

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

**ABRAHAM CHRISTIAN, *Applicant***

**vs.**

**WESTPORT INSURANCE CORP. for RING SECURITY AGENCY, INC.,  
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Numbers: ADJ4316583 (SAL 0108105); ADJ3920506 (MON 0315103)  
Salinas District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ DEIDRA E. LOWE, COMMISSIONER**



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

**May 10, 2021**

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

**SAAM AHMADINIA  
THE DENTAL TRAUMA CENTER  
CHONG LEGAL GROUP**

**PAG/bea**

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

# **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

## **I. INTRODUCTION**

Lien claimant, Dental Trauma Center, has filed a timely, verified Petition for Reconsideration of the undersigned's 2/22/21 Findings and Award [sic] (actually Orders).

## **II. FACTS**

On 12/04/2002 in ADJ3920506 and on 10/06/2003 in ADJ4316583, Applicant, Abraham Christian, sustained injury arising out of and in the course of employment to his knees, back, digestive, neck, psyche, internal, dental, sleep, sexual dysfunction, eyes, hypertension, and TMJ, while employed as a security officer by Ring Security, then insured by Westport Insurance Corp.

Applicant's claims were resolved by Compromise and Release on 2/10/20. (EAMS/FileNet.)

Thereafter, the attorney's fees liens and Dental Trauma Center's lien were tried and then submitted for decision on 11/24/20. In response to the undersigned's F&A, only Dental Trauma Center (hereinafter DTC) petitioned for reconsideration.

Defendant was ordered to pay DTC the amount of \$27,567.89, less any prior payments. (F&A, 2/22/21, Orders, at p. 2.) Neither sanctions nor penalties were ordered. (F&A, Finding No. 7.) The decision was silent as to interest.

DTC does not contest the allowed amount, but appeals only that no interest or penalty were ordered per Labor Code §4603.2(b).

## **III. DISCUSSION**

To the extent that the undersigned failed to elaborate on her conclusions, they will be discussed below. (*Smales v. W.C.A.B.* (1980) 45 Cal.Comp.Cases 1026.)

DTC provided services for Applicant from 1/13/09 through 9/26/13. (9/17/20 Minutes of Hearing and Summary of Evidence, L.C.'S EX. L-52: Patient

Ledger, Dental Trauma Center, 6/8/20.)

The applicable penalty and interest (P&I) provision in effect from 2009 through 2012 was contained in Labor Code §4603.2(b)(1). In 2013, SB863 amended the section moving the P&I provision to subsection (b)(2). (2012 Cal ALS 363, 2012 Cal SB 863, 2012 Cal. Stats. ch. 363.)

In general, the requirements to avoid P&I remained the same. The main difference between the two versions is the deletion of “working day” to just “day.” Both required that the provider provide a properly documented list of services. If so provided, the payor is to pay the provider the reasonable maximum amounts allowed in the OMFS in effect for the date of service. If the payor does not pay the provider within 45 (working) days, the payor is liable for an increase of 15%, plus legal interest retroactive to the date of receipt of the itemization, UNLESS the employer pays the provider at OMFS within that time and advises the provider “the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees.” (2012 Cal ALS 363, 2012 Cal SB 863, 2012 Cal Stats. ch. 363.)

One of the main difficulties with DTC’s argument is that most of the services in contention were for items not included in the OMFS. Both DTC’s witness, Beth Gaebler, and Defendant’s witness, Robert Jimenez, testified that dental codes are not contained in the OMFS. (9/17/20 and 10/27/20 Minutes of Hearing and Summary of Evidence.) As such, it is up to DTC to establish reasonable charges. (*Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal. Comp. Cases 1588 (en banc).)

Defendant produced numerous EOBs for DTC’s dates of service. In those, Defendant advised that only a certain amount would be allowed and provided the reason codes. Lien claimant provided no evidence that they sought to correct any shortcomings or to request a secondary review. (DEFTS' EX. D-2: Explanation of Benefits, Managed Care, 1/21/09 through 10/3/13.)

Furthermore, DTC has not stated with specificity those EOBs that were “late,” instead making a generalized statement.

**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

**ROISILIN RILEY**  
Workers' Compensation  
Administrative Law Judge

Filed and Served: April 5, 2021