

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

VICTOR NICOLAS ALOR LOPEZ, *Applicant*

vs.

**ALLIED UNIVERSAL, Permissibly Self-Insured,
administered by ESIS, *Defendants***

**Adjudication Number: ADJ14289195
Van Nuys District Office**

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

Applicant's attorney, Robert Ozeran and the Law Offices of Robert Ozeran, seeks reconsideration of the Findings and Award (F&A) issued by a workers' compensation arbitrator (WCA) on February 28, 2024, wherein the WCA denied applicant's attorney's petition for attorney's fees associated with the review of applicant's deposition, and awarded sanctions against applicant's attorney of \$990.00 to be paid to defendant's attorneys McNamara and Drass for their appearance at the proceedings and \$600.00 to be paid to the "Ross Pike Memorial Trust" for costs associated with the proceedings.

Applicant's attorney contends that the WCA erred in not awarding the additional attorney fees pursuant to Labor Code section 5710¹, and that applicant's attorney did not engage in sanctionable conduct.

We received an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we deny reconsideration.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We have considered the allegations of the Petition for Reconsideration, the Supplemental Petition,² the Answer and the contents of the Report with respect thereto. Based on our review of the record, we will grant reconsideration and rescind the F&A and substitute a new F&O that finds that applicant's attorney's request for additional attorney's fees is denied and that defendant's attorney's and the Ross Pike Trust's requests for attorney's fees and costs are denied, and order that applicant's attorneys, defendant's attorneys and the Ross Pike Trust take nothing.

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 case was transmitted to the Appeals Board on July 15, 2024, and 60 days from the date of transmission is September 13, 2024. This decision is issued by or on September 13, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

² Applicant's attorney filed a document entitled "Applicant's Response to Recommendation and Report." (Supplemental Petition) Pursuant to our authority, we accept the pleading and have reviewed the Supplemental Petition herein. (Cal. Code Regs., tit. 8, § 10964.) We remind applicant's current attorney that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (Id.) We expect applicant's attorney to comply with this requirement in the future.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation arbitrator, the Report was served on March 24, 2024, and the case was transmitted to the Appeals Board on July 15, 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 July 15, 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 July 15, 2024.

II.

Section 5813(a) provides for sanctions for “bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) These 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.” (Cal. Code Regs., tit. 8, § 10421.) Here, as explained further below, we do not agree that applicant’s attorney’s petition seeking fees pursuant to section 5710 was indisputably without merit or otherwise displayed sanctionable conduct. Sanctions are designed to punish litigation abuses and to provide the court a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers’ Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) An argument that is unmeritorious is not necessarily frivolous, which can be defined as “not having any serious purpose or value”. (See “Frivolous”, Google Dictionary, retrieved September 13, 2024, from <http://www.google.com>.)

Section 5710 provides, in pertinent part, as follows:

- (a) The appeals board, a workers’ compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010)

of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. . . . (b) If the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits: (1) All reasonable expenses of transportation, meals, and lodging incident to the deposition. (2) Reimbursement for any loss of wages incurred during attendance at the deposition. (3) One copy of the transcript of the deposition, without cost. (4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer. . . (§ 5710 [Emphasis added].)

Hence, the WCA has authority to award applicant reasonable attorney's fees incurred by reason of his deposition. (§ 5710.) Consequently, we do not agree that applicant's attorney's conduct rose to the level of sanctionable conduct under section 5813. We specifically note that reimbursement for attorney's fees associated with the review of applicant's deposition with applicant may be a recoverable expense especially where the applicant is not English speaking.

However, based on our review of the record, we do not find any error in the WCA's finding that applicant's attorney has failed to satisfy his burden of proving that he is entitled to recovery of section 5710 fees in this case. We first observe that applicant's attorney did not appear at the proceedings; instead, he sent another attorney in his place. The transcript of the proceedings provides that only seven exhibits for applicant (Exhibits 1 to 7) were entered into the evidentiary record. (Transcript of Proceedings, February 15, 2024 (Transcript), p. 8:5-17.) When the arbitrator asked if there were any other exhibits that applicant's attorney wished to admit at the hearing, applicant's attorney declined. (Transcript, p. 8 15-17.)

Thus, with respect to applicant's allegation that he should receive payment for the time spent with applicant, the only evidence in the record is the bill sent to defendant. (Exhibit 4.) As noted above, applicant's attorney was not present at the proceedings, so that he could not provide testimony about reimbursement for the time spent with applicant. And while we note that applicant's attorney has affirmed under penalty of perjury in his petition for attorney's fee that he spent the time, we could find no additional evidence that provides a basis for the overturning the WCA's decision. Consequently, we agree with the conclusion of the WCA that the record fails to support the request for payment for one hour of attorney time and one-half hour of legal staff time reviewing the deposition transcript. Therefore, we are unable to discern error in the WCA's

finding that applicant is not entitled to additional attorney's fees for review of the deposition transcript.

Accordingly, we grant applicant attorney's Petition for Reconsideration and rescind the F&A and substitute a new F&O that finds applicant's attorney's request for additional attorney's fees is denied and that defendant's attorney's and the Ross Pike Trust's requests for attorney's fees and costs are denied, and order that applicant's attorneys, defendant's attorneys and the Ross Pike Trust take nothing.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Award of February 28, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of February 28, 2024 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant's attorneys Robert Ozeran and the Law Offices of Robert Ozeran failed to meet their burden of proof that they are entitled to additional Labor Code section 5710 fees.
2. Defendant's attorneys McNamara and Drass's petition for costs and sanctions for appearance at the proceedings is denied.
3. Ross Pike Memorial Trust's request for costs for the proceedings is denied.

ORDERS

- a. Applicant’s attorneys Robert Ozeran and the Law Offices of Robert Ozeran shall take nothing by way of their petition for additional Labor Code 5710 fees.
- b. Defendant’s attorneys McNamara and Drass shall take nothing by way of their petition for costs and sanctions for appearance at the proceedings.
- c. Ross Pike Memorial Trust shall take nothing by way of their request for costs for the proceedings.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 13, 2024

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

**VICTOR NICOLAS ALOR LOPEZ
ROBERT OZERAN
MCNAMARA DRASS
LEONARD SILBERMAN, ARBITRATOR**

LN/md

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