

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

3
4 **ANNE HOVANESSION,**

5 *Applicant,*

6 **vs.**

7
8 **BIG LOTS STORES, INC. and SENTRY**
9 **INSURANCE c/o SEDGWICK CLAIMS**
10 **MANAGEMENT SERVICES,**

11 *Defendants.*

Case Nos. ADJ3269661 (OXN 0142587)
ADJ4389164 (OXN 0147019)
ADJ4133913 (OXN 0147111)

OPINION AND DECISION
AFTER RECONSIDERATION

12 The Appeals Board granted Reconsideration on August 13, 2013 to further study the factual and
13 legal issues in this case. This is our Opinion and Decision After Reconsideration.

14 Big Lots Stores Inc. and Sentry Insurance (Defendant) and Lien Claimant, Santana Lopez &
15 Associates LLC (Santana Lopez) both seek reconsideration of the May 28, 2013 Findings and Order by
16 which the Workers' Compensation Judge (WCJ) found that the market rate for services provided by
17 Santana Lopez is \$100.00 per hour, that Defendant is liable for a 10% payment increase plus interest, and
18 that a two hour minimum charge for services of less than two hours or for cancelled appointments is not
19 appropriate.

20 By its Petition for Reconsideration (Petition) Defendant makes various arguments asserting that
21 as a lien claimant, Santana Lopez did not meet its burden of proof regarding the services as billed.
22 Santana Lopez, by its Petition, asserts that the WCJ erred in finding that the two hour minimum charge
23 was not appropriate and that the payment increases plus interest should have been awarded per Labor
24 Code sections 4603.2(b) and/or 4622.

25 We received a Report and Recommendation on Petition for Reconsideration (Report) from the
26 WCJ in response to each Petition. The WCJ agreed that payment increases and interest should be
27 awarded per Labor Code sections 4603.2(b) and/or 4622, depending on which section is applicable, but

1 otherwise recommended that the Petition filed by Santana Lopez be denied. The WCJ also
2 recommended that Defendant's Petition be denied. We have received an Answer from Santana Lopez
3 but have not received an Answer from Defendant.

4 We have considered the allegations in the Petitions, the arguments in the Answer submitted by
5 Santana Lopez, and the contents of the Reports issued by the WCJ. Based upon our review of the record,
6 we agree with the WCJ that Santana Lopez did meet its burden of proof regarding its entitlement to
7 payment for the services it provided. However, we find that further development of the record is
8 necessary to determine the issues regarding the two hour minimum charges and the payment increases.
9 As explained below, for these reasons, as our Decision After Reconsideration we shall rescind the
10 Findings and Order and return the matter to the trial level for further proceedings consistent with our
11 decision.

12 BACKGROUND

13 Applicant sustained three industrial injuries to her back and psyche. Santana Lopez provided
14 Armenian interpreter services when Applicant received medical treatment, underwent medical-legal
15 evaluations and was present for Court appearances. The injury claims were resolved by a Joint
16 Compromise and Release that included an award of ongoing medical treatment. The WCJ issued the
17 Order Approving Compromise and Release on November 8, 2012. All three matters were tried on April
18 3, 2013; the issues submitted for decision all pertained to the lien filed by Santana Lopez.

19 DISCUSSION

20 In support of its arguments regarding the proper hourly rate and the two hour minimum billing,
21 Santana Lopez submitted Market Rate Information (LC-2). The exhibit contains numerous billing
22 statements and the subsequent payments received. However, our review of the billing statements
23 indicates that the actual rates are inconsistent and there is no evidence regarding billing for missed
24 appointments. For example, the first portion of the exhibit (\$100.00 per hour/ 2 hour minimum) contains
25 a statement which shows four hours of services were billed at \$450.00, five hours and ten minutes were
26 billed at \$450.00 and 45 minutes were billed at \$250.00. Another statement shows two and one half
27 hours billed at \$330.00 and 50 minutes billed at \$330.00. The second portion of the exhibit (\$150.00 per

1 hour/ 2 hour minimum) contains a statement which shows one and three quarters hours billed at \$265.00,
2 another statement where four hours and 55 minutes was billed at \$450.00 and one indicating 50 minutes
3 was billed at \$250.00. There is also a statement showing one hour and 25 minutes billed at \$450.00 and
4 another showing two and one half hours billed at \$375.00. Although some of the statements do show
5 billing at \$100.00 or \$150.00 per hour, others show a wide range of billing rates. Again, none of the
6 statements include any billing for missed appointment fees. Accordingly, it is appropriate that the record
7 be further developed. (*McClune v Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 117 [63
8 Cal.Comp.Cases 261]; *M/A Com-Phi v Workers' Comp. Appeals Bd. (Sevadjian)* (1998) 65 Cal.App.4th
9 1020 [63 Cal.Comp.Cases 821]; *Kuykendall v Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396
10 [65 Cal.Comp.Cases 264].)

11 As we have previously stated, "...we are not prepared to conclude that the two-hour minimum
12 applies to all medical treatment appointments, some of which might take only 10 to 15 minutes. On the
13 other hand, we understand that, without some minimum rate of reimbursement, there might not be a
14 sufficient incentive for interpreters to provide services during medical treatment, and injured workers
15 would, therefore, be deprived of this necessary adjunct to medical treatment." (*Guitron v. Santa Fe*
16 *Extruders* (2011) 76 Cal.Comp.Cases 228, 248 (Appeals Board en banc) (citations omitted).) It is the
17 responsibility of the parties to decide what evidence will be submitted at trial. Again, as we previously
18 stated, "...we emphasize that we neither prescribe nor proscribe any particular admissible evidence that
19 may prove that the lien claimant interpreter's services were reasonably required in a given case." (*Id.* at
20 245.) However, under the circumstances of the present case, it would be appropriate for Santana Lopez
21 to submit evidence of actual billing, and payment received, for medical appointments which were missed
22 by an injured worker. It may also be found probative to have evidence regarding the actual time,
23 including travel time, spent attending medical appointments for those when the injured worker was
24 present as well as for those when the injured worker failed to attend. Another option could be to provide
25 evidence showing routine calendaring or scheduling which would be impacted by attending a missed
26 appointment or having the appointment cancelled without proper notice. Again, these recommendations
27 are neither mandatory nor exclusive.

1 Regarding the payment increases, the provisions of Labor Code section 4622 apply to medical-
2 legal expenses and section 4603.2(b) is related to medical treatment. It is noted that the payment
3 increases identified in both sections are imposed if payment is not made within a specified number of
4 days from the date the bills are received by the employer. (Lab. Code, §§ 4622 and 4603.2(b).)
5 Evidence indicating the dates that the bills were served on the employer may be an essential aspect of the
6 burden of proof for the party asserting entitlement to the increased payment. Evidence as to when the
7 employer received the bills may be important for the party defending against the increased payment.

8 In summary, we believe Santana Lopez did meet its burden of proof as to its entitlement to
9 payment for the interpreting services it provided. The record needs to be developed regarding the issues
10 of the two hour minimum billing in order to determine if and/or when such billing would be appropriate.
11 Also there should be evidence submitted indicating the dates that bills were sent, received and paid, in
12 order to accurately assess the respective parties' compliance with the timelines delineated in Labor Code
13 sections 4622 and 4603.2(b). As stated, our recommendations as to how the record should be developed
14 are not mandatory or exclusive. It is the responsibility of the parties to determine how best to develop
15 the record.

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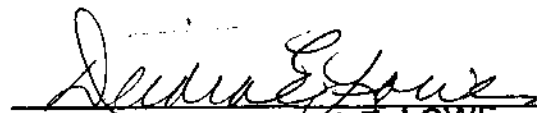
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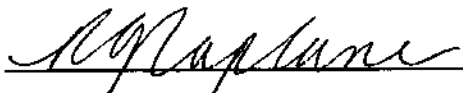
1 For the foregoing reasons,

2 **IT IS ORDERED** as the Appeals' Board's Decision After Reconsideration, that the May 28,
3 2013 Findings and Order is **RESCINDED**, and the matter is **RETURNED** to the trial level for further
4 development of the record by the parties and for further proceedings and decision by the WCJ, consistent
5 with this Opinion.

6 **WORKERS' COMPENSATION APPEALS BOARD**

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9 **DEIDRA E. LOWE**

10 **I CONCUR,**

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13 **RONNIE G. CAPLANE**

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16 **ALFONSO J. MORESI**



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

19
20 **NOV 07 2013**

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

23 **JOHN MOLONEY**
24 **PRINDLE, AMARO GOETZ ET AL.**
25 **SANTA LOPEZ & ASSOCIATES**



26
27 **TLH/bea**

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ANNE HOVANESSIAN,**

5 *Applicant,*

6 **vs.**

7 **BIG LOTS STORES, INC. and SENTRY**
8 **INSURANCE c/o SEDGWICK CLAIMS**
9 **MANAGEMENT SERVICES,**

10 *Defendants.*

Case Nos. **ADJ3269661 (OXN 0142587)**
ADJ4389164 (OXN 0147019)
ADJ4133913 OXN 0147111)

OPINION AND ORDER
GRANTING RECONSIDERATION

11 Reconsideration has been sought by both defendant and lien claimant, with regard to a decision
12 filed on May 28, 2013.

13 Taking into account the statutory time constraints for acting on the petitions, and based upon our
14 initial review of the record, we believe reconsideration must be granted in order to allow sufficient
15 opportunity to further study the factual and legal issues in this case. We believe that this action is
16 necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned
17 decision. Reconsideration will be granted for this purpose and for such further proceedings as we may
18 hereinafter determine to be appropriate.

19 For the foregoing reasons,

20 **IT IS ORDERED** that the Petitions for Reconsideration are **GRANTED**.

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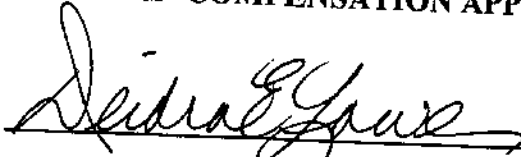
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1 **IT IS FURTHER ORDERED** that pending the issuance of a Decision After Reconsideration in
2 the above case, all further correspondence, objections, motions, requests and communications shall be
3 filed in writing only with the Office of the Commissioners of the Workers' Compensation Appeals Board
4 at either its street address (455 Golden Gate Avenue, 9th floor, San Francisco, CA 94102) or its Post
5 Office Box address (PO Box 429459, San Francisco, CA 94142-9459), and shall not be submitted to the
6 Oxnard District Office or any other district office of the WCAB and shall not be e-filed in the Electronic
7 Adjudication Management System.

8 **WORKERS' COMPENSATION APPEALS BOARD**

9 
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11 DEIDRA E. LOWE

12 I CONCUR,

13 
14

15 RONNIE G. CAPLANE

16 
17

18 ALFONSO J. MORESI



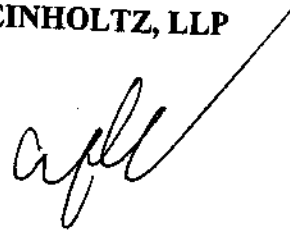
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **AUG 13 2013**

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

23 **LAW OFFICES OF JOHN MALONEY**
24 **PRINDLE, AMARO, GOETZ, HILLYARD, BARNES & REINHOLTZ, LLP**
25 **SANTA LOPEZ & ASSOCIATES**

26 ebc

27 

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

*Emailed 9/30/13
Will be in EAMS
shortly. CG
9/30*

CASE NUMBER: ADJ3269661 (MF); ADJ4133913; ADJ4389164

ANNE HOVANESSIAN

-vs.-

BIG LOTS; SEDGWICK
CLAIMS MANAGEMENT
SERVICES

Santana Lopez and Associates,
Interpreting Services, Lien
Claimant and Real Party in
Interest.

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Bonita A. Edelberg

REPORT AND RECOMMENDATION ON LIEN CLAIMANT'S
PETITION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to stipulations by the parties, the above claims involved admitted injuries sustained by the applicant on **July 31, 2002, May 22, 2005 and during the period from December 1, 2004 to December 1, 2005 to her psyche and back.** All claims were resolved by a joint Compromise and Release with the aid of an interpreter in the Armenian language. The Compromise and Release left future medical treatment open.

The only issue for trial in all three cases was the lien of Santana Lopez and Associates for unpaid dates of services. Defendant contended that the services of the interpreters were not reasonably and necessarily required and argued the reasonableness of the value of the charges, raised the issue of the lack of certification of the interpreters and argued the necessity of the underlying medical treatment.

Findings and Order issued on May 28, 2013 that, in pertinent part, lien claimant was entitled to reimbursement for all dates of service at the market rate of \$100.00 per hour, or portion thereof, and that charges for a two hour minimum for services less than two hours and for applicant's failure to attend without proper cancellation notice were not reasonable.

It is from this decision that lien claimant, hereinafter petitioner, filed a timely and verified Petition for Reconsideration.

The undersigned acknowledges and apologizes for the fact that this Report and Recommendation is late. It appears that there was confusion of tasks because of the prior Report and Recommendation on defendant's Petition for Reconsideration which issued shortly before receipt of the instant Petition.

II. CONTENTIONS

In addition to the statutory contentions, petitioner argues that it is entitled to a two hour minimum at the market rate for failed appointments and for appointments of less than two hours. Petitioner also argues that the undersigned erred by allowing penalty and interest only per Labor Code Section 4622 where some services were subject to Labor Code Section 4603.2(b).

III. DISCUSSION AND CONCLUSIONS

Taking the second issue first, the undersigned agrees that the penalty and interest should attach to the nature of the services provided. This was the intention of the undersigned when ordering reimbursement by defendant at Petitioner's market rate of \$100.00 per hour, or portion thereof, and penalty and interest for all dates of service "pursuant to law". Any percentages stated or reference to only one Labor Code Section were typographical errors.

In connection with petitioner's market rate, the Court did not "amend" same as claimed by petitioner. The undersigned simply did not agree that the two hour minimum at market rate for

failed appointments not cancelled by the applicant within the time mandated by statute or for appointments which may have lasted only ten minutes is reasonable. The undersigned opined that some minimum rate of reimbursement might be reasonable for appointments which were very short as an incentive for the services to continue. The undersigned agrees that no interpreter, especially in a minority language such as Armenian, would accept a job based on a ten minute appointment only.

The undersigned specifically noted billing that appeared unreasonable on its face. There was a charge of \$300.00 for one hour services on April 13, 2011 with Dr. Barry, Sherman Oaks Psyche from 1:00 to 2:00 pm. There was a charge of \$300.00 for date of service February 16, 2011 for 45 minutes at Barrington Psyche Center.

The black letter law of Title 8, California Code of Regulations, 9795.3 (b)(1), is that the interpreter shall be paid at the greater of the rate for one half day or one full day in the Superior Court fee schedule or at the market rate for Workers Compensation Appeals Board hearings, arbitration, deposition or formal rehabilitation conferences and (2) For all other events listed under (a) (which now, by case law, includes treatment), the fee shall be billed and paid at the rate of \$11.25 per quarter hour or portion thereof with a minimum payment of two hours or the market rate, whichever is greater. This section is written in the disjunctive and the undersigned is of the opinion that the two hour minimum does not apply to the subsequent phrase. Further, section (c) regarding cancellation (or the failure to timely cancel) mandates only that the payment shall be no less than the minimum fee, which in this case is \$100.00. Therefore, it is the opinion of the undersigned that the two hour minimum for a ten minute appointment or a "no show" is not reasonable. Based on the undersigned's reading of the statute, since the market rate is \$100.00 per hour, petitioner is entitled to reimbursement of \$100.00 for cancellations covered by subsection (c).

Petitioner disagrees with this reading apparently based on the further requirement of how the interpreter is to establish the market rate, i.e. submitting documentation including a list of recent similar services performed and the amount paid for those services. The undersigned reads this section to mandate the nature of the evidence required to establish a market rate but is of the opinion that it does not mandate that this evidence alone will support the reasonableness of the charges

under any and all conditions especially where, as here, some billing is unreasonable on its face.

While the Market Rate evidence, Exhibit 2, and trial testimony were sufficient to establish a market rate of \$100.00 per hour, there is nothing therein which explains the CPT codes used or addresses in any way apparent to the undersigned, what was received for failed appointments or for appointments which may have lasted no more than fifteen minutes. In this manner, it appears that petitioner's claim may be seen as rebutted by its own evidence, or rather, the lack thereof.

As previously found, the undersigned is of the opinion that petitioner met its burden of proof as set forth in Guitron v. Santa Fe Extruders (2011) 76 California Compensation Cases 22, (en banc). The undersigned agrees that a market rate of \$100.00 per hour is reasonable for the Armenian language. Nevertheless, Title 8, California Code of Regulations, 10564 states, in pertinent part, that recovery shall be allowed in the amount charged by the interpreter **unless the charge is manifestly unreasonable.** (emphasis added).

The undersigned was guided by the opinion in *Guitron*, supra, where the Workers Compensation Appeals Board stated that ... "we are not prepared to conclude that the two hour minimum applies to all ... appointments, some of which might take only 10 to 15 minutes". Nevertheless, it was understood also that, without some minimum rate of reimbursement, there might not be a sufficient incentive for interpreters to provide services and the injured workers would be deprived of this necessary adjunct to medical treatment.

The Workers Compensation Appeals Board referred to another case where \$45.00 per visit was considered adequate payment for interpreting services at medical treatment appointments that were not shown to last longer than one hour. That case involved Spanish language interpretation. DiGiuseppe v. Workers Compensation Appeals Board (Menjivar) (2002) 67 California Compensation Cases 1003 (W/D). The undersigned does not mean to imply that the same charge is reasonable for Armenian interpreters.

The undersigned is of the opinion that the two hour minimum applied to failed appointments or ten minute appointments is manifestly unreasonable.

IV. RECOMMENDATION

Had the undersigned been timely aware of lien claimant's Petition for Reconsideration and absent the filing of the prior Petition for Reconsideration by defendant, the undersigned would have rescinded the Findings and Award under Title 8, California Code of Regulations, 10859 and resubmitted the matter resulting in an Amended Findings and Award of lien claimant's entitlement to penalty and interest under the Labor Code Section applicable to the nature of the services provided. Therefore, the undersigned makes no recommendation in opposition to petitioner's contention on this issue.

For the reasons stated above, in connection with the reasonableness of a two hour minimum based on the market rate as applied to failed appointments or appointments of short duration, the undersigned respectfully recommends that the Petition for Reconsideration be DENIED.

DATE: September 30, 2013



Bonita A. Edelberg
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE