

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **JOHN LETT,**

5  
6 *Applicant,*

7 **vs.**

8 **L.A.C.M.T.A.; THE TRAVELERS**  
9 **INSURANCE COMPANY,**

10  
11 *Defendant(s).*

**Case No. VNO 0378504**  
**VNO 0378505**  
**VNO 0382578**  
**VNO 0402513**  
**VNO 0462718**

**OPINION AND DECISION**  
**AFTER RECONSIDERATION**

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13 On December 15, 2003, the Appeals Board granted  
14 reconsideration to further study the factual and legal issues in  
15 this matter, so as to give us a complete understanding of the  
16 record and enable us to issue a just and reasoned decision.  
17 Having completed our study, we hereby issue our Decision After  
18 Reconsideration.

19 On May 9, 2003, the applicant's deposition was taken by  
20 defendant. On May 14, 2003, pursuant to the petition filed by  
21 applicant's counsel, the workers' compensation administrative law  
22 judge (WCJ) issued a conditional order allowing applicant's  
23 counsel attorney's fees of \$416.60 in accordance with Labor Code  
24 section 5710.<sup>1</sup>

25 <sup>1</sup> Pursuant to Labor Code section 5710(b)(4): "Where the employer or insurance carrier requests a deposition to be  
26 taken of an injured employee... the deponent is entitled to receive in addition to all other benefits: a reasonable  
27 allowance for attorney's fees for the deponent, if represented by an attorney licensed by the State Bar of this state,"  
which fee "shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the  
employer or his or her insurer."

1 Defendant timely objected to the order on May 22, 2003,  
2 contending that it would be an unreasonable exercise of discretion  
3 to allow attorney fees when the applicant had not signed and  
4 delivered the deposition transcript, and thus, the deposition had  
5 not been completed. Defendant also argued as a matter of public  
6 policy that Labor Code section 5710 must be interpreted consistent  
7 with efforts to eliminate workers' compensation fraud under  
8 Insurance Code section 1871.4, and that because Labor Code section  
9 5710 fees were a benefit to the injured worker as opposed to his  
10 or her attorney, it was logical to provide that benefit only after  
11 the injured worker had completed the deposition. Defendant  
12 apparently had no objection as to the monetary amount of the fee  
13 requested.

14 The issue of the Labor Code section 5710 deposition fees  
15 proceeded to hearing on July 7, 2003, and following the submission  
16 of points and authorities by the parties, the WCJ issued his  
17 decision on October 2, 2003. The WCJ determined that there was no  
18 legal requirement that an applicant sign his or her deposition  
19 transcript prior to allowing reasonable attorney's fees under  
20 Labor Code section 5710. Specifically, the WCJ found that  
21 "setting of a discretionary fee pursuant to Labor Code section  
22 5710 refers to a reasonable attorney fee to be set and approved by  
23 the appeals board; and that the manner in which the deposition is  
24 taken and completed is governed by the Code of Civil Procedure  
25 section 2025(q) in accordance with Labor Code section 5710."

26 Defendant filed a timely petition from the WCJ's decision,  
27 contending that it is an abuse of discretion to allow Labor Code

1 section 5710 fees to an attorney whose client refuses to sign a  
2 deposition transcript under penalty of perjury. For the reasons  
3 discussed below, we will affirm the WCJ's decision.

4 Labor Code section 5710 requires only that the employer or  
5 insurance carrier requests a deposition be taken of the injured  
6 worker. Here, the applicant's deposition was taken and therefore,  
7 the requirements for setting a fee were satisfied. Labor Code  
8 section 5710 contains no requirement that an applicant must sign  
9 his or her deposition as a condition precedent to allowing  
10 reasonable attorney's fees.<sup>2</sup>

11 Moreover, even assuming that the substantive provisions of  
12 the Code of Civil Procedure are applicable to workers'  
13 compensation proceedings, Code of Civil Procedure section  
14 2025(q)(1) provides that the deponent "may either approve the  
15 transcript of the deposition by signing it, or refuse to approve  
16 the transcript by not signing it," and that if "the deponent fails  
17 or refuses to approve the transcript within the allotted period,  
18 the deposition shall be given the same effect as though it had  
19 been approved, subject to any changes timely made by the  
20 deponent."

21 In other words, Code of Civil Procedure section 2025(q)(1)  
22 allows the deponent not to sign his or her deposition, with the  
23 consequence that deposition is given the same effect as if it had

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24 <sup>2</sup> Labor Code section 5710(a) authorizes "the deposition of witnesses residing within or without the state to be taken *in*  
25 *the manner* prescribed by law for like depositions in civil actions in the superior courts of this state under Article 3  
26 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure." (emphasis added.)  
27 Thus, it would appear that Labor Code section 5710 incorporates the deposition *procedures* set forth in the Code of  
Civil Procedure and not its substantive provisions. (See *Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th  
654, 64 Cal.Comp.Cases 624, 630 (fn. 7); *Moran v. Bradford Building, Inc.* (1992) 57 Cal.Comp.Cases 273 (Appeals  
Board en banc).)

1 been signed. Thus, whether the applicant signs his or her  
2 deposition, should have no bearing whatsoever on the discretionary  
3 allowance of a reasonable fee under Labor Code section 5710 for  
4 attorney services rendered in connection with that deposition,  
5 which was taken at the behest of the defendant employer or  
6 carrier.

7 Furthermore, this defendant's reliance on *People v. Post*  
8 (2001) 94 Cal.App.4th 467, 66 Cal.Comp.Cases 1503 is completely  
9 misplaced. In *Post*, the Court of Appeal affirmed the applicant's  
10 conviction of workers' compensation fraud under Insurance Code  
11 section 1871.4(a)(1) for making false statements and  
12 misrepresentations about her physical condition in her *unsigned*  
13 deposition. The Court also held that while Ms. Post could not be  
14 convicted of perjury in violation of Penal Code section 118 when  
15 she did not sign her deposition transcript,<sup>3</sup> she could be  
16 convicted of attempted perjury. Thus, the alleged public policy  
17 concerns of defendant (who has not asserted that there are any  
18 material misrepresentations in the applicant's deposition) with  
19 respect to workers' compensation fraud are not only speculative,  
20 but are wholly unfounded. In addition, defendant has failed to  
21 show how it is prejudiced in any way by the applicant's failure to  
22 sign his deposition.

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25 <sup>3</sup> This is because under Penal Code section 124, a conviction for perjury requires that the deponent execute his or her  
26 deposition transcript. (See *Collins v. Superior Court* (2001) 89 Cal.App.4th 1244, 66 Cal.Comp.Cases 706.) The  
27 Court in *Post*, however, also urged the Governor and legislators to reevaluate the signature and delivery requirements of  
Penal Code section 124, noting that in federal courts the crime of perjury is complete once a materially false statement  
is spoken at a deposition and there is no requirement the transcript be executed by the deponent. (66 Cal.Comp.Cases  
at p. 1515.)



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