

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

ALBERT HUNNICUTT, *Applicant*

vs.

**UNIFIED GROCERS;
SECURITY NATIONAL INSURANCE COMPANY, C/O AMTRUST, *Defendants***

**Adjudication Numbers: ADJ10916721, ADJ10915440, ADJ11026183
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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.

I.

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, 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 February 3, 2025, and 60 days from the date of transmission is April 4, 2025. This decision is issued by or on April 4, 2025, 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 February 3, 2025, and the case was transmitted to the Appeals Board on February 3, 2025. 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 3, 2025.

II.

The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants’ attorneys. (*Vierra v. Workers’ Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1149 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) In calculating attorney’s fees, our basic statutory command is that the fees awarded must be “reasonable.” (Lab. Code, §§ 4903, 4906(a) & (d); Cal. Code Regs., tit. 8, § 10844.) Pursuant to section 4906, in establishing what constitutes a “reasonable” attorney’s fee, the WCJ must consider four factors: (1) the responsibility assumed by the attorney; (2) the care exercised by the attorney; (3) the time involved; and (4) the results obtained. (Lab. Code, § 4906(d); see Cal. Code Regs., tit. 8, § 10844.) Here, the WCJ explained

how he considered those factors in rendering his decision. Moreover, a WCJ has broad discretion in determining a reasonable fee, and we see no abuse of discretion by the WCJ in this case. Thus, we will not disturb the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO , COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 4, 2025

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

**ALBERT HUNNICUTT
LAW OFFICE OF ROBERT PALTY
LLARENA, MURDOCK, LOPEZ & AZIZAD**

JMR/pm

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

STATE OF CALIFORNIA

**Division of Workers' Compensation
Workers' Compensation Appeals Board**

Case Numbers ADJ10916721 (Master File); ADJ10915440; ADJ11026183

ALBERT HUNNICUTT

v.

**UNITED GROCERS
SECURITY NATIONAL
INSURANCE COMPANY,
c/o AMTRUST**

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

**I
INTRODUCTION**

Applicant Albert Hunnicutt has filed a timely, verified petition for reconsideration of the December 30, 2024 Joint Findings and Order Re: Attorney Fees, which found that his former attorney, Robert Palty, is entitled to a reasonable attorney fee of \$7,500.00 from the \$118,102.50 of permanent disability awarded on July 19, 2024. The petition alleges generally that the undersigned acted without or in excess of his powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award. More specifically, the petition alleges that the decision was "based on the lien claimant Mr. Palty's professional responsibility and not any evidence" (Petition, p.1). The petition points out that there was an agreement to a fee of 15 percent, but this requires and includes a professional responsibility to represent clients. Mr. Hunnicutt believed Mr. Palty was negligent in preparing the stipulation and award that was ultimately not filed, and "because he did not provide NRLB investigation reports to the judge or to assist the insurance company investigation to decide claim status" (Id.). The petition also alleges that a child support lien was not timely paid by the insurance carrier, causing Mr. Hunnicutt to pay extra fees and refinance his home. The petition also points out that Mr. Palty did not take the case in chief to trial and asserts that Mr. Palty failed to account for the 106 hours that he claimed to have spent on the case.

There appears to be no answer to the petition.

The petition for reconsideration is dated January 13, 2025. Because the undersigned was on vacation when the petition was filed and through January 31 thereafter, this report is being

transmitted to the Reconsideration Unit on Monday, February 3, 2025. Under Labor Code Section 5909, the Reconsideration Unit should have an additional 60 days from the transmission of this report to act on the petition.

II FACTS

On October 29, 2024, the parties to this case, including applicant's former attorney of record Robert Palty, submitted for a decision the issue of Mr. Palty's lien claim against compensation for reasonable attorney fees, payable from 15% of the \$108,102.50 in gross permanent disability that was ordered to be withheld for this purpose in the now-final Joint Findings and Award of July 19, 2024.

All documents filed in this case are stored in the Workers' Compensation Appeals Board (WCAB) filing system called FileNet. Looking in FileNet in the Master File in this case, case number ADJ10916721, shows that Mr. Palty filed an application for adjudication to open the case on June 26, 2017. This was filed with a fee disclosure statement, Labor Code Section 4906(g) declaration, and Venue Verification, all previously signed on June 22, 2017. So, based on the existence of these documents in the WCAB file, it is clear that Mr. Palty was representing Mr. Hunnicutt by June 22, 2017, when the earliest documents were signed.

Less than two months later, on August 15, 2017, the Employment Development Department (EDD) filed a lien claim and related statements. The next month, on September 14, 2017, the Los Angeles County Child Support Services Department (CSSD) filed a lien claim as well.

An answer to the application was filed on behalf of defendants by the law firm of Shaw Jacobsmeier on March 23, 2018. The WCAB file shows that Mr. Palty filed a Declaration of Readiness to request a hearing on May 16, 2019, August 9, 2019, June 9, 2020, and Minutes of Hearing show that hearings were held on June 26, 2019, November 7, 2019, and January 27, 2020, before Mr. Palty petitioned to be relieved as attorney of record on March 30, 2020, which was granted by an Order Dismissing Attorney of Record Robert Palty for Applicant dated April 28, 2020. Mr. Palty filed a notice and request for allowance of lien dated May 20, 2020, seeking to be paid attorney fees from any recovery by Mr. Hunnicutt.

During the period in which Mr. Palty represented Mr. Hunnicutt, Agreed Medical Evaluator Alexander Angerman saw Mr. Hunnicutt and his report of October 26, 2017 was filed

in FileNet. Dr. Angerman's opinions were ultimately used as the basis for the July 19, 2024 Findings and Award.

After Mr. Palty was permitted to stop representing Mr. Hunnicutt, further hearings were held on September 4, 2020, November 3, 2022, April 27, 2023, July 20, 2023, October 2, 2023, December 27, 2023, March 26, 2024, and May 7, 2024. Mr. Hunnicutt had to represent himself at these hearings, including the trial of May 7, 2024, where he testified on his own behalf

Both Mr. Palty and Mr. Hunnicutt, as well as defense attorney Phuong Pham, offered testimony at the October 29, 2024 trial on the sole issue of Mr. Palty's lien claim for fees. Mr. Palty explained that he spent over 106 hours working on Mr. Hunnicutt's case. Up to the time he was relieved as the attorney of record, he tried everything he could to settle the case. On July 19, 2019 he reached an agreement to settle the case by stipulations with request for award. He and Mr. Hunnicutt signed the stipulations and emailed them to defense attorney Saul Soulima the next day, on July 20, 2017. Mr. Hunnicutt then left messages for Mr. Palty, and showed up in his office, saying he did not want to settle. Mr. Hunnicutt did not give any reason for refusing to settle other than that he just changed his mind. Mr. Soulima was at first reluctant to not file the settlement, but Mr. Palty convinced him not to do it.

The stipulations signed by Mr. Palty are not significantly different than the findings and award that were later issued in this case, except that the *Western Growers* case was applied to increase the percentage of permanent disability by a very small amount in the findings and award. Mr. Hunnicutt convinced Judge Pollak that his condition had worsened, and that he should go back to the AME instead of to trial.

Mr. Palty testified that he had no choice but to drop Mr. Hunnicutt as a client, because Mr. Hunnicutt was abusive to Mr. Palty's staff. He said that Mr. Hunnicutt called in the middle of the night. One of Mr. Palty's staff members threatened to resign. Mr. Palty did not include in his accounting of hours the amount of time he spent getting Mr. Hunnicutt's file to him.

Mr. Palty noted that the findings and award was based on the AME, Dr. Angerman, that he obtained for the case by agreement with the defense attorney, and that an AME can only be obtained through an attorney, so this is not something that Mr. Hunnicutt could have done for himself. Mr. Palty also pointed out that Mr. Hunnicutt used a QME after Mr. Palty stopped representing him, and the QME found less whole person impairment than the AME did.

When asked by Mr. Hunnicutt, Mr. Palty agreed that Mr. Hunnicutt was not terminated, he was laid off. Mr. Palty didn't have documents from the insurance company in front of him to reference exactly what they said about whether Mr. Hunnicutt was terminated. He recalled that Mr. Hunnicutt's case was denied at first, then accepted. Mr. Palty believes the insurance company did not have Mr. Hunnicutt terminated when they denied his claim. (Mr. Hunnicutt strongly disagreed with this statement.)

Mr. Palty replied that he has no idea what Mr. Hunnicutt is talking about when Mr. Hunnicutt asked him whether he recalls a workers' compensation judge saying that Mr. Hunnicutt was "in the back seat of the car" while Mr. Palty and the defense attorney were "in the driver's seat." Mr. Palty recalled that Mr. Hunnicutt gave him NLRB documents, but he thought that they were irrelevant, so Mr. Palty did not give them to the judge. Mr. Hunnicutt wanted the insurance to pay for child support. Mr. Palty thinks that Mr. Hunnicutt paid it, and the insurance company paid Mr. Hunnicutt.

Upon further questioning about whether Mr. Hunnicutt was terminated or laid off, Mr. Palty responded that he actually doesn't remember whether Mr. Hunnicutt was terminated or laid off. This statement upset Mr. Hunnicutt.

When it was Mr. Hunnicutt's turn to testify, he explained that he has a learning disability. He sees words backwards and has to spell them out. During his testimony, a voice was heard over the telephone line, apparently speaking to Mr. Hunnicutt. When Mr. Palty asked about this, Mr. Hunnicutt explained that no one was in the room with him while he was testifying, and the voice that Mr. Palty heard with Mr. Hunnicutt was from his iPad, which was helping him by reading words out loud to him.

Mr. Hunnicutt asserts that Mr. Palty did not provide sufficient evidence of his services to support his lien claim for the fee that he is requesting. According to Mr. Hunnicutt, Mr. Palty is entitled only to a minimal fee, and not 15%, because he has provided insufficient information regarding the following things: (1) filing the application; (2) hours spent during initial intake; (3) how many additional phone calls were made; (4) any third-party communications; (5) the number of communications and period in which they were made; (6) confirmation of investigation, and of gathering and processing all available information in this case; (7) description of settlement negotiations; (8) the overall case not being settled; and (9) body parts allegedly missing from the proposed stipulations and request for award. Mr. Hunnicutt noted that in reviewing the court file,

the stipulations and award document and negotiations by Robert Palty did not include all of the body parts, specifically both elbows, so he believes that Mr. Palty was negligent in preparing this stipulation on his behalf. Mr. Hunnicutt reasoned that because Mr. Palty was negligent in preparation of the stipulations, he might have been negligent in other respects as well. Based on this, Mr. Hunnicutt maintains that Mr. Palty is not entitled to all the fees that were withheld from the findings and award.

Mr. Hunnicutt noted that Mr. Palty represented him for 1,040 days, from June 22, 2017 to April 7, 2020. Mr. Hunnicutt believes that Mr. Palty is entitled to no more than \$4,800 for his services during that period.

Mr. Hunnicutt believes that both elbows were not included in the stipulations and request for award. He believes settlement documents say "elbow" and not "both elbows." Mr. Palty referenced where the stipulations say, "both elbows," but Mr. Hunnicutt believes that the relevant documents said elbow, and not both elbows.

Based on time, Mr. Hunnicutt thinks that \$3,719.25 would be an appropriate amount for Mr. Palty's fee. Mr. Hunnicutt is not a lawyer, but this is what he calculated as an appropriate fee. This is not the full amount of the fee withheld from the findings and award, because Mr. Palty did not provide enough information to justify a full fee.

Mr. Hunnicutt acknowledges that he heard Mr. Palty's testimony that he spent 106 hours on the case. Mr. Hunnicutt replied that Mr. Palty quit on him during the pandemic for no reason. Mr. Hunnicutt does not believe it was relevant whether he was calling Mr. Palty's office in the middle of the night. Mr. Hunnicutt believes he never abused Mr. Palty's staff.

Mr. Hunnicutt pointed out that Mr. Palty didn't give NLRB documents to the judge as Mr. Hunnicutt requested. Mr. Hunnicutt has papers from the union and the company saying he was laid off. Mr. Palty refused to give this paperwork to the workers' compensation judge. The judge said that the attorneys were in the front seat of the car, and that Mr. Hunnicutt was in the back seat and didn't know where they were going. Another time a judge said to his attorney, "I bet you a dollar he knows."

Mr. Hunnicutt testified that he worked seven days a week, doing double shifts. Now his whole system is messed up, Mr. Hunnicutt believes Mr. Palty didn't do anything for him. He didn't tell Mr. Hunnicutt until three years later that they said Mr. Hunnicutt was terminated. Mr. Palty didn't tell Mr. Hunnicutt that he was going to court, and Mr. Hunnicutt believes that when Mr.

Palty went to court, he went against Mr. Hunnicutt. Mr. Palty said nothing when they tried to railroad Mr. Hunnicutt. Mr. Palty had Mr. Hunnicutt in the wrong network for years, and didn't tell Mr. Hunnicutt. Mr. Hunnicutt lost his driver's license and had to take the bus. He was losing everything. Mr. Hunnicutt testified that it was Mr. Pally who abused him, and not the other way around. Mr. Hunnicutt never had another lawyer. He thinks that whether he "abused" the defense attorney is irrelevant.

Mr. Hunnicutt noted that his file is huge, and filled several CDs. Mr. Hunnicutt had 132 coworkers, and he was laid off. Mr. Hunnicutt was not abusive. He never abused anyone. He doesn't recall that. He doesn't threaten anyone. "That's not me," he said.

Defense attorney Phuong Pham was called as a rebuttal witness on behalf of lien claimant Robert Palty. She testified that is the second defense attorney on Mr. Hunnicutt's case. She didn't recall seeing the billing statements of the previous defense attorney. There were probably 6 to 10 banker's boxes of records in Mr. Hunnicutt's case. It took her about nine hours to review them.

Mr. Palty's estimate that he spent 106 hours on Mr. Hunnicutt's case seemed about right to Ms. Pham, based on the size of the file. Applicants' attorneys were being paid approximately \$350 to \$400 per hour at the time that Mr. Palty was representing Mr. Hunnicutt, Ms. Pham thinks. Ms. Pham agrees that \$400 per hour seems like an appropriate rate for Mr. Palty. Mr. Hunnicutt did threaten to come to Ms. Pham's office, and Ms. Pham recalls that because of this they decided to shut down the office.

When asked by Mr. Hunnicutt whether he threatened her, Ms. Pham explained that she was not saying that Mr. Hunnicutt ever threatened to do something at her office. She just recalled that her assistant said that Mr. Hunnicutt had called, that he was upset, and that he wanted to come to the office to discuss his claim. Mr. Hunnicutt was residing in California at the time. They decided to shut down the office.

Mr. Hunnicutt's claim was accepted, according to Ms. Pham. There was an initial denial based on the claim being post-termination, but when they later discovered that Mr. Hunnicutt was not terminated, but laid off, the claim was accepted, and they went to an AME.

Ms. Pham couldn't say whether there were prior medical records before Mr. Hunnicutt was laid off, and such events took place before Ms. Pham had the file. Ms. Pham does not recall telling Mr. Hunnicutt, "this is all your lawyer's fault." She did not tell him that no formal investigation was made into the circumstances surrounding him losing his job.

Following the trial on the issue of attorney fees, a Joint Findings and Order Re: Attorney Fees was issued on December 30, 2024. The findings noted the award in the case in chief dated July 19, 2024, which is now final, which awarded permanent disability indemnity of 67% to applicant Albert Hunnicutt, less credit for sums paid. Fifteen percent (15%) of the total sum of \$118,102.50 that was awarded as permanent disability under Labor Code Section 4658 was ordered to be withheld by defendants pending resolution of any claims for an attorney fee by applicant's former attorney of record, Robert Palty.

Taking into account that Mr. Palty represented Mr. Hunnicutt for approximately three-sevenths of the time between application and award, laid some groundwork for the results ultimately obtained by Mr. Hunnicutt through trial, exercised customary responsibility, and demonstrated a level of care that was not atypical for representatives of injured workers but also not quite up to Mr. Hunnicutt's demands, it was found that a reasonable attorney fee for applicant's former attorney is \$7,500.00.

Mr. Hunnicutt has filed a timely, verified petition for reconsideration of the decision to award his former attorney \$7,500.00 in fees from his award. The petition alleges generally that the undersigned acted without or in excess of his powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award. More specifically, the petition alleges that the decision was "based on the lien claimant Mr. Palty's professional responsibility and not any evidence" (Petition, p. 1). The petition points out that there was an agreement to a fee of 15 percent, but this requires and includes a professional responsibility to represent clients. Mr. Hunnicutt believed Mr. Palty was negligent in preparing the stipulation and award that was ultimately not filed, and "because he did not provide NRLB investigation reports to the judge or to assist the insurance company investigation to decide claim status" (Id.). The petition also alleges that a child support lien was not timely paid by the insurance carrier, causing Mr. Hunnicutt to pay extra fees and refinance his home. The petition also points out that Mr. Palty did not take the case in chief to trial, and asserts that Mr. Palty failed to account for the 106 hours that he claimed to have spent on the case.

III DISCUSSION

As noted in the opinion on decision, it seems clear from the testimony of all concerned that the relationship between Mr. Hunnicutt and his attorney was not an easy one. Mr. Palty decided to

stop representing Mr. Hunnicutt. The opinion noted that in the case of *Hensel v. Cohen* (1984) 155 Cal.App.3d 563, 567, the Second District Court of Appeal addressed "the right of an attorney on a contingent fee contract to assert a lien upon amounts recovered by a former client when the attorney discharges the client and is unable to point to some action of the client which provided the attorney with justifiable cause for abandonment of the case." The Court in *Hensel*, which involved a civil personal injury case as opposed to a workers' compensation claim, noted that "[a]s a general rule, other jurisdictions have allowed recovery for services already rendered only when the attorney has justifiable cause for withdrawing from the case. They have denied any compensation when the attorney has voluntarily abandoned the case without good cause." (*Hensel*, cited above at page 567, citing 7 Am) Jur.2d, Attorneys at Law, Sections 262-266, pages 298-303, and the Annotation, *Compensation/or Attorney Who Withdraws* (1978) 88 A.L.R.3d 246, Section 2 [which was since replaced by 53 A.L.R.5th 287]).

The question in the *Hensel* case, and in other cases contemplating whether an attorney may assert a lien on the recovery in a case in which representation was terminated at the attorney's request, is whether the termination of services was justified. Justification can include the client's refusal to accept a settlement offer which had been recommended by the attorney, or where any other reason makes it unreasonably difficult for counsel to represent the client effectively (See 53 A.L.R.5th 287, cited above).

In this case. Mr. Palty did testify that Mr. Hunnicutt had refused to accept a settlement offer that he had recommended. Also, it appears that Mr. Palty's petition to be relieved as the attorney of record for Mr. Hunnicutt was granted on the basis that it had become unreasonably difficult for him to represent his client effectively. So, Mr. Palty should be entitled to assert a lien for fees.

As for the amount of those fees, California Labor Code Section 4903(a) allows liens for a "reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith." Section 4906(a) allows the WCAB to determine what constitutes a reasonable attorney fee, and Section 4906(d) provides that "[i]n establishing a reasonable attorney's fee, consideration shall be given to the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained." These four criteria-responsibility, care, time, and results-are also found in California Code of Regulations, Title 8, Section I 0844.

In most situations, the results determine the amount of a fee, with most injured workers' attorneys receiving 15% of what they obtain for a client in a settlement or in an award after trial. The amount of time spent is typically not used to either increase or decrease the customary 15% fee, but is often used in a formula to divide a fee between current and former attorneys, where the attorney who completed a trial award or settlement gets about a third of the fees, and previous attorneys get to divide the rest of the fees by the number of days spent officially representing the injured worker as attorney of record. Like the idea of a fee that is equal to 15% of results, the idea of former attorneys dividing that fee pro rata by time is also not in any statute or regulation; it is just common practice. In cases where these customs based on results and time do not seem to be enough to produce fair results, the other two criteria in Labor Code Section 4906(d) are used-care and responsibility.

While Mr. Hunnicutt and Mr. Palty disagreed about what was important in his case, it cannot be said that Mr. Palty did not exercise due care and responsibility in securing a trustworthy Agreed Medical Evaluator for his client, followed by a proposed stipulated award, which was then followed by backing out of the stipulated award at Mr. Hunnicutt's insistence.

On the other hand, Mr. Hunnicutt attended more hearings than his former attorney in this case and spent more time representing himself than he spent being represented by Mr. Palty. Although Mr. Hunnicutt cannot collect a fee for his time because he is not an attorney, the proportion of Mr. Palty's contribution to time, care, responsibility, and results requires some examination of how much Mr. Hunnicutt contributed in these areas. Even though Mr. Hunnicutt was hindered by a learning disability and a lack of legal experience, he indeed did increase the amount of the award from that which Mr. Palty had recommended to him after four more years of pursuing his case.

Unfortunately, it is out of the question to order that Mr. Palty be paid hourly fees based on his valuation of services at \$400 per hour for 106 hours of work. First, injured workers' attorneys are paid a contingent fee, and not an hourly rate, apart from when they are paid by defendants under Labor Code Section 5710 for the limited time spent on attending a deposition. The fee in question in this case is not a deposition fee; it is the fee on an award. Second, the amount withheld from the award for fees represents what the undersigned found was the maximum reasonable amount of fees on the award, 15%, assuming full representation, which there was not in this case. A fee based on Mr. Palty's deposition fee rate multiplied by an estimation of hours spent yields a

result that is more than twice the amount the Court allowed on the settlement, which would not have been exceeded even if the award had been obtained solely by Mr. Palty's efforts.

The opinion on decision regarding Mr. Palty's fees took all four of the criteria in Labor Code Section 4906(d) into consideration: Mr. Palty's *time* of just under three years (June 22, 2017 to April 28, 2020) out of approximately seven years from case inception to trial award, along with the fact that while he did not directly obtain the results, he certainly contributed to them through the selection of the AME, as well as the responsibility shown by Mr. Palty in obtaining the opinions of the AME and doing everything required to move the case toward a settlement, which may be mitigated somewhat by the level of *care* exercised, which addressed basic legal requirements for compensation but did not satisfy all of Mr. Hunnicutt's concerns-which perhaps could not be fully satisfied, given the desperation of his situation and the limited ability of the workers' compensation system to do something about it. Considering all things, it was found that a reasonable attorney fee for Robert Palty is \$7,500.00 of the withheld sum of \$17,715.38. This is considerably more than would be allowed by a customary formula for division of fees, and more than the amount requested by Mr. Hunnicutt as an allowance, but also considerably less than Mr. Palty would have liked to receive or what he would have received if the law and circumstances permitted payment of his hourly market value out of Mr. Hunnicutt's benefits.

The opinion on decision noted that its determination regarding Mr. Palty's fee is likely to be just about as disappointing to both sides as everything else that has transpired, but seems to be the right balance for approximately three-sevenths of the time, some groundwork laid for the results, moderate responsibility, and care that was not atypical but not quite up to Mr. Hunnicutt's demands.

IV RECOMMENDATION

It is respectfully recommended that the petition be denied.

DATE: 2/3/25

Clint Feddersen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE