

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

JAIME DELGADO, *Applicant*

vs.

**MYERS CONTAINER, LLC;
OLD REPUBLIC INSURANCE COMPANY, administered by GALLAGHER BASSETT,
*Defendants***

**Adjudication Numbers: ADJ14369406, ADJ14369412
San Francisco 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 and Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration. The WCJ has broad discretion in determining a reasonable fee. (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1149-1150 [72 Cal.Comp.Cases 1128].) We have independently reviewed the record and find no good cause to disturb the WCJ's decision.

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 June 17, 2025, and 60 days from the date of transmission is Saturday, August 16, 2025. The next business day that is 60 days from the date of transmission is Monday, August 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, August 18, 2025, 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 June 17, 2025, and the case was transmitted to the Appeals Board on June 17, 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 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 June 17, 2025.

¹ 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.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 18, 2025

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

**JAIME DELGADO
BUZZELL LAW GROUP
D'ANDRE LAW**

JMR/abs

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

**Report and Recommendation on
Petition for Reconsideration and Notice
of Transmission to WCAB**

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein

Introduction

On June 9, 2025 applicant filed a Petition for Reconsideration of my May 27, 2025 Findings and Award, served on all parties on May 28, 2025.

Petitioner asserts that the order, decision or award was procured by fraud, the evidence does not justify the findings of fact, that petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing and that the findings of fact do not support the order, decision or award. The petition was timely filed and accompanied by the verification required under Labor Code section 5902 and Regulation 10940(c). To date, I am not aware of an answer having been filed by lien claimant.

Facts

Petitioner, Jaime Delgado, signed an attorney fee agreement with Buzzell Law Group on March 8, 2021. On March 12, 2021, the Buzzell Law Group filed an application on Mr. Delgado's behalf alleging he sustained a specific injury of December 15, 2020 to the arms and shoulders while employed by Container Management. This was assigned WCAB No. ADJ14369406. A second application was filed the same date alleging Mr. Delgado sustained a cumulative trauma for the period of December 15, 2017 through December 15, 2020 to the arms and shoulders, also while employed by Container Management. This was assigned WCAB Case No. 14369412.

Mr. Delgado signed a notice of dismissal of attorney on June 21, 2023. The Buzzell Law Group filed a lien on June 21, 2023.

Mr. Delgado, representing himself, proceeded to trial on July 22, 2024 on the issues of injury arising out of and in the course of employment, temporary disability, permanent disability, and the need for further medical care. Following that trial, I issued my Amended Findings and Award on August 27, 2024. In WCAB Case no. ADJ14369406, I found, in part, that applicant's injury caused permanent disability of 13%, entitling applicant to 42.25 weeks of disability indemnity payable at the rate of \$290 per week in the total sum of \$12,252.50. I also ordered 15% of that amount, or \$1,837.88, to be held in trust pending resolution of the lien of Buzzell Law Group. In WCAB Case no. ADJ14369412, I found, in part, that applicant's injury caused permanent disability of 5%, entitling applicant to 15 weeks of disability indemnity payable at the rate of \$290 a week in the total sum of \$4,350.50. I also ordered 15% of that amount, or \$652.57 to be held in trust pending resolution of the lien of Buzzell Law Group.

After Mr. Delgado and his former attorney were unable to informally resolve the lien, the matter once again proceed to trial on April 15, 2025 on the issue of the attorneys' fee lien. On May

27, 2025, I issued my Findings and Award, in which I found that lien claimant was entitled to 7.5% of the total amount of permanent disability awarded in my August 27, 2024 Amended Award, or half of the monies that was ordered withheld. It is from that Finding and Award that reconsideration is sought.

Discussion

Among applicant's exhibit at trial was an attorney fee agreement with Buzzell Law Group on March 8, 2021. (Applicant's Exhibit 20, admitted at the April 15, 2025 trial.) The agreement stated that the client (Jaime Delgado) was an attorney in a claim against the employer Container Management Services and "possibly others as future investigations may indicate." (Id.) It appears from the petition for reconsideration that applicant is arguing that it is a false contract as he did not intend to file a cumulative trauma case. There is nothing in evidence that this contract was false, or procured by fraud. His agreement with lien claimant specifically stated that they are representing him in claims against Container Management. (Id.) The fee agreement did not limit the representation to just a specific injury, so if the medical records indicated that the applicant also sustained a cumulative trauma injury, the agreement did cover that claim as well. In addition, the panel QME attributed the industrial disability for the lumbar spine to the cumulative trauma claim. Absent the filing of the claim for a cumulative trauma, applicant would not have received any permanent disability for the lumbar spine injury, or an award of medical care for the lumbar spine.

Although the petition for reconsideration also alleged that he had newly discovered evidence that could not have been submitted at the trial, there is nothing in the reconsideration detailing what that new evidence is.

The lien claimant did file two applications on behalf of Mr. Delgado. They represented him through the panel QME process and obtained the reporting from a panel QME upon which my award of permanent disability was based. Mr. Delgado did represent himself at the July 22, 2024 trial, but introduced evidence obtained through the efforts of his former attorney. I balanced the efforts in representation of both the lien claimant and Mr. Delgado when I awarded 7.5% of the total amount of permanent disability to lien claimant.

Recommendation

For the foregoing reasons, I recommend that applicant's Petition for Reconsideration, filed herein on June 9, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

WCJ Elizabeth C. Dehn
Workers' Compensation Judge
Workers' Compensation Appeals Board

Date: June 17, 2025

By: A. Paraiso

OPINION ON DECISION

This matter proceeded to trial on April 15, 2025 attorneys' fee lien of applicant's prior attorney. Documentary evidence submit was submitted. In addition, the applicant testified on his own behalf.

Facts

On August 27, 2024, an Amended Finding and Award was issued in these matters. In WCAB Case no. ADJ14369406, I found applicant's injury caused permanent disability of 13%, entitling applicant to 42.25 weeks of disability indemnity payable at the rate of \$290 per week in the total sum of \$12,252.50. I also ordered 15% of that amount, or \$1,837.88, to be held in trust pending resolution of the lien of Buzzell Law Group. In WCAB Case no. ADJ14369412, I found applicant's injury caused permanent disability of 5%, entitling applicant to 15 weeks of disability indemnity payable at the rate of \$290 a week in the total sum of \$4,350.50. I also ordered 15% of that amount, or \$652.57 to be held in trust pending resolution of the lien of Buzzell Law Group.

Documentary evidence

Lien claimant's exhibit

Lien claimant submitted a document entitled "Jaime Delgado BLJ Work Product Exhibit" which consisted of 32 actions. The actions included intake, filing applications, proceeding through the QME process and preparing the applicant and attending the deposition. There is nothing to indicate the length of time spent on the various tasks or who performed them. (LC Exhibit 1)

Applicant's exhibits

Applicant signed an attorney fee agreement with Buzzell Law Group on March 8, 2021. The agreement stated that the client is hiring the attorney in a claim against the employer Container Management Services and "possibly others as future investigations may indicate." It stated legal fees are normally 15%. On page 2, it states that if the attorney is discharged or withdraws, when the case settles, has an arbitration award or judgement in the client's favor, the client is responsible for a reasonable fee. That fee is to be determined on the number of hours spent by the attorney, the attorney's hourly rate, the extent the attorney's work contributed to the result, the amount of the fee in proportion to the results obtained, and the amount obtained, among other things. (Exhibit 20, Lawyer's Contract dated March 8, 2021.)

An application was filed on behalf of Jaime Delgado alleging a specific injury of 12/15/2020 to the arm and shoulder while working for Container Management Services. The application was signed by Matthew Buzzell. There is a venue consent form signed by Jaime Delgado dated March 8, 2021 and a Labor Code section 4906(g) form of the same date again signed by the applicant. Also in the exhibit is a declaration of readiness to proceed dated December 21, 2021 on the issue of temporary disability benefits following surgery (Applicant's Exhibit 21, Claimed parties to the contract with counsel. Parties that the lawyer claims independently without consultation, of various dates.)

Jaime Delgado wrote to Dr. Matthew Johnson requesting that he prepare a continuity of care report allowing him to continue to treat for an additional 12 months. The letter is undated and unsigned by both Mr. Delgado and the doctor. Also attached to the exhibit is a letter dated May 18, 2023 from the Buzzell Law Group to defense counsel designating Kent Hagan DC as a new primary treating physician. (Applicant's Exhibit 25, Letter request letters from the lawyer's doctor who claim that I do not sign, dated April 20, 2023.)

Applicant signed and served a notice of dismissal of attorney dated June 21, 2023. (Applicant's Exhibit 26, Dismissal of the Lawyer dated June 21, 2023.)

The Buzzell Law Group wrote to the San Francisco WCAB on June 29, 2023 with the heading "notice and request for allowance of lien" advising of their lien in the amount of \$50,000 for attorney's fees (Applicant's 27 Attorney's Bill (Salary for \$50,000) dated June 29, 2023.)

The remaining exhibits are of no additional probative value.

Analysis

An attorney is entitled to a fee in workers' compensation, but any fee must be awarded by the judge. In order to determine the appropriate fee, a judge is tasked with considering the (1) responsibility taken on by the attorney, (2) the care exercised in representing the applicant, (3) the time involved and (4) the results obtained. (Labor Code section 4906(d); Title 8 Ca. Code Regs section 10844.) If an applicant dismisses his attorney, his former attorney may still be entitled to a fee based on the work they put in. (*See, Jimenez v. Mattco Forge*, 2017 Cal. Work. Comp. P.D. Lexis 34.)

Typically, the maximum fee awarded to attorneys at this district office is 15% of the total recovery when they represent the applicant through trial or settlement. Mr. Delgado dismissed his attorneys in June, 2023 and Mr. Delgado represented himself at both the mandatory settlement conference and at trial, as well as this lien trial. Therefore, I do not find that lien claimant Buzzell Law Group is entitled to the maximum 15% that may have been awarded if they represented him for the entirety of his claim.

Lien claimant's only evidence regarding the time involved in their representation of the applicant is an unverified work product index that lists a series of tasks. There is no indication of the time spent on each task, nor is there any indication of whether it was performed by an attorney, paralegal, or other staff member. Therefore I am unable to determine the actual amount expended on the tasks.

However, I do note that lien claimant filed the applications on behalf of Mr. Delgado. They also were involved in the panel QME process and represented him through the panel QME process with Dr. Han. My original findings and award was based on the reporting of panel QME, Dr. Han. They also attempted to obtain a new primary treating physician for the applicant when his former PTP was no longer in defendant's Medical Provider Network. (Exhibit 25.) They filed for an expedited hearing on the issue of temporary disability. (Exhibit 21.) It appears that the issue was resolved informally absent a trial.

The applicant appears to believe that the lien claimant is not entitled to a recovery because he did not hire them to file a cumulative trauma claim. His agreement with lien claimant specifically stated that they are representing him in claims against Container Management. (Exhibit 20.) The fee agreement did not limit the representation to just a specific injury, so if the medical records indicated that the applicant also sustained a cumulative trauma injury, the agreement did cover that claim as well. In addition, the panel QME attributed the industrial disability for the lumbar spine to the cumulative trauma claim. Absent the filing of the claim for a cumulative trauma, applicant would not have received any permanent disability for the lumbar spine injury.

In balancing the efforts in representation of the applicant by lien claimant and the efforts of the applicant in representing himself at trial, I find that lien claimant is entitled to 7.5% of the total amount of the permanent disability awarded in my August 27, 2024, which is half of the monies that I ordered withheld. In ADJ14369406, I find that lien claimant is entitled to \$918.93, with the remaining amount to be paid to the applicant. In ADJ14369412, lien claimant is entitled to \$326.28, with the remaining balance of the withheld amount to be paid to the applicant.

DATE: May 27, 2025

Elizabeth Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

ON: MAY 28, 2025 BY: ATANG