

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

**MEHDI PAKDAMANIAN, *Applicant***

**vs.**

**FUJIFILM NORTH AMERICA CORP.; TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA; SUBSEQUENT INJURIES BENEFITS TRUST FUND,  
*Defendants***

**Adjudication Number: ADJ13250134  
Van Nuys District Office**

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

Lien claimant Ghitterman, Ghitterman & Feld, who has associated with Torkan & Fanzipour to act as applicant's counsel, and who is apparently primarily responsible in representing applicant in the proceedings for Subsequent Injuries Benefits Trust Fund (SIBTF) benefits, seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Award of August 12, 2024<sup>1</sup>, wherein, as relevant to the instant Petition, lien claimant was awarded an attorneys' fee of 15% of applicant's recovery. In this matter, in a Compromise and Release approved on February 9, 2023, in exchange for \$65,000, applicant settled his claim against his employer's insurance carrier that while employed on January 27, 2020 (ADJ13444375) and during a cumulative period ending February 10, 2020 (ADJ13250134), applicant sustained industrial injuries to his knee. Shortly thereafter, applicant filed for SIBTF benefits. Applicant and the SIBTF entered into Stipulations with Request for Award, wherein there was a stipulation that applicant's subsequent industrial injury in combination with preexisting disability had caused permanent total (100%) disability. Petitioning lien claimant sought an attorneys' fee of 25%.

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<sup>1</sup> The WCJ concurrently issued the Award and a document captioned "Order Reducing Attorney's Fees." Despite the title of this document, the Order Reducing Attorney's Fees appears to be an opinion on decision explaining the grounds upon which the determination of the attorneys' fees was made. (Lab. Code, § 5313.) The title is also incorrect because lien claimant was never awarded attorney's fees greater than 15 percent, so attorneys' fees were never reduced. Rather, lien claimant was not awarded the full amount that it requested.

On July 2, 2024, the WCJ issued an Award which awarded permanent total disability indemnity in accordance with the Stipulations but awarded an attorneys' fee of 15% rather than the 25% requested. No explanation was given by the WCJ regarding the attorneys' fee award. On July 24, 2024, lien claimant filed a Petition for Reconsideration of the Award of attorneys' fees. On July 30, 2024, pursuant to Appeals Board Rule 10961(b) (Cal. Code Regs, tit. 8, § 10961, subd. (b)), the WCJ rescinded the Award of July 2, 2024 and issued a Notice of Intention to award an attorneys' fee of 15% if good cause to award a higher attorneys' fee was not shown by lien claimant by written objection due August 19, 2024. Lien claimant filed its Objection on August 5, 2024, and on August 12, 2024 the WCJ filed the Award under review still awarding a 15% attorneys' fee, but this time accompanied by the rationale behind the decision.

Lien claimant contends that the WCJ erred in awarding an attorneys' fee of 15%. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration and amend the WCJ's decision so that an evidentiary hearing may take place to afford the lien claimant to present additional evidence regarding an increased attorneys' fee.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 case was transmitted to the Appeals Board on August 23, 2024, and 60 days from the date of transmission is October 22, 2024. This decision is issued by or on October 22, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 23, 2024, and the case was transmitted to the Appeals Board on August 23, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 23, 2024.

Turning to the merits, while we see no error in the WCJ’s decision on the existing record, we will grant reconsideration and amend the WCJ’s decision in order to afford applicant’s counsel the opportunity to develop the evidentiary record on the issue of an increase of the award of attorneys’ fees. In the further proceedings, applicant’s counsel may present documentary evidence and testimony in an evidentiary hearing so that the WCJ may decide the issue on a more complete record based on the factors set forth in Labor Code § 4906(a) and WCAB Rule 10844 (Cal. Code Regs., tit. 8, § 10844). Applicant should be granted notice of the hearing and the notice required by WCAB Rule 10842 (Cal. Code Regs., tit. 8, § 10842). Pending the WCJ’s decision on an attorney fee increase, SIBTF should continue to pay benefits and attorneys’ fees as currently required by the Award.

For the foregoing reasons,

**IT IS ORDERED** that Lien Claimant Ghitterman, Ghitterman & Feld's Petition for Reconsideration of the Award of August 12, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Award of August 12, 2024 is **AMENDED** as follows:

**AWARD**

**AN AWARD** is made in favor of **MEHDI PAKDAMANIAN** against the **SUBSEQUENT INJURIES BENEFITS TRUST FUND** of:

(A) Permanent disability and life pension in accordance with the attached addendum.

a. Less 15% payable to **Ghitterman, Ghitterman & Feld** for the reasonable value of services rendered. The issue of an increase of the attorneys' fee is deferred pending further development of the record, hearing, and decision by the WCJ.

(B) Less credit as provided in paragraph 7 of the addendum.

(C) Payment from the Subsequent Injuries Benefits Trust Fund is contingent upon the availability of funds to pay this claim and the authority to make payments.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**October 22, 2024**

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

**MEHDI PAKDAMANIAN  
GHITTERMAN, GHITTERMAN & FELD  
TORKAN & FANZIPOUR  
DIR, OFFICE OF THE DIRECTOR, LEGAL UNIT**

**DW/oo**

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