representative as noted on the Official Address Record (OAR) was not served. The WCJ states that he issued a First Amended Report to correct two minor scrivener’s errors that mistakenly refer to Cost Petitioner as Defendant.

Cost petitioner apparently did not accept the \$175.00 as full and final payment, and on April 10, 2023, cost petitioner requested a second bill review and requested market rate for his translation services for the reading of the C&R. (Exh. 2, Cost Petitioner, Invoice for Translation Services with second bill review dated 4/10/2023; Exh. E, Defendant, Request for second bill review dated 4/10/2023, Tony Barriere Interpreting for date of service 2/16/2023, dated 4/10/2023.)

On April 19, 2023, an EOR for the appeal of the second bill review of the March 30, 2023 EOR decision/payment issued. The decision was as follows: “No additional reimbursement was allowed after review or appeal/reconsideration of the March 30, 2023 EOR.; These services have previously been reviewed and payment has been made.; Other: Market rate not established. Documentation does not list **recent** similar services and/or the amounts paid for those services.; Other: The statement provided failed to identify hours of translation provided.” (Exh. C, Defendant, EOR for Tony Barriere Interpreting for date of service 2/16/2023, dated 4/19/2023, p. 1.)

On June 14, 2023, cost petitioner filed its petition for costs and a declaration of readiness (DOR). Defendant’s administrator, Omaha, and defendant’s attorneys, CW Law, were served with the petition and the DOR.

On July 13, 2023, Am Lien filed a notice of representation. The notice of representation is on behalf of defendant “Millwork Brothers Inc.; administered by Omaha National.”

On July 13, 2023, Am Lien substituted in for CW law as defendant’s representative.

On August 2, 2023, Am Lien filed an objection to cost petitioner’s petition on behalf of defendant Millwork Brothers Inc., insured by Palomar Specialty Insurance Company, administered by Omaha National Underwriters “collectively ‘Defendant.’”

On April 2, 2024, the parties proceeded to trial on the following issues: whether cost petitioner is entitled to attorney fees and costs; whether cost petitioner complied with WCAB Rule 10545(c) (Cal. Code Regs., tit. 8, § 10545(c)) and, if not, whether that failure warrants dismissal of the cost petition; whether cost petitioner has established a valid market rate for the services at issue in this case; and whether payment of interpreting services in this case are subject to the provisions of AD Rule 9795.3(b)(1); and whether defendant acted in bad faith in denying the additional payment sought by cost petitioner. Defendant stipulated that its workers’ compensation

insurance carrier was Palomar Specialty Insurance Company, administered by Omaha National Underwriters.

On July 10, 2024, the WCJ issued the F&A. It was served on cost petitioner’s attorneys, Am Lien, and Omaha.

On August 5, 2024, cost petitioner filed its Petition for Reconsideration, and it was served on Omaha and CW Law.

On August 14, 2024, Am Lien filed its Answer on behalf of defendant Millwork Brothers Inc., insured by Palomar Specialty Insurance Company, administered by Omaha National Underwriters. Am Lien contends that it was not served with the Petition as defendant’s legal representative, and since the Petition was not properly served, it is “untimely” and therefore “inactionable;” and that cost petitioner’s attorney should be subject to sanctions because the reason he did not serve Am Lien was so that “[d]efendant would not have the opportunity to issue a response.”

## **DISCUSSION**

### **I.**

Former Labor Code<sup>2</sup> 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

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<sup>2</sup> Unless otherwise stated, all statutory references are to the Labor Code.

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 August 20, 2024, and 60 days from the date of transmission is Saturday, October 19, 2024. The next business day that is 60 days from the date of transmission is Monday, October 21, 2024. (See Cal. Code Regs., tit. 8 § 10600(b).)<sup>3</sup> This decision is issued by or on Monday, October 21, 2024, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 19, 2024, and the case was transmitted to the Appeals Board on August 20, 2024. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on August 20, 2024.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on August 20, 2024.

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<sup>3</sup> 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.

## II.

Pursuant to section 5905, a party petitioning for reconsideration is required to serve a copy of the petition “forthwith upon all adverse parties.” (Lab. Code §5905.) Cost petitioner served the Petition on defendant’s administrator Omaha and defendant’s former attorneys CW Law. As the WCJ and defendant’s legal representative assert, defendant’s current legal representative was not served with the petition. The failure to properly serve all adverse parties *may* constitute grounds for dismissal of the petition. (See *State Compensation Ins. Fund v. Workers’ Comp. Appeals Bd. (Paquette)* (1983) 48 Cal.Comp.Cases 475 [1983 Cal. Wrk. Comp, LEXIS 3831] (writ den.).)

Both the defendant and the WCJ cite to former WCAB Rule 10850 (Cal. Code Regs., tit. 8, § 10850, repealed effective January 1, 2020), which stated that:

Service of copies of a petition for reconsideration, removal, or disqualification shall be *made on all parties* to the case and on any lien claimant, the validity of whose lien is specifically questioned by the petition, and to any case that has been consolidated therewith pursuant to Section 10590. Failure to file proof of such service shall constitute valid ground for dismissing the petition.

We first note that former WCAB Rule 10850 was repealed on January 1, 2020, and replaced with WCAB Rule 10940(c) (Cal. Code Regs., tit. 8, § 10940(c)), which requires that the proof of service of the Petition be filed at the WCAB. Cost petitioner complied with that Rule by filing the proof of service, albeit with an error as to defendant’s current representative, on August 5, 2024.

While current WCAB Rule 10625 (Cal. Code Regs., tit. 8, § 10625) does require that the attorney or agent of record be served, the Petition for Reconsideration was served on defendant’s legal administrator and former attorneys. Here, defendant confuses the term “service” with the term “filing.” “Service’ of a document means to deliver a copy of the document in a manner permitted by these rules to a party or other person” and “Filing’ a document means receipt and acceptance by the Workers’ Compensation Appeals Board of the document for the purpose of having it included in the adjudication file.” (Cal. Code Regs., tit. 8, § 10305 subd. (t), subd. (m).) Service is not a condition for timely filing because section 5900(a) requires timely filing and does not mention service. Section 5905 requires service on an adverse party, and Omaha, an adverse party, was served. Section 5905 requires service forthwith, and Am Lien apparently received the

Petition within section 5905's 10 day period to file an answer, so that even if cost petitioner served defendant's prior attorneys by mistake, the error is harmless.

Moreover, despite their protestations to the contrary, defendant filed its Response on August 14, 2024, or within 9 days of the Petition, so that defendant clearly cannot demonstrate that it was prejudiced in its ability to timely file an answer.

Turning to the real issue with service in this case, *we admonish defendant Millwork Brothers Inc., insured by Palomar Specialty Insurance Company, administered by Omaha National Underwriters, and its representative Am Lien Solutions, LLC, that all parties are required to comply with AD Rule 10205.5 (Cal. Code Regs., tit. 8, § 10205.5) and WCAB Rules 10400, 10401 (Cal. Code Regs., tit. 8, §§ 10400, 10401)*. Here, despite filing several pleadings identifying Palomar Specialty Insurance Company as defendant employer's workers' compensation insurance carrier, Palomar is not on the Official Address Record. Upon return of this matter to the trial level, Am Lien must immediately correct the Official Address Record to reflect that Palomar is a party to this case.

### III.

Turning to the merits of the petition, the interpreter has the burden of proving among other things that the fees charged were reasonable in order to recover charges for interpreter services. (*Guitron v. Santa Fe Extruders*, (2011) 76 Cal. Comp. Cases 228, 234 (Appeals Board en banc).) In this matter, it is apparent that petitioner is entitled to payment for the translation services provided to applicant. The issue is the amount of the payment given the fact that the translation services are not related to medical treatment.

The provisions of the Labor Code and the Administrative Director (AD) rules regarding interpreter services needed for medical treatment are different from the provisions as to interpreter services provided in other settings. Also, the billing and payment requirements in section 4603.2 are in regard to "A provider of services provided pursuant to section 4600, including but not limited to ... interpreters ..." (Lab. Code, § 4603.2(b)(1)(A).)

Section 5811 states:

. . . . 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 to the actual amount to be paid for interpreter services, the provisions of AD Rule 9795.3 are relevant to the issue herein:

**(a) Fees for services performed by a certified or provisionally certified interpreter, upon request of an employee who does not proficiently speak or understand the English language, shall be paid by the claims administrator for any of the following events: ...**(4) A deposition of an injured employee or any person claiming benefits as a dependent of an injured employee, at the request of the claims administrator, including the following related events: (i) Preparation of the deponent immediately prior to the deposition, (ii) Reading of a deposition to a deponent prior to a signing, and, and (iii) Reading of prior volumes to a deponent in preparation for a continuation of a deposition. (5) An appeals board hearing, or arbitration. (6) A conference held by an information and assistance officer ... to assist in resolving a dispute between an injured employee and a claims administrator. (7) **Other 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.**

(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. ... (2) For all other events listed under subdivision (a), interpreter fees shall be billed and paid at the rate of \$11.25 per quarter hour or portion thereof, with a minimum payment of two hours, or the market rate, whichever is greater. ...

(Cal. Code Regs., tit. 8, § 9795.3 (bold added).)

Petitioner contends that the rate of reimbursement for section 5811 interpreter services is the higher of the established market rate or the superior court half/full day rate in the county where the services were provided and cites the above AD Rule 9795.3(b)(1) in support of his position.

Here, providing translation services for an applicant at a board hearing, deposition, conference, or arbitration, is similar to providing translation services for the reading of a C&R. These are all proceedings where an applicant with limited English language abilities has a civil right to be provided with interpretation services in order to fully understand the document and/or



proceedings that he is signing and/or participating in. We agree with petitioner that the correct rate for his services falls within AD Rule 9795.3(b)(1).

Thus, we grant the Petition, rescind the F&O and return this matter to the trial court for proceedings consistent with this opinion.

Since we are rescinding the decision and returning the matter to the WCJ to consider the issue of defendant's liability for interpreting fees under section 5811 in the first instance, we do not reach the issue of whether cost petitioner is entitled to reasonable expenses pursuant to section 5813.

Accordingly, we grant reconsideration, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of July 11, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 11, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**October 16, 2024**

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

**FELIX VASQUEZ  
LAW OFFICES OF GEORGE E. CORSON IV  
AM LIEN SOLUTIONS**

**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*