

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

NICOLE TRIPLETT, *Applicant*

vs.

**FEDEX GROUND PACKAGE SYSTEMS, INC., permissibly self-insured;
administered by SEDGWICK CONCORD, *Defendants***

**Adjudication Number: ADJ20067702
Van Nuys District Office**

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

Applicant's attorney (petitioner) seeks reconsideration of the Order Approving Compromise and Release (Order), issued by the workers' compensation administrative law judge (WCJ) on March 13, 2025, wherein the WCJ approved the Compromise and Release (C&R) entered into by the parties, and awarded attorney's fees to petitioner in the amount of 10% of the lump sum award granted to applicant.

Petitioner contends in the Petition for Reconsideration that the 15% attorney fee that he requested is justified and appropriate in this matter, and that the 10% awarded is inconsistent with standard practice and creates an undue burden on applicants' attorneys.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant the Petition for Reconsideration, rescind the WCJ's March 13, 2025 Order, and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant filed an Application for Adjudication (Application) on November 5, 2024, claiming that she suffered from cumulative injuries to her back, arm, neck, shoulder and other

body parts during the time period August 17, 2017 through July 22, 2018, while employed by defendant Federal Express. The Fee Disclosure Statement signed by applicant and petitioner on the same date indicated that “Attorney’s fees normally range from 9%-12% of the benefits awarded. 15% Attorney Fee.” (11/5/24 Fee Disclosure Statement.)

The parties reached agreement and signed a Compromise and Release (C&R) on February 25, 2025. (2/27/25 Fully Executed C&R.) The C&R provided that the settlement amount was \$15,000, of which \$12,750 would be paid to applicant, and \$2,250, or 15%, would be paid to petitioner as attorney’s fees.

The WCJ’s Order approved the \$15,000 settlement amount, but reduced the attorney’s fees to \$1,500, or 10% of the award. (3/13/25 Order Approving C&R.) In the Order, the WCJ explained the reduction in attorney’s fees as follows:

In determining a reasonable attorney’s fee, the considerations set forth in CCR 10844 have been applied. Here, given the time expended by applicant’s counsel, the lack of either treating or evaluating medical, lack of deposition, lack of any evidence of disability, and the result obtained justify a reasonable attorney fee of 10%.

(*Ibid.*)

The Petition was timely filed in response to the Order Approving the C&R. It included petitioner’s statement that, “The undersigned has formally advised the Applicant, via written correspondence, of the intention to file this Petition for Reconsideration regarding the reduction of attorney fees. The Applicant has been informed of her right to seek independent counsel or assistance from the Information & Assistance Officer at the WCAB should she wish to object to this petition.” (Petition, at p. 2.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

¹ All section references are to the Labor Code, unless otherwise indicated.

(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 April 14, 2025, and 60 days from the date of transmission is June 13, 2025. This decision is issued by or on June 13, 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 April 14, 2025, and the case was transmitted to the Appeals Board on April 14, 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 April 14, 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, the statute requires that the fees awarded must be “reasonable.” (Lab. Code, §§ 4903(a), 4906(a) & (d); Cal.

Code Regs., tit. 8, § 10844; *Vierra, supra*, at p. 1149.) 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 in representing the applicant; (3) the time involved; and (4) the results obtained. (Lab. Code, § 4906(d); see Cal. Code Regs., tit. 8, § 10844.)

An attorney is not permitted to request, demand or accept any money from a worker for the purpose of representing the worker before the Workers’ Compensation Appeals Board or in any related appellate procedure related until the fee has been approved or set by the Workers’ Compensation Appeals Board or an appellate court. (Cal. Code Regs., tit. 8, § 10840; see also *Bentley v. Industrial Acci. Com.* (1946) 75 Cal.App.2d 547, 549 [11 Cal.Comp.Cases 204] [Attorneys appearing in workers’ compensation matters may not contract for fees in excess of those awarded by the Appeals Board].) The Court in *Bentley* held, further, that attorneys are entitled to a careful appraisal of the value of services rendered, and “[i]t is the privilege of attorneys to supplement the facts developed in the course of the proceedings by other evidence as to the extent and value of the legal services.” (*Bentley, supra*, at pp. 549-550.)

All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.*

(1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

We note that a WCJ has broad discretion in determining a reasonable fee, and that in exercising that discretion, the WCJ may reduce an agreed upon fee. (Lab. Code, §§ 4903(a), 4906(a) & (d); Cal. Code Regs., tit. 8, § 10844; *Vierra, supra*, at p. 1149.) Here, in reducing petitioner's fee, the WCJ indicated that "the considerations set forth in CCR 10844 have been applied" and provided a brief discussion of those considerations. (3/13/25 Order Approving C&R.) However, the WCJ did not indicate in the Order specifically what evidence was relied upon in reaching the conclusion that a 10% attorney fee is reasonable. Thus, we are unable to adequately evaluate the basis of the WCJ's Order.

Moreover, petitioner was not provided with notice and an opportunity to be heard prior to the WCJ entering the Order reducing the agreed-upon attorney's fees. (11/5/24 Fee Disclosure Statement; 3/13/25 Order Approving C&R.) Petitioner thus had no opportunity "to supplement the facts developed in the course of the proceedings by other evidence as to the extent and value of the legal services." (*Bentley, supra*, at pp. 549-550.) For these reasons, we must return this matter to the trial level for further proceedings.

In keeping with due process, we will rescind the Order and return the case in order to afford petitioner the opportunity to 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 section 4906(d) and WCAB Rule 10844.

Accordingly, we grant applicant's Petition, rescind the WCJ's March 13, 2025 Order, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 13, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 13, 2025 Order is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 13, 2025

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

**NICOLE TRIPLETT
LAW OFFICES OF ROBERT OZERAN
BRUNDO LAW, APC**

MB/ara

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