WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA ISABEL RAMIREZ, *Applicant,* vs. QUIZNOS; STATE FARM 21567 BAKERSFIELD, *Defendants.*	Case No. ADJ1220602 (SJO 0264607) **OPINION AND ORDER GRANTING RECONSIDERATION AND DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's ("WCJ") Findings and Award of June 10, 2009, wherein the WCJ allowed the lien claim of Ditto Interpreting ("Ditto") in the amount of $1,570. Previously in this matter, by way of a stipulated Award of November 6, 2007, it was found that, while employed as a fast food worker on September 30, 2006, applicant sustained industrial injury to her left leg, right arm, back, right shoulder, and left knee causing permanent disability of 29% and the need for further medical treatment. Subsequently, Ditto purportedly provided interpreting services at 17 of applicant's medical appointments with her primary treating physician, Hessam Noralahi, M.D., from December of 2007 through June of 2008. Applicant's claims against defendant were ultimately settled for $33,500 by way of a Compromise & Release agreement approved on December 3, 2008.

Defendant contends that the WCJ erred in allowing Ditto's lien. Among other things, defendant argues: (1) that its liability for reasonable medical expenses pursuant to Labor Code § 4600 does not include interpreting services at a medical appointment; (2) that it was not liable for interpreting services pursuant to Administrative Rule 9795.1 *et seq.* (Cal. Code Regs., tit. 8, § 9795.1 *et seq.*) because there was no evidence presented that the interpreters utilized by Ditto were certified or provisionally certified; (3) that there was insufficient evidence that interpreting

services were reasonably necessary because the applicant apparently attended some medical appointments without an interpreter; (4) that it should not be liable for interpreting services at medical appointments that were denied by the utilization review process; (5) that Ditto has billed for dates of service which do not coincide with Dr. Noralahi's evaluation dates; and (6) that Ditto submitted insufficient evidence that the fees that it charged were reasonable. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration ("Report").

We agree with the WCJ that for an injured worker who does not speak English, the use of an interpreter "is reasonably required to cure or relieve the injured worker from the effects of his or her injury," (Labor Code, § 4600, subd. (a)) and that requiring an injured worker to be treated only by a physician proficient in the injured worker's mother tongue would deprive the injured worker of the right to "be treated by a physician of his or her own choice...." (Labor Code, § 4600, subd. (c).) We also note that the provisions of Administrative Rule 9795.1 *et seq.* appear to relate only to interpreting services at legal and medical-legal appointments and hearings, and not to medical treatment appointments, such as the ones at issue here. (Cal. Code Regs., tit. 8, § 9795.3.) Accordingly, the fact that the interpreters sent by Ditto were not "certified" or "provisionally certified" does not create a defense to liability.[1]

However, we will grant reconsideration, rescind the Findings and Award of June 10, 2009, and return this matter to the trial level for further proceedings and decision because we find that the lien claimant did not adequately establish the reasonableness of its fees.

Labor Code § 4903(b) permits the reasonable expense of medical treatment required to cure or relieve from the effects of the injury to be allowed as a lien. Labor Code § 4906(a) states that "No charge, claim, or agreement ... for the expense mentioned in subdivision (b) of Section 4903, is enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount."

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[1] We take no position on the issue of whether, in this particular case, the interpreters' certification or lack thereof is relevant to the issue of the reasonableness of the fees charged by Ditto. The WCJ may consider this issue in the further proceedings.

As the California Court of Appeal, Fourth Appellate District stated:

> "In workers' compensation matters, the burden of proof rests on the party or lien claimant 'holding the affirmative of the issue.' (Lab. Code, § 5705; see § 3202.5.) ... [T]he lien claimant bears the burden of establishing the ... entitlement to benefits and the reasonable value of the services. [Citation.]" (*Zenith Ins. Co. v. Workers' Comp. Appeals Board (Capi)* (2006) 138 Cal.App.4th 373, 376-377 [71 Cal.Comp.Cases 374].)

In this matter, Ditto billed for 17 dates of service. However, only 12 dates of service coincide with dates of medical evaluations performed by Dr. Noralahi. Although Ditto billed for interpreting services on December 5, 2007, January 31, 2008, February 18, 2008, May 21, 2008, and May 30, 2008, the record does not contain evidence of any medical evaluations taking place on those dates. Although the defendant presented this argument in its petition for reconsideration, the WCJ did not address it in her Report. Accordingly, the WCJ's decision must be rescinded, and the case should be sent back to the trial level in order for the WCJ to determine this issue. To the extent that the record needs further development on this issue, the WCJ should allow it.

Additionally, the lien claimant did not present sufficient evidence that the fees that it charged were reasonable. Although Ditto presented bills for interpreting services that were apparently paid in other cases, there was no evidence presented whether the interpreters used in the instant case had similar qualifications as the interpreters utilized in the other cases. We note that the billings in the other cases did not include the rate per hour, but rather appeared to be a flat rate. We believe that further evidence is necessary on the issue of what would represent a reasonable fee.

Because we rescind on the abovementioned issues, we do not reach the other arguments advanced by the defendant. The defendant may raise these issues again in the further proceedings. We take no position on them.

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For the foregoing reasons,

IT IS ORDERED that reconsideration of the Findings and Award of June 10, 2009 be, and hereby is, **GRANTED.**

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of June 10, 2009 be, and hereby is, **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

DEIDRA E. LOWE

I CONCUR,

RONNIE G. CAPLANE

CONCURRING, BUT NOT SIGNING

JOSEPH M. MILLER

WORKERS' COMPENSATION APPEALS BOARD SEAL

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEP 08 2009

SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:

MARIA RAMIREZ
AUBAIN & GUEVARA
BRADFORD & BARTHEL
DITTO INTERPRETING SERVICES

DW/csl