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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALICIA GONZALEZ,

Applicant,

vs.

KELLERMEYER BERGENSON SERVICES,
ZURICH AMERICAN INSURANCE
COMPANY,

Defendants.

RECEIVED
Case No. ADJ9447747
(Oxnard District Office)

FEB 01 2016

JOHN H. SPINER
OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant Kellermeyer Bergenson Services, insured by Zurich American Insurance Company and administered by Gallagher Bassett Services, Inc. (Gallagher Bassett), seeks reconsideration of the Amended Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 19, 2015. The F&A provided that the market rate of interpreters before the Workers' Compensation Appeals Board (WCAB) was \$220.00 per half day, certified interpreter Mina Thorlaksson translated on behalf of applicant on three occasions and is entitled to payment of \$660.00 less credit for payments made, defendant unreasonably delayed payment for the services by Thorlaksson who is entitled to penalties of 25% of her billings, defendant caused Thorlaksson to incur costs and expenses to collect her billings without reason or rationale, defendant caused the court to expend time, energy and resources without good cause or justification, defendant's actions were egregious and frivolous warranting sanctions in the amount of \$500.00, and that the reasonable value of services rendered by the attorney for Thorlaksson is to be adjusted by parties with jurisdiction reserved by the WCAB. The WCJ awarded Thorlaksson payment of \$660.00 by defendant plus the 25% penalties, and ordered defendant to pay the sanctions and attorney's fees.

Defendant contends that the WCJ's findings that the market rate was \$220.00 per half day for interpreters and Thorlaksson is owed \$660.00 for her interpreting services are not supported by

1 substantial evidence. Defendant also contends that the penalties awarded were not warranted because
2 defendant paid reasonable amounts for the interpreting services and Thorlaksson failed to follow proper
3 procedures such as serving defense counsel with required documents. Defendant contends further that
4 the sanctions awarded were not warranted since there were valid reasons to litigate the interpreting
5 services billed by Thorlaksson, including Thorlaksson's failure to verify her "Petition for Labor Code
6 5811 Costs" (Petition for Costs), properly serve supporting documents, and file a valid Declaration of
7 Readiness to Proceed (DOR).

8 The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report)
9 recommending denial of reconsideration.

10 Thorlaksson answered that the law and substantial evidence support the F&A and reconsideration
11 should be denied.

12 We have reviewed the record and considered the allegations of the Petition for Reconsideration
13 (Petition) and the answer and the contents of the WCJ's Report. Based on our review of the record and
14 for the reasons discussed below, we will deny defendant's Petition.

15 **FACTUAL AND PROCEDURAL BACKGROUND**

16 Applicant Alicia Gonzalez claimed industrial injury while employed as a janitor by Kellermeyer
17 Bergenson Services on September 14, 2014, and defendant provided medical treatment and temporary
18 disability benefits.

19 Applicant was provided Spanish interpreting services by State Certified Interpreter Mina
20 Thorlaksson at the WCAB's Santa Barbara district office on September 29, 2014 and October 30, 2014,
21 and at the WCAB's Oxnard district office on November 20, 2014. Thorlaksson mailed defendant an
22 invoice for each date of interpreting services in the amount of \$220.00. (Cost claimant ex. 2.)

23 On January 21, 2015, Thorlaksson filed the Petition for Costs which requested an order from the
24 WCJ for payment of \$792.00 for the interpreter services billed defendant plus penalty and interest. The
25 WCJ ordered defendant to pay \$792.00 on January 21, 2015, with a provision that the order would be
26 void if there was an objection in writing within 15 days of service of the order. On January 30, 2015,
27 defendant filed Defendant's Objection to Order of Payment for Labor Code § 5811 (Objection) alleging

1 that the Petition for Costs was not verified, prior payment should be credited, Thorlaksson's charges
2 exceeded fees set by the Santa Barbara Superior Court, and entitlement to penalties was not explained.

3 Thorlaksson filed a DOR to resolve the amount claimed for interpreting services, and the matter
4 was set for a mandatory settlement conference (MSC) and then for trial. Thorlaksson testified at trial that
5 she is a certified interpreter for Spanish to English, and defendant stipulated that Thorlaksson was
6 certified. (Summary of Evidence (SOE) Sept. 1, 2015, p. 3.) Thorlaksson provided applicant with
7 interpreting services for the dates billed, and Thorlaksson sent invoices with the dates of service and
8 billed amounts to the insurer. Thorlaksson provided interpreting services on September 14, 2014, and
9 sent the bill to Gallagher Bassett on the date of the invoice or next day. The invoice was for \$220.00,
10 which is her market rate. Nothing else was sent with the invoice. Thorlaksson also sent invoices for
11 \$220.00 on the same or next day for interpreting services on October 30, 2014 and November 20, 2014.
12 On November 20, 2014, Lilia Santana appeared as the interpreter at the Oxnard WCAB and her
13 certification number was shown on the invoice.

14 Thorlaksson also testified that she sent a letter indicating prior payments for her interpreter
15 services and her market rate to the claims administrator in March 2014. (SOE, p. 3.) The letter showing
16 the market rate was not sent with each invoice. Thorlaksson sends the market rate letter one time to a list
17 of insurance companies, with claim numbers and prior payments for her interpreting services.

18 Thorlaksson testified further that she called the claims adjuster in this case, and left messages on
19 the voice mail. (SOE, p. 3, line 25 to p. 4, line 1.) Gallagher Bassett never called back or objected to the
20 invoices. Thorlaksson filed the Petition for Costs, the WCJ signed the order and the defense attorney
21 objected. There was no previous objection. (SOE, p. 4, line 13.)

22 Thorlaksson also testified that she filed the DOR. (SOE, p. 4, line 17.) Her market rate of
23 \$220.00 per half day has not gone up or down since 2014. She receives \$156.56 for interpreting services
24 at the Superior Court, which has been the rate for 5 years and is acceptable because it is paid within a
25 quick time frame. Santa Barbara is a small area and there are fewer certified interpreters. After filing the
26 DOR, Thorlaksson received a notice to appear and produce information and she hired an attorney who
27 advised not to produce the requested information. (SOE, p. 5, lines 5-9.)

1 On cross-examination, Thorlaksson testified that she performs interpreting services 99% of the
2 time in Santa Barbara and occasionally in Oxnard. (SOE, p. 5, lines 11-12.) She did not keep track of
3 how many appearances she had in September or October 2014. Thorlaksson's market rate letter was sent
4 to the claims administrator in Sacramento on March 31, 2014, and was not sent regarding any particular
5 case. She was paid less than \$200.00 per appearance several times in 2014. (SOE, p. 5, line 25 to p. 6,
6 line 1.) She served the Petition for Costs the same day the WCJ issued the order.

7 The WCJ issued the F&A, defendant petitioned for reconsideration, the WCJ issued the Report
8 and Thorlaksson answered.

9 **DISCUSSION**

10 "Interpreter fees that are reasonably, actually, and necessarily incurred shall be paid by the
11 employer under this section, provided they are in accordance with the fee schedule adopted by the
12 administrative director. A qualified interpreter may render services during the following . . . (B) An
13 appeals board hearing." (Lab. Code § 5811(b)(2);¹ see also Cal. Code Regs., tit. 8, § 9795.3(a)(5).)

14 "The following fees for interpreter services provided by a certified or provisionally certified
15 interpreter shall be presumed to be reasonable: (1) For an appeals board hearing, arbitration, or
16 deposition: interpreter fees shall be billed and paid at the greater of the following (i) at the rate for one-
17 half day or one full day as set forth in the Superior Court fee schedule for interpreters in the county
18 where the service was provided, or (ii) at the market rate. The interpreter shall establish the market rate
19 for the interpreter's services by submitting documentation to the claims administrator, including a list of
20 recent similar services performed and the amount paid for those services." (Cal. Code Regs., tit. 8, §
21 9795.3 (b).)

22 "All expenses for interpreter services shall be paid within 60 days after receipt by the claims
23 administrator of the bill for services unless the claims administrator, within this period, contests its
24 liability for such payment, or the reasonableness or the necessity of incurring such expenses. A claims
25 administrator who contests all or part of a bill for interpreter services shall pay the uncontested amount
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¹ All further reference to statute is to the Labor Code unless stated otherwise.

1 and notify the interpreter of the objection within 60 days after receipt of the bill.” (Cal. Code Regs., tit.
2 8, § 9795.4(a).)

3 Here, substantial evidence supports the WCJ’s F&A that Thorlaksson is entitled to her billed
4 market rate of \$220.00 per half day and \$660.00 total for providing applicant certified interpreting
5 services for three half day appearances at the Santa Barbara and Oxnard district offices of the WCAB. (§
6 5811; § 5903; § 5952; *Garza v. Workmen’s Comp. App. Bd. (Garza)* (1970) 3 Cal.3d 312, 317-319 [33
7 Cal.Comp.Cases 500].) Thorlaksson testified and defendant stipulated that Thorlaksson was a certified
8 interpreter. (See Cal. Code Regs., tit. 8, § 9795.1.5 and § 9795.3(b).) Thorlaksson also testified that her
9 market rate for interpreting services was \$220.00 per half day, which was documented by her letter
10 indicating recent similar services and amounts paid and that was sent to Gallagher Bassett and other
11 insurers in March 2014 (cost claimant ex. 1). (See Cal. Code Regs., tit. 8, § 9795.3 (b)(1).)

12 Thorlaksson also testified that she sent Gallagher Bassett the invoices in the amount of \$220.00
13 for interpreting services at the WCAB on September 29, 2014, October 30, 2014 and November 20,
14 2014, which were mailed on the date of the invoice or the next day (cost claimant ex. 2). (See Cal. Code
15 Regs., tit. 8, § 9795.3 and § 9795.4.) Thorlaksson testified further that there was no payment or objection
16 from defendant until she received the payment of \$220.00 on January 11, 2015, the Objection dated
17 January 30, 2015, and the payment of \$275.00 on January 31, 2015. Defendant presented no evidence
18 that rebutted Thorlaksson’s testimony or her documentary evidence, which the WCJ reported was
19 credible. (*Garza, supra*, 3 Cal.3d at pp. 317-319.) Therefore, defendant failed to timely pay the invoiced
20 amounts or object to the billed expenses within 60 days of receipt of the invoices as required, and the
21 market rate amounts billed by Thorlaksson are presumed reasonable and owed. (§ 5811; Cal. Code
22 Regs., tit. 8, § 9795.3(b) and § 9795.4(a).)

23 Defendant contends that Thorlaksson’s invoices did not include proofs of service that confirm
24 service on Gallagher Bassett. Defendant also contends that Thorlaksson’s invoices were not served on
25 defense counsel until received with the Petition for Costs, which deprived defendant of the opportunity to
26 timely object and due process.

27 As pointed out by Thorlaksson’s answer, defendant cites no authority that proofs of service were

1 required with invoices for interpreting services. The expenses for interpreter services must be paid
2 within 60 days after receipt of the invoice by the claims administrator, and not defense counsel. (See
3 Cal. Code Regs., tit. 8, § 9795.4(a).) The record indicates that the claims administrator received the
4 invoices because the payments of \$220.00 and \$275.00 were made, and the first payment of \$220.00
5 occurred before the Petition for Costs with the invoices were served on defense counsel. Defendant
6 provided no testimony or rebuttal evidence that the invoices were not received by the claims
7 administrator as indicated by Thorlaksson's testimony. Therefore, defendant had the opportunity to
8 timely object to the invoices and was not deprived of due process as alleged.

9 Although the Petition for Costs is a procedure by which payment for interpreter services may be
10 obtained, it was not a requirement for payment of Thorlaksson's interpreter services. (See Cal. Code
11 Regs., tit. 8, § 9795.3, § 9795.4 and § 10451.3.) Therefore, the defects in the Petition for Costs alleged
12 by defendant are not dispositive. As also reported by the WCJ and noted by Thorlaksson's answer,
13 defendant's Objection voided the WCJ's order that defendant is ordered to pay Thorlaksson \$792.00
14 based on the Petition for Costs. Similarly, defendant argues that Thorlaksson's DOR failed to specify the
15 good faith effort to settle the dispute. The WCJ reported that defendant failed to object to the matter
16 being ordered to trial at the MSC or file a petition for removal challenging the order. Moreover,
17 Thorlaksson testified at trial that she left phone messages with the claims administrator without response
18 before filing of the DOR. Defendant also alleges that Thorlaksson's refusal to produce the names and
19 numbers of cases in which interpreters made appearances for the service dates in issue is relevant to the
20 reasonableness of her charges. As pointed out by Thorlaksson's answer, discovery ended at the MSC.
21 (See § 5502(d)(3).)

22 Defendant also contends that Thorlaksson was limited to charging \$147.00 per half day for her
23 interpreting services based on the Santa Barbara Court Service Vendor Rate Fee Schedule (def. ex. A.).
24 (See Cal. Code Regs., tit. 8, section 9795.3(b)(1).) Defendant argues that Thorlaksson admitted at trial
25 that she received \$156.56 per half day for Superior Court interpreting services, and defendants overpaid
26 Thorlaksson at the rate of \$165.00 per half day. Defendant argues further that Thorlaksson provided no
27 current corroboration regarding her market rate of \$220.00 per half day, or that there were a lack of

1 interpreters in Santa Barbara to justify awarding the market rate.

2 As Thorlaksson set forth in her answer, she is entitled to the greater of the Superior Court fee
3 schedule rate or the market rate. (Cal. Code Regs., tit. 8, § 9795.3(b)(1).) Although Thorlaksson
4 testified that she received \$156.56 per half-day for Superior Court interpreting services, the WCJ found
5 her testimony credible that she charged her market rate of \$220.00 per half-day because she is paid
6 sooner for Superior Court interpreting services and there was a shortage of interpreters in the Santa
7 Barbara area. (*Garza, supra*, 3 Cal.3d at pp. 317-319.) Thorlaksson also provided documentation
8 establishing her market rate for the same year as her interpreting services in 2014. As reported by the
9 WCJ, the Santa Barbara Court Service Vendor Rate Fee Schedule submitted by defendant as exhibit A is
10 dated July, 1, 2009.

11 Defendant also contends that the WCJ should have not have awarded the 25% penalty for
12 unreasonable delay of payment because Thorlaksson's invoices did not include proofs of service
13 confirming mailing to the claims administrator and defense counsel until the invoices were received with
14 the Petition for Costs dated January 21, 2015. Defendant contends that it timely objected to the invoices
15 and paid reasonable interpreter charges within 60 days of receipt of the invoices with the Petition for
16 Costs. (See Cal. Code Regs., tit. 8, § 9795.4(a).) However, they failed to offer evidence of their alleged
17 objections.

18 "When payment of compensation has been unreasonably delayed or refused, either prior to or
19 subsequent to the issuance of an award, the amount of the payment unreasonably delayed or refused shall
20 be increased up to 25 percent or up to ten thousand (\$10,000), whichever is less. In any proceeding
21 under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial
22 justice between the parties." (§ 5814(a).)

23 As we explained previously, defendant cites no authority that proofs of service were required with
24 the mailing of Thorlaksson's invoices for interpreting services. The record also indicates that defendant
25 received the invoices accordingly and defendant presented no rebuttal evidence. Defendant did not
26 explain why there was a payment of \$220.00 on January 11, 2015 or a payment of \$275.00 on January
27 31, 2015. Therefore, substantial evidence supports the WCJ's F&A that defendant unreasonably delayed

1 payment of Thorlaksson's interpreter services by failing to timely object to the invoices or pay the
2 uncontested amounts as required within 60 days of receipt of the invoices. (§ 5814; Cal. Code Regs., tit.
3 8, §9795.4(a); *Garza, supra*, 3 Cal.3d at pp. 317-319.)

4 Defendant also contends that the WCJ's award of \$500.00 sanctions and attorney's fees was
5 unwarranted because defendant's litigation of Thorlaksson's invoices for interpreter services was not bad
6 faith action which was frivolous or solely intended to cause unnecessary delay. Defendant argues that
7 litigation of Thorlaksson's invoices was necessary because of her failure to include valid proofs of
8 service with the invoices, serve invoices prior to the Petition for Costs and on defense counsel, verify the
9 Petition for Costs and invoices under penalty of perjury, and attempt to resolve the dispute before filing
10 the DOR.

11 "The workers' compensation referee or appeals board may order a party, the party's attorney, or
12 both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a
13 result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In
14 addition, a workers' compensation referee or the appeals board, in its sole discretion, may order
15 additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the
16 General Fund." (§ 5813(a); see also Cal. Code Regs., tit. 8, section 10561.)

17 As we have already explained, defendant cites no authority that proofs of service were required
18 with the mailing of Thorlaksson's invoices for interpreting services or that the invoices must be served
19 on defense counsel. (See Cal. Code Regs., tit. 8, § 9795.3(1) and § 9795.4(a).) The record indicates that
20 defendant received the invoices as indicated by Thorlaksson' testimony and invoices, and defendant
21 presented no contrary evidence such as testimony by the claims administrator. The Petition for Costs
22 was not required for payment of Thorlaksson's interpreter services, and the alleged defects in the Petition
23 for Costs were not a basis for contesting payment when due. (See Cal. Code Regs., tit. 8, § 9795.3(1)
24 and § 9795.4(a).) Similarly, the alleged defect of Thorlaksson's DOR was rendered moot or waived by
25 defendant's failure to object to the matter being ordered to trial at the MSC or filing a petition for
26 removal challenging the order. Moreover, Thorlaksson testified that she left phone messages with the
27 claims administrator without response before filing the DOR.

1 Defendant also alleges that Thorlaksson was required to verify her invoices under penalty of
2 perjury as any other party pursuant to section 5703(a)(1) and California Code of Regulations, title 8,
3 sections 10301(dd), 10770(c)(4) and 10770.5. However, defendant provides no authority that section
4 5307(a)(1), which pertains to medical reports, and California Code of Regulations, title 8, sections
5 10770(c)(4) and 10770.5, which pertain to lien claims under section 4903 et seq., apply to Thorlaksson
6 who sought payment for interpreting services at a hearing under section 5811 and California Code of
7 Regulations, title 8, section 9795.1.5 et seq. Thorlaksson may be a party for purposes of filing the
8 Petition for Costs under California Code of Regulations, title 8, sections 10301(dd) and 10451.3, but that
9 does not necessarily mean that she is required to file invoices for interpreting services at a hearing under
10 penalty of perjury under section 5811 and California Code of Regulations, title 8, sections 9795.1.1,
11 9795.3 and 9795.4.

12 Finally, defendant argues that trial was continued from the morning to the afternoon and
13 completed after a previously scheduled deposition by Thorlaksson's counsel at 1:00 p.m. Defendant
14 does not explain how continuance of the trial during the day and the unavailability of Thorlaksson's
15 counsel affected the award of sanctions or attorney's fees.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Reconsideration of the Amended Findings and Award
3 issued on November 19, 2015 is **DENIED**.

4
5 **WORKERS' COMPENSATION APPEALS BOARD**

6
7 *F. M. Brass*

8 **FRANK M. BRASS**

9 **I CONCUR,**

10
11 *K. Zalewski*

12 _____
13 **KATHERINE ZALEWSKI**

14 *M. Sweeney*

15 _____
16 **MARGUERITE SWEENEY**



17
18 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

19 **JAN 29 2016**

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

22 **ALICIA GONZALEZ**
23 **BARRAGAN & SATZMAN LLP**
24 **LAW OFFICE OF JOHN H. SUGDEN**

JH

25
26 **PR/ara**