

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

WARREN P. HARVEY, *Applicant*

vs.

**SOCAL MACHINE, INC., insured by TRUCK INSURANCE EXCHANGE,
administered by FARMERS INSURANCE, Defendants**

**Adjudication Number: ADJ17547374
San Diego District Office**

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

Applicant seeks reconsideration of the October 16, 2025 Opinion and Award (O&A), wherein the Workers' Compensation Appeals Board (WCAB) approved the proposed Stipulations with Request for Award in which the parties agreed that applicant was permanently and totally disabled and in need of future medical care.

Applicant contends that he is entitled to the annual statutory increase required by Labor Code¹ section 4659(c) effective July 1, 2025, and that the attorney's fee calculation contains a clerical error.

We have not received an answer from any party. Because the Petition seeks reconsideration of a decision of the WCAB, the workers' compensation administrative law judge (WCJ) has not prepared a Report and Recommendation on Petition for Reconsideration (Report).

Applicant has also previously petitioned for reconsideration of the Findings and Award (F&A) issued and served by the WCJ in this matter on October 23, 2024. In that decision, the WCJ found that the equitable hourly reimbursement rates for in-home healthcare services to applicant for his spouse's services are \$17.53 for regular caregiver duties and \$53.55 for duties equivalent to nursing such as medication dispensing, bandage changing or wound care, assisting with therapy, catheterization, and the bowel program. The WCJ awarded applicant's attorney a fee of 12 percent

¹ All further references are to the Labor Code unless otherwise noted.

from the retroactive benefits received for the period February 4, 2024, to the date of the Award. On January 24, 2025, we granted applicant's Petition for Reconsideration and ordered that a final decision after reconsideration was deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Thus, and irrespective of our October 16, 2025 Award which addressed and resolved issues of, *inter alia*, permanent disability and attorney fees, the issues related to reimbursement for home healthcare services and attorney's fees remain pending pursuant to our January 24, 2025 order granting reconsideration.

We have considered the allegations of the Petitions for Reconsideration and the contents of the Report with respect to the October 23, 2024 F&A. Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition and rescind our October 16, 2025 O&A. We will affirm the October 23, 2024 F&A, except that we will amend it to reflect reimbursement rates for skilled nursing services of \$80.00 per hour and regular caregiver services at \$38.00 per hour (Finding of Fact No. 7; Award a.). We will also defer the issue of attorney's fees as it relates to home healthcare services. (Finding of Fact No. 8; Award b.). We will then return this matter to the trial level for further proceedings and decision by the WCJ.

FACTS

Applicant sustained injury to his neck while employed as an operations manager by defendant SoCal Machine, Inc., on November 3, 2022.

On June 19, 2024, the parties proceeded to trial on issues of reimbursement for home healthcare services and associated attorney's fees. The WCJ heard testimony from applicant and continued the matter for further testimony.

On September 5, 2024, the WCJ heard further testimony from the claims adjuster and applicant's spouse, and ordered the matter submitted for decision.

On October 23, 2024, the WCJ issued her F&A, setting reimbursement rates for the home healthcare services provided by applicant's spouse, as well as associated attorney's fees.

On November 15, 2024, applicant filed a Petition for Reconsideration averring, *inter alia*, entitlement to reimbursement at rates commensurate with the costs to defendant to provide services using an outside agency or provider. Applicant also challenged the number of hours daily, and the associated attorney's fees awarded. (Petition, at pp. 4-7.)

On January 24, 2025, we granted applicant's Petition and ordered that a final decision after reconsideration was deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

On August 26, 2025, the parties filed Stipulations with Request for Award, stipulating to permanent and total disability with indemnity payments commencing November 4, 2022, and attorney's fees of \$135,000.00. The parties further stipulated that:

This matter was tried on the issue of [home healthcare] reimbursement rate. An F&A was issued. Applicant's petition for recon was granted. The matter was taken under study. The WCAB referred the matter to a Commissioner's Settlement Conference. A decision on the petition is still pending. These stipulations do not resolve the issues pending before the WCAB.

(Stipulations with Request for Award, p. 7, ¶ 9.)

On October 16, 2025, we issued our O&A, determining that the proposed Stipulations with Request for Award was adequate. Accordingly, we approved the proposed settlement and issued a corresponding Award. We also noted that the issues regarding home health reimbursement raised in applicant's November 15, 2025 Petition for Reconsideration remained pending before the WCAB.

Applicant's Petition contends the Award does not make specific provision for the statutory increase provided by section 4659(c) as of January 1, 2025, and that the award of attorney's fees was based on an error in the calculations set forth in the proposed settlement. (Petition, at p. 4:1.)

DISCUSSION

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 November 10, 2025, and 60 days from the date of transmission is January 9, 2026. This decision is issued by or on January 9, 2026, 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 our review of the record, we did not receive a Report and Recommendation by a workers’ compensation administrative law judge, and 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 the notice of transmission required by Labor Code 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 November 10, 2025.

II.

We first address applicant’s November 8, 2025 Petition. Therein, applicant requests that we grant reconsideration of our October 16, 2025 O&A which approved the parties’ proposed Stipulations with Request for Award. Applicant contends the O&A fails to make provision for the

annual State Average Weekly Wage (SAWW) adjustments to the permanent disability rate required under section 4659(c). (Petition, at p. 4:6.)

While the O&A does in fact make specific provision for the “increases required under Labor Code section 4659,” it appears that applicant objects to the commencement *date* of the section 4659(c) calculations, asserting that the initial adjustment must occur on the first January 1 following the initial payment of permanent disability. (Petition, at p. 4:11; *Baker v. Workers’ Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 438 [76 Cal.Comp.Cases 701].) As such, applicant contends the initial SAWW adjustment must occur on January 1, 2025. (Petition, at p. 4:20.) Applicant’s Petition further contends that “a recently acquired professionally prepared commutation” indicates there was error in the calculation of the weekly commuted attorney fee amount. (*Id.* at p. 5:2.)

Applicant’s timely Petition raises bona fide issues regarding both the commencement date of section 4659(c) adjustments, as well as the calculation and commutation of attorney’s fees. Because both issues are best addressed at the trial level with the guidance of the WCJ, who is tasked with reviewing the settlement for completeness and adequacy, we will grant applicant’s petition, rescind our O&A, and return this matter to the trial level for further proceedings at the WCJ’s discretion.

The parties may wish to address both the commencement date of the section 4659(c) adjustment as well as any revisions to the attorney fee calculations by way of amendment to the existing Stipulations with request for Award.

We next address the issue of reimbursement for home healthcare services in the October 23, 2024 F&A. The parties have placed in issue “[e]quitable reimbursement for home healthcare services per Labor Code section 4600(h),” and associated attorney’s fees. (Minutes of Hearing and Summary of Evidence, dated August 7, 2024, at p. 2:19.) The WCJ’s Opinion on Decision described the nature of applicant’s home healthcare needs:

[T]he parties have agreed that applicant does need care 24 hours a day, 7 days a week. The evidentiary record in this matter consists of medical evidence, non-medical evidence as well as the testimony from the applicant, his wife and other witnesses. The evidence establishes applicant does work 8 hours a week, such that care from his spouse is not being provided for those hours and his wife does not request reimbursement for such time. In addition, the parties were given an opportunity to submit trial briefs, which both parties have submitted.

The parties previously entered into a Stipulation for reimbursement at a rate of \$17.00 per hour for home healthcare reimbursement for the period of June 7, 2023, to August 2, 2023. Currently, applicant's wife, has been providing home healthcare at \$17.00 per hour, however, applicant believes that the current rate is not a proper reflection of the fair market value of the services being rendered and is requesting a higher rate of pay commensurate to that of a skilled nurse.

Applicant's condition is one that is equivalent to a quadriplegic. According to the most recent medical record submitted by his treating physician, Dr. Crowley, applicant needs intermittent catheterization which is performed 5 to 6 times a day and he is dependent for even the most simple self-care but can feed himself and brush his teeth. She notes all transfers are via a Hoyer lift and he is dependent in bed mobility and for most simple self-care. (Applicant's Exhibit 7) A review of notes submitted by prior in-home health aides notes that applicant can put his shirt on and he continues to increase his strength. In one daily care record, applicant did laundry, vacuuming and watered plants. (Applicant's Exhibit 19, Bates stamp 000059) On a positive note, the prior caregivers continued to note applicant was motivated, getting stronger and continues with a happy demeanor. This does not mean that applicant needs less than 24 hour care on most days. Applicant testified and the records support that applicant continues to need to be rotated throughout the night, assistance in getting out of bed, bathing himself, preparation of meals, bowel movement program, assistance with complex dressing himself and meal preparation. He also is reliant on others for his transportation needs and assistance with his home exercise program.

Although assistance is needed 24 hours a day, such care does not rise to the level of that of an LVN for all 24 hours. Some of the care throughout the day only rises to the level of that of an in-home care giver. There is no reason to not follow the guidelines of those used in Puckett to determine the rate of pay for applicant's home healthcare.

Defendant's Exhibit A states how to become a caregiver. It discusses certain skills needed for the position, including general home maintenance, cooking and cleaning. These are activities that applicant's caregiver, his wife, does perform. Defendant's have also submitted representations of caregiver salaries in El Cajon, California, where the applicant lives. (Defendant's Exhibit C) Such salaries range from \$17.30 to \$21.66 per hour, with the average reported by Indeed.com at \$18.39 per hour in El Cajon based on approximately 151 salaries reported with the lowest salary at \$15.61 per hour and the highest salary being \$21.66. Defendant produced the claims adjuster on this case who credibly testified that the results found in defendant's exhibit were true and accurate representations of what she found when researching this claim for reimbursement rates. (MOH/SOE, 9/5/24, page 5, lines 21-23) She also confirmed that she is currently paying \$17 per hour for home healthcare reimbursement to the applicant.

(Opinion on Decision, at pp. 5-6.)

With respect to reimbursement for levels of care commensurate with professional nursing care, the WCJ further reasoned that the *wages* paid by third-party providers ranged between “\$39 to \$80 per hour … [t]he median cost would be approximately \$53.55 and appears to be appropriate for services being rendered equivalent to that of a professional nurse or professional licensed caregiver and taking into consideration a 10% discount as these services are not being provided by a company.” (Opinion on Decision, at p. 7.)

Based on this evidence, the WCJ determined that “[t]he equitable reimbursement rate for in-home healthcare services to the applicant for his spouse’s services are \$17.53 when the wife is performing regular caregiver duties such as laundry, meal preparation, changing sheets, and assisting applicant in dressing and bathing and \$53.55 when the wife is performing duties equivalent to nursing such as medication dispensing, bandage changing or wound care, assisting with therapy, catheterization, and the bowel program.” (F&A, dated October 23, 2024, Finding of Fact No. 7.)

Applicant’s November 15, 2024 Petition contends the appropriate reimbursement rate for home healthcare services furnished by applicant’s spouse is the *cost* to defendant for equivalent services from a home healthcare provider, rather than the hourly *wages* received by employees of third-party home healthcare providers. (Petition, at p. 5:8.) Applicant asserts that “reimbursing Applicant based on the median hourly rate of pay for caregivers fails to consider the multitude of other benefits enjoyed by agency caregivers,” and submits as examples various types of benefits that a third-party provider would offer its home healthcare employees, including health and accident insurance, retirement savings, employee assistance programs, sick and vacation time, and workers’ compensation coverage. (*Id.* at p. 6:18.) Based on the trial evidence relevant to the actual *cost* to defendant for providing the services through a third-party provider, applicant asserts that reasonable costs for services provided at the skilled nursing level warrant \$80.00 per hour, while non-skilled attendant care warrants \$38.00 per hour. (*Id.* at p. 11:25.) In the alternative, applicant asserts that averaging the costs to the employer between services at the skilled nursing and unskilled nursing levels would yield an hourly rate applicable to all services provided at \$53.55/hour. (*Id.* at p. 8:25; see, e.g., *L.A. County Metro. Transp. Auth. v. Workers’ Comp. Appeals Bd. (Puckett)* (2003) 68 Cal.Comp.Cases 501 [2003 Cal. Wrk. Comp. LEXIS 240] (writ den.) (*Puckett*).)

Finally, applicant asserts that the WCJ's award of 12 percent attorney's fees did not adequately consider the responsibility assumed by the attorney and the care exercised in developing the record or the time spent in pursuing benefits. (*Id.* at p. 10:23.)

Defendant's Answer responds that the WCJ "properly calculated a rate of reimbursement by determining the level of care [applicant's spouse] provided for each service and awarded a rate commensurate with that level of care." (Answer, at p. 3:2.) Defendant contends that any averaging of the various reimbursement rates applicable to the various nursing skill levels would require defendant to reimburse applicant for services at rates that are inconsistent with the services actually provided. (*Id.* at p. 5:25.)

The WCJ's Report addresses the attorney's fee issue and notes that "this WCJ does not disagree that a higher fee may be warranted, even to the extent of an 18% fee, for this complex case and does acknowledge that a customary fee is 15%." (Report, at p. 4.)

It is well settled that a WCJ's decision must be supported by substantial evidence (Lab. Code, § 5903; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]), and "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc).) While the WCAB may reject the findings of a WCJ and enter its own findings on the basis of its review of the record, when a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight and should be rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310, 314].)

Here, the WCJ has carefully weighed the documentary and testimonial evidence adduced at trial and has determined that the most accurate and reasonable method by which to calculate reimbursement for the home healthcare services provided by applicant's spouse is to determine the medical skills necessary for each category of services provided, with a corresponding rate available depending on the nature of the services. The WCJ carefully weighed the credibility and substance of the witness testimony at trial and reviewed the nature of the services being provided to applicant. The WCJ concluded that "the calculation of the amount due in this matter was based on the facts of this case and the evidence received." (Report, at p. 3.)

Insofar as the WCJ has determined that the services provided fall into two primary categories for reimbursement, and that such services should be reimbursed at rates commensurate with the nature of the services provided, we are persuaded that the WCJ has appropriately exercised

her discretion based on a complete review of the record and the facts specific to this case. Moreover, we discern no evidence of considerable substantiality that would warrant disturbing the WCJ's decision to apply two separate hourly rates based on the nature of the services provided. (Finding of Fact No. 7.)

However, we are also persuaded that the appropriate metric in determining the hourly rate of reimbursement is the employer's cost of providing equivalent services. As is comprehensively discussed in the WCJ's Opinion on Decision, the record substantiates that "although assistance is needed 24 hours a day, such care does not rise to the level of that of an LVN for all 24 hours ... [s]ome of the care throughout the day only rises to the level of that of an in-home care giver." (Opinion on Decision, at p. 6.) Thus, were applicant's spouse not providing the required home healthcare services, defendant would need to pay a third-party provider at market rates for skilled nursing or home attendant levels of care, depending on the nature of the services required. Inasmuch as the record reasonably establishes that the home healthcare services are medically necessary, that applicant's spouse is a qualified and appropriate provider of those home healthcare services, and the market rates that the employer would otherwise pay to a third-party provider, it is appropriate for applicant's spouse to receive reimbursement at rates commensurate with the *cost* to defendant to provide equivalent services through a third-party provider. The evidentiary record includes billing from third-party home healthcare providers as well as unrebutted testimony from applicant's spouse regarding the corresponding costs for various levels of home healthcare services. (Exhibits 10-17; 20-24; Minutes of Hearing, dated September 5, 2024, at p. 12:4.) Based on our review of the record, we are persuaded that the cost to defendant for the provision of home healthcare is \$80.00 per hour for nursing level care and \$38.00 per hour for regular caregiver care. We will amend Finding of Fact No. 7 to reflect these figures.

Turning to the issue of attorney's fees on the award of home healthcare reimbursement, applicant's Petition contends the award of 12 percent does not accurately reflect the time and care exercised by applicant's attorney, or the complexity of the issue involved. (Petition, at p. 9:16.) The WCJ's Report observes that "[w]hile this WCJ appreciates the outline given in the Petition for Reconsideration to establish a higher attorney fee rate, this information was not presented at the time of trial ... In addition, at the time of final resolution of this claim, this WCJ does not disagree that a higher fee may be warranted, even to the extent of an 18% fee, for this complex case and does acknowledge that a customary fee is 15%." (Report, at p. 4.) We note that both

applicant and his attorney have signed the verified Petition requesting the award of 15 percent fees, and inasmuch as the WCJ agrees the issue should be revisited, we will amend the award of attorney fees to defer the issue and return the matter to the trial level for further proceedings and decision at the WCJ's discretion. (Finding of Fact No. 8.)

In summary, we grant reconsideration and rescind our October 16, 2025 O&A approving the parties' Stipulations with Request for Award based on the need to correct computational error in the calculation and commutation of attorney fees and to clarify the date of commencement of section 4659(c) adjustment. We will return this matter to the trial level for further proceedings at the WCJ's discretion. In addition, we have previously granted reconsideration to further study the issue of appropriate reimbursement rates for home healthcare services. Following our review of the entire record, we discern no good reason to disturb the WCJ's decision to award reimbursement at levels commensurate with either skilled nursing or regular caregiving duties. However, given that the reasonable cost to the employer is the appropriate metric by which to assess reimbursement rates, we will amend the October 23, 2024 F&A, Finding of Fact No. 7, to reflect hourly rates of \$38.00 for regular caregiver duties, and \$80.00 per hour for skilled nursing services. We will also defer the issue of appropriate attorney's fees for the home healthcare services, Finding of Fact No. 8, although we recommend that the parties engage in meaningful discussion to resolve payment for home healthcare services and the outstanding attorney's fees expeditiously. We will otherwise affirm the F&A.

Upon return of this matter to the trial level, we also encourage the parties to meet and confer regarding any necessary changes to the commencement of the increase under section 4659(c) and commutation of attorney's fees on the proposed stipulations with request for award in an effort to bring this matter to a prompt and amicable conclusion, and to submit amended proposed stipulations to the WCJ for review of adequacy. As appropriate, the WCJ may conduct additional proceedings at her discretion responsive to the issue of the appropriate attorney's fees for home healthcare services and the proposed stipulations.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the October 16, 2025 Opinion and Award issued by the Workers' Compensation Appeals Board is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Award issued by the Workers' Compensation Appeals Board on October 16, 2025 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award dated October 23, 2024 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * * * *

7. The equitable reimbursement rate for in-home healthcare services to applicant for his spouse's services are \$38.00 when performing regular caregiver duties, such as laundry, meal preparation, changing sheets, and assisting applicant in dressing and bathing and \$80.00 when performing duties equivalent to nursing, such as medication dispensing, bandage changing or wound care, assisting with therapy, catheterization, and the bowel program.
8. The issue of attorney's fees is deferred.

AWARD

AWARD IS MADE in favor of WARREN HARVEY against SOCAL MACHINE INC of:

- a. Reimbursement for in-home healthcare services at a rate of \$38.00 for services equivalent to a caregiver and a rate of \$80.00 for services equivalent to nursing care duties.
- b. The issue of attorney's fees is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 7, 2026

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

**WARREN HARVEY
LAW OFFICE OF MIKE HERRIN
LAW OFFICES OF SCOTT C. STRATMAN**

SAR/abs

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