WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ELOISA BECERRA QUEZADA, ***Applicant***

vs.

MARRIOTT HOTEL SERVICES, LLC, Permissibly Self-Insured; Administered by MARRIOTT INTERNATIONAL INC., ***Defendants***

Adjudication Number: ADJ12140628, ADJ13210903
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant Marriott International, Inc., seeks reconsideration or, in the alternative, removal of the Order Imposing Sanctions Against Marriott International, Inc., (Order) issued by the workers' compensation administrative law judge (WCJ) on December 22, 2020. As relevant herein, the WCJ ordered defendant to pay sanctions in the amount of $750.00 to the General Fund as well as costs to Dolores I. Campos Interpreting Services, Inc. (cost petitioner) in the amount of $165.00.

Defendant contends, as relevant herein, that the evidence does not support a finding of unreasonable delay in its payment to cost petitioner; and that a proper hearing is required to determine the issue of sanctions and costs.[1]

Cost petitioner did not file an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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[1] Section 5902 provides, as relevant herein: "The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a [WCJ] to be unjust or unlawful, and every issue to be considered by the appeals board." (Lab. Code, § 5902.) WCAB Rule 10945 provides, as relevant herein, that the petition for reconsideration "shall fairly state all of the material evidence relative to the point of points at issue. Each contention shall be separately stated and clearly set forth." (Cal. Code Regs., tit. 8, § 10945(a).) We note that it was difficult to fully appreciate all of defendant's arguments in its Petition, and recommend that defendant keep this statute and regulation in mind when it submits a Petition for Reconsideration.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will treat the Petition as one for reconsideration, grant reconsideration, and affirm the Order, except we will amend it to reduce the amount of sanctions to $125.00.

FACTUAL BACKGROUND

On November 30, 2020, we issued our Opinion and Decision After Reconsideration (Decision After Reconsideration). In our Decision After Reconsideration, we adopted and incorporated the WCJ's September 30, 2020 Report (September Report), rescinded the September 11, 2020 Order to Pay Labor Code § 5811 Costs, and substituted a new order as recommended by the WCJ that defendant pay $300.00 as Labor Code section 5811 costs to cost petitioner.[2] In the WCJ's September Report, the WCJ recommended that the case be remanded to the trial level to determine if sanctions and costs should be lodged against defendant for its untimely payment of section 5811 interpreting costs.

On December 1, 2020, the WCJ issued a Notice of Intention to Impose Sanctions and Costs (NIT). As relevant herein, the WCJ based his determination for sanctions and costs on section 5813 and WCAB Rule 10454(h).[3] The WCJ allowed for objection and a demonstration of good cause to be filed by December 21, 2020. The WCJ also ordered cost petitioner to file a bill of particulars for the reasonable value of its services in connection with defendant's failure to pay section 5811 costs by December 21, 2020.

On December 18, 2020, cost petitioner filed its bill of particulars requesting $165.00 as the value of its services.

Also on December 18, 2020, defendant filed its Response to the NIT and attached five exhibits in support of its response. Exhibit A is a printout of the files in EAMS in ADJ12140628; Exhibit B is a declaration from John Castro; Exhibit C is a declaration from Kathleen E. Chillison, a Claims Unit Manager with Marriott Claims Services; Exhibit D is a record of payment of $300.00 to cost petitioner; and Exhibit E is an e-mail from cost petitioner to defendant informing defendant that it was closing the file due to the Compromise and Release. Our review of the record shows that cost petitioner did not respond to defendant's objection.

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[2] All further statutory references are to the Labor Code unless otherwise stated.

[3] We note that the citation to WCAB Rule 10454(h) should be WCAB Rule 10545(h). (Cal. Code Regs., tit. 8, § 10545(h).)

On December 22, 2020, the WCJ issued his Order, which is before us on reconsideration.

DISCUSSION

I.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 [1989 Cal. App. LEXIS 663]; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650, 650-651, 655-656].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, 81 Cal.App.4th at p. 1075 ("interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"); *Rymer*, *supra*, 211 Cal.App.3d at p. 1180 ("[t]he term ['final'] does not include intermediate procedural orders or discovery orders"); *Kramer*, *supra*, 82 Cal.App.3d at p. 45 ("[t]he term ['final'] does not include intermediate procedural orders").) Such interlocutory decision include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

The WCJ's order to defendant to pay sanctions and costs is a determination of a substantive right or liability of defendant. Thus, the WCJ's Order is a final order subject to reconsideration, and we treat the Petition as one for reconsideration.

II.

Defendant alleges that "[t]he WCJ has converted a Labor Code § 5811 Petition to a Labor Code § 5813 without affording defendant due process of law mirroring a trial by ambush." (Petition for Reconsideration, January 7, 2021, p. 10:1-2.) We disagree.

"What safeguards comport with due process or what due process requires under specific circumstances varies, as not every context to which the right to procedural due process applies requires the same procedure. The primary purpose of procedural due process is to provide affected parties with the right to be heard at a meaningful time and in a meaningful manner. Consequently,

due process is a flexible concept, as the characteristic of elasticity is required in order to tailor the process to the particular need. [Citations.] Thus, not every situation requires a formal hearing accompanied by the full rights of confrontation and cross-examination. [Citation.] 'What due process does require is notice reasonably calculated to apprise interested parties of the pendency of the action affecting their property interest and an opportunity to present their objections.' [Citation.]" (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072 [114 Cal.Rptr.2d 798].)

Here, defendant received ample notice that its untimely payment of cost petitioner's invoice would be the subject of sanctions and costs. The WCJ first raised this issue in his September 30, 2020 Report. In our Decision After Reconsideration on November 30, 2020, we stated that "[t]he WCJ or any party may initiate further proceedings regarding sanctions." (Report, November 30, 2020.) Lastly, on December 1, 2020, the WCJ issued the NIT pursuant to section 5813 and WCAB Rule 10421. Thus, defendant had sufficient notice that its untimely payment of cost petitioner's invoice was the basis for potential sanctions and costs.

The NIT also provided defendant with an opportunity to lodge any objections to the NIT. Defendant, in fact, lodged its objections in its Response to the NIT and attached five exhibits in support thereof. We are admitting the five exhibits as evidence and have considered them. Thus, we conclude that the WCJ's NIT and the provision in the NIT that allowed the parties to lodge any objections were sufficient to safeguard defendant's due process rights.

III.

Section 5813 provides, as relevant herein:

> The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.
>
> (Lab. Code, § 5813.)

The facts that form the basis for sanctions and costs are quite simple: on December 20, 2019, cost petitioner served its invoice of $300.00 for interpreting services on defendant. Defendant failed to pay cost petitioner's invoice soon thereafter, which prompted cost petitioner

to serve its Petition for Costs on July 30, 2020. Approximately two to three weeks later on August 19, 2020, defendant issued a check for $300.00 to satisfy cost petitioner's invoice.

The issue is whether defendant received the invoice when it was served on December 20, 2019. Defendant argues, as relevant herein, that it did not receive cost petitioner's invoice in December 2019 or soon thereafter despite the proof of service; that it first became aware of the $300.00 invoice when it received cost petitioner's Petition for Costs; and that it promptly issued a check for $300.00 once it received the invoice. In support of this position, defendant submitted, as relevant herein, three exhibits: two declarations and a printout of EAMS.

The WCJ disagreed with defendant. The WCJ cited Evidence Code section 641 and the presumption that the invoice was presumed received because it was correctly addressed and properly mailed to defendant. (Evid. Code, § 641.) The WCJ did not find defendant's arguments persuasive, in part, because the presumption "can only be rebutted by evidence that the notice of intention was not in fact mailed as declared by the proof of service." (Citations omitted.) (Report, *supra*, p. 4.)

We agree with the WCJ's conclusion that defendant's failure to pay timely cost petitioner's invoice was a bad-faith action that is sanctionable. However, our reasoning is based on our holding in *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 [2018 Cal. Wrk. Comp. LEXIS 100] (Appeals Board en banc). In *Suon*, we addressed the presumption found in Evidence Code section 641:

> "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." (Evid. Code, § 641; see also *AO Alfa-Bank v. Yakovlev* (2018) 21 Cal. App. 5th 189, 212 [230 Cal. Rptr. 3d 214]; *Hagner v. United States* (1932) 285 U.S. 427, 430 [76 L. Ed. 861, 52 S. Ct. 417] ["[t]he rule is well settled that proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed"]; *Minniear v. Mt. San Antonio Community College District* (1996) 61 Cal. Comp. Cases 1055, 1059 (Appeals Board en banc) [typical presumption affecting the burden of producing evidence "is the presumption that a mailed letter was received"].)
>
> If the opposing party alleges that the information was not received, the WCJ may separately consider lack of receipt of the information [. . .]. The presumption that a letter mailed was received is rebuttable. (*People v. Smith* (2004) 32 Cal. 4th 792, 799 [11 Cal. Rptr. 3d 290, 86 P.3d 348].) However, the trier of fact is obligated to "assume the existence of the presumed fact unless and until evidence is introduced to support a finding of its nonexistence." (*Craig v. Brown & Root* (2000) 84 Cal. App. 4th 416, 421 [100 Cal. Rptr. 2d 818].) A mere allegation that the recipient did

> not receive the mailed document has been found to be insufficient to rebut the presumption. (See *Alvarado v. Workmen's Comp. Appeals Bd.* (1970) 35 Cal. Comp. Cases 370 (writ den.) and *Castro v. Workers' Comp. Appeals Bd.* (1996) 61 Cal. Comp. Cases 1460 (writ den.).) If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce "believable contrary evidence" that it was not received. (*Craig*, *supra*, at pp. 421–422, citing *Slater v. Kehoe* (1974) 38 Cal. App. 3d 819, 832, fn. 12 [113 Cal. Rptr. 790].) Once the recipient produces sufficient evidence showing non-receipt of the mailed item, "the presumption disappears" and the "trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received."

(*Id*. at p. 1817.)

Here, defendant attached, as discussed above, three exhibits in support of its position: a print out of EAMS attached as Exhibit A; a declaration of John Castro attached as Exhibit B, and a declaration from Kathleen Chillison attached as Exhibit C. We conclude that these three exhibits are not "believable contrary evidence" and do not rebut the presumption.

Mr. Castro and Ms. Chillison declared that they looked in their respective files and did not find cost petitioner's invoice prior to cost petitioner's July 30, 2020 Petition for Costs. In essence, defendant repeats its assertions in the form of a declaration. While we appreciate that defendant provided declarations, the issue is that the declarations are missing critical information. For example, it is unclear if Mr. Castro and Ms. Chillison are the people responsible for receiving and filing mail. A declaration from such a person or persons would be more probative. They would be able to discuss the process, procedure, and protocol involved when mail is received; they would also be able to provide any information regarding the steps they took to look for the invoice. For these reasons, the declarations of Mr. Castro and Ms. Chillison do not rebut the presumption that defendant received the invoice that cost petitioner served on December 20, 2019.

As for the EAMS printout, we give little weight to this document because it, by itself, does not provide any significant insight into the WCAB's file pertaining to this case.

Cost petitioner seeks $165.00 as reasonable value of its services rendered in connection with defendant's failure to pay timely section 5811 costs. We conclude that there is sufficient evidence in cost petitioner's bill of particulars to justify $165.00 as a reasonable amount.

As for the imposition of $750.00 for sanctions, we conclude that this amount is excessive. As discussed above, defendant failed to rebut the presumption that it received cost petitioner's invoice served on December 20, 2019. A little over seven months later on July 30, 2020, cost

petitioner was forced to serve it Petition for Costs. This time, less than three weeks later on August 19, 2020, defendant issued its check for $300.00 for cost petitioner's interpreting services. Defendant's action in promptly paying the invoice on August 19, 2020, should mitigate the award for sanctions Based on the evidence in the record, we conclude that sanctions in the amount of $125.00 is reasonable.

We cannot ignore the fact that a significant amount of judicial resources has been allocated or, to put it bluntly, wasted because of defendant's decision to seek reconsideration on an issue that was of minimal significance. Not only did defendant seek reconsideration twice, defendant also requested a hearing. The California Constitution vested the Legislature with plenary power to create a "complete system of workers' compensation." One goal of the workers' compensation system is to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character." (Cal. Const., art. XIV, § 4.) We note that all parties in a workers' compensation proceeding have the responsibility to proceed expeditiously and to resolve any disputes informally when possible. The parties should only request the WCAB's intervention when necessary. We believe this case did not need the WCAB's intervention.

Accordingly, we treat the Petition as one for reconsideration, grant reconsideration, and affirm the Order, except amend it to order sanctions in the amount of $125.00.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 22, 2020 Order Imposing Sanctions Against Marriott International, Inc., is **GRANTED**.

IT IS FURTHER ORDERED that Exhibits A, B, C, D, and E, attached to Defendant's Response to December 1, 2020 Notice of Intention to Impose Sanctions and Costs, are admitted as evidence.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 22, 2020 Order Imposing Sanctions Against Marriott International, Inc. is **AFFIRMED**, **EXCEPT** as amended as follows:

> **IT IS HEREBY ORDERED** that **Marriott International, Inc.,** shall pay sanctions of one hundred twenty-five dollars and zero cents ($125.00) to the General Fund. Payment shall be made within twenty (20) days plus five (5) additional days for mailing [Cal. Code Regs., tit. 8 § 10605(a)(1)] after service of this Order. Payment shall be made by check payable to the Workers' Compensation Appeals Board, Tax I.D. 94-3160882, for transmission to the General Fund and shall reference *ELOISA BECERRA QUEZADA vs. MARRIOTT HOTEL SERVICES, LLC* (ADJ 12140628). Payment shall be sent to **WORKERS' COMPENSATION APPEALS BOARD**, Post Office Box 429459, San Francisco, California 94142-9459, *Attention: Anne Schmitz*.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

MARGUERITE SWEENEY, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 8, 2021

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

ELOISA BECERRA QUEZADA
DOLORES CAMPOS INTERPRETING SERVICES
FLOYD SKEREN

SS/abs

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

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

WCAB Case No(s). ADJ 12140628
ADJ 13210903

ELOISA BECERRA QUEZADA,	VS.	**MARRIOTT HOTEL SERVICES, LLC; Permissibly Self-Insured, administered by Marriott International, Inc.,**
APPLICANT,		DEFENDANT(S).

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE
DAVID L. POLLAK JANUARY 8, 2021

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION/REMOVAL

INTRODUCTION:

On January 7, 2021, the Defendant filed a timely and verified petition for reconsideration/removal dated January 7, 2021, alleging that the undersigned WCJ erred in his order imposing sanctions against **Marriott International, Inc**., dated December 22, 2020. The Defendant alleges that the undersigned WCJ failed to afford the Defendant its due process right to be heard on the imposition of sanctions, that the undersigned WCJ without the authority to even impose sanctions on **Marriott International, Inc**., and that it did not act in bad faith in failing to timely pay **Dolores I. Campos Interpreting Services, Inc.**

STATEMENT OF FACTS:

The Applicant, while employed on March 7, 2019, as a housekeeper for Marriott Hotel Services, LLC, claimed to have sustained industrial injury to her back, left elbow, left middle finger and psychiatric system when, while cleaning a jacuzzi, she slipped and fell down. (ADJ 12140628)

The Applicant also filed a second workers' compensation claim on June 27, 2019, to her psychiatric system claiming to be due to being assaulted in and harassed in a sexual manner while receiving medical treatment for her workers' compensation injury on March 7, 2019. (ADJ 13210903)

On December 11, 2019, WCJ Robert Sommer issued his order approving compromise and release resolving the case-in-chief for $30,000.00 for case number ADJ 12140628.

Dolores I. Campos Interpreting Services, Inc., forwarded its bill for $300.00 for interpreting services rendered on December 20, 2019 to **Marriott International, Inc.** The proof of service dated December 20, 2019 served the itemized statement on the **Marriott International, Inc.,** and its attorney of record at their correct addresses.

Having failed to receive payment, on August 20, 2020, **Dolores I. Campos Interpreting Services, Inc.**, filed its petition for Labor Code § 5811 costs dated

July 30, 2020 for $365.00. The petition was served on **Marriott International, Inc.,** and its attorney of record at their correct addresses.

On August 21, 2020, the undersigned WCJ issued his notice of intention to order payment of Labor Code § 5811 costs for $365.00 dated August 21, 2020. The notice of intention was served by **Dolores I. Campos Interpreting Services, Inc.**, on **Marriott International, Inc.,** and its attorney of record at their correct addresses.

On September 1, 2020, **Marriott International, Inc.,** filed its objection dated September 1, 2020. In its objection, it claimed that it did not receive the December 20, 2019 invoice despite the proof of service demonstrating proper service and that it paid **Dolores I. Campos Interpreting Services, Inc.**, $300.00 on August 19, 2020, after receiving the petition for costs dated July 30, 2020.

On November 30, 2020, the WCAB ordered that **Marriott International, Inc.,** pay Labor Code § 5811 costs of $300.00 to **Dolores I. Campos Interpreting Services, Inc.**, and remanded the case back to the trial level to initiate further proceedings regarding sanctions.

On **December 1, 2020**, the undersigned WCJ noticed his intention to sanction, **Marriott International, Inc.**, up to **$750.00**, for its failure to timely pay Labor Code § 5811 costs of **Dolores I. Campos Interpreting Services, Inc**.
Marriott International, Inc., was given until **Monday, December 21, 2020** to file and serve any written objection demonstrating good cause to the contrary as to why it should not be sanctioned.

On **December 18, 2020**, John Castro, from **Floyd Skeren Manukian Langevin, LLP** filed his objection dated **December 18, 2020**. In his objection, he averred that there was no unreasonable delay in payment of Labor Code § 5811 costs, that it did fully pay $300.00 to **Dolores I. Campos Interpreting Services, Inc**., and should not pay any further monies, and that imposition of sanctions against it violates the United States and California Constitution.

On **December 18, 2020**, **Dolores I. Campos Interpreting Services, Inc**., filed its bill of particulars dated **December 18, 2020**, requesting Labor Code § 5813 costs of $165.00 for one hour of time expended having filed its petition for costs pursuant to Labor Code § 5811.

Having considered the Defendant's objection, finding no good cause not to impose sanctions, the undersigned WCJ issued his order imposing $750.00 in sanctions against **Marriott International, Inc.**, and awarded costs of $165.00 to **Dolores I. Campos Interpreting Services, Inc**.

It is from this order that the Defendant claims to be aggrieved.

DISCUSSION:

With respect to the Defendant's requested relief of removal, its petition was taken from a "final" imposing order. The December 22, 2020 order at issue here was final in that it determined a substantive right and liability of a party defendant herein.

Accordingly, the appropriate vehicle by which to challenge the order is a petition for reconsideration. [Labor Code §§ 5900(a), 5902, 5903; see Rymer v. Hagler (1989) 45 Cal. Comp. Cases 410, 413; see also Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer) (1978) 43 Cal. Comp. Cases 661, 665.]

With respect to the Defendant's requested relief of reconsideration, Labor Code § 5813 permits the award of sanctions of up to $2,500.00, attorney's fees and costs against a party who engages in bad faith actions or tactics that are frivolous or solely intended to cause delay. Labor Code § 5813(b) provides that "[t]he determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeals board's own motion." Pursuant to Cal. Code Regs., tit. 8, § 10421(b)(4), violations subject to sanctions include but are not limited to "[f]ailing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure."

Pursuant to Cal. Code Regs., tit. 8, § 10454(h):

> "If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs, if any, under Labor Code [§] 5813 and [Cal. Code Regs., tit. 8, §] 10421. The amount of the attorney's fees, costs, and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this section, the monetary sanctions shall not be less than $500."

In addition, the expenses for interpreter services must be paid within 60 days after receipt of the invoice by the claims administrator, and not the defense attorney. [Cal. Code Regs., tit. 8, § 9795.4(a)] Failure to comply with § 9795.4(a) shall subject that party to sanctions pursuant to Labor Code § 5813 and Cal. Code Regs., tit. 8, § 10421 [Quan v. Barrett Business Services (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 575, *9-10 (Appeals Board noteworthy panel decision); Gonzalez, *supra*, 2016 Cal. Wrk. Comp. P.D. LEXIS at pp. 16-17.]

With respect to the Defendant's due process claims, notwithstanding its contention that it should be accorded the right to a trial on the issue of sanctions, [See Labor Code § 5313; see Labor Code § 133; see also Hernandez v. AMS Staff Leasing (2011) 76 Cal. Comp. Cases 343, 348 (significant panel decision); see also Hamilton v. Lockheed Corporation (2001) 66 Cal. Comp. Cases 473, 475 (Appeals Board en banc)] due process with respect to sanctions merely requires that the parties be given the notice and an opportunity to be heard. [Cal. Code Regs., tit. 8, § 10835(b) ("no finding shall be made contrary to a stipulation of the parties without giving the parties notice and an opportunity to be heard.")] Due process, however, does not require a formal trial-type hearing where the presentation of argument and evidence can be fairly accomplished by a paper record or other means. [See Federal Deposit Ins. Corp. v. Mailer (1988) 486 U.S. 230, 247 (due process does not guarantee an opportunity to present oral testimony where it can be satisfied based on written material).]

With respect to the Defendant's contention that the undersigned WCJ is without the authority to impose sanctions in this case, the WCAB and individual WCJs have the inherent power to control the WCAB's practice and procedure to prevent frustration, abuse, or disregard of its processes. [Crawford v. Workers' Comp. Appeals Bd. (1989) 54 Cal. Comp. Cases 198, 201] Also, they generally retain jurisdiction over the parties that come before them [Baldwin v. Fresh & Easy, LLC (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 58, *6-7] and can act on petitions for costs on a walk-through basis. [Cal. Code Regs., tit. 8, § 10789(a)(5).]

In this case, the undersigned WCJ gave the Defendant ample notice and opportunity to be heard on the merits of the undersigned WCJ's notice of intention to impose sanctions and a reasonable fee for the cost petitioner. In addition, the undersigned WCJ exhaustively explained his rationale in his legal reasoning and reasonably determined that the cost petitioner's bill of particulars reasonably accounted for its time expended.

Therefore, for the reasons set forth above, the Defendant was not denied its due process right to be heard with respect to the imposition of sanctions.

With respect to the Defendant's claim that it did not engage in bad faith tactics and that sanctions should not have been imposed, where a proof of service by mail was proper, it is presumed that the notice of intention was received. [Evid. Code § 641 ("[a] letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail")] This presumption can only be rebutted by evidence that the notice of intention was not in fact mailed as declared by the proof of service. [Garcia v. Jose Martinez Enterprises (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 422, *4 (Appeals Board noteworthy panel decision); Camacho v. Nick's Doors, Inc. (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 297, *4-5 (Appeals Board noteworthy panel decision); Arruda v. Goodwill Industries of Santa Clara (2012) 2012 Cal. Wrk. Comp. P.D. LEXIS 551, *4 (Appeals Board noteworthy panel decision); Flores v. United California Bank aka Sanwa Bank (2012) 2012 Cal. Wrk. Comp. P.D. LEXIS 341, *8-9 (Appeals Board noteworthy panel decision)]

In this case, despite its repeated bare assertions that the Defendant did not receive the invoice from **Dolores I. Campos Interpreting Services, Inc**., that placed it on notice that payment needed to be tendered by the claims administrator in a timely manner, the WCAB, in its opinion and order granting reconsideration dated November 30, 2020, adopted and incorporated the undersigned WCJ's finding in his previous report and recommendation dated September 30, 2020, as follows:

> "[D]espite the Defendant's assertion to the contrary, it and its attorney of record were served with Dolores I. Campos Interpreting Services, Inc.'s December 20, 2019 itemized billing at their correct addresses. Therefore, notwithstanding its hypertechnical complaints regarding the proof of service, ***it did receive proper notice and was given an adequate opportunity to be heard***. [See Torres v. Action Embroidery Corporation (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 130, *7 (Appeals Board noteworthy panel decision)]" (Emphasis added.) [Quezada v. Marriott Hotel Services,

LLC (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 380, *5-6 (Appeals Board noteworthy panel decision).]

Therefore, for the reasons set forth above, the undersigned WCJ did not err in imposing sanctions against the Defendant for untimely payment of the invoice of **Dolores I. Campos Interpreting Services, Inc**.

RECOMMENDATIONS:

The undersigned WCJ respectfully recommends that, as a petition for removal, it should be denied as not arising from a final order.

With respect to the Defendant's petition for reconsideration, it should be denied.

Date: **January 8, 2021**

DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE