

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

**ADRIAN HERNANDEZ, *Applicant***

**vs.**

**WEST STAR NORTH DAIRY;  
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ9722480  
Bakersfield District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR RECONSIDERATION  
AND DECISION AFTER RECONSIDERATION**

Lien claimant Citywide Scanning Services seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 23, 2020. The WCJ found that lien claimant performed actual, reasonable, and necessary services in regards to invoices 3738-1, 3738-2, 3738-3, and 3738-8; and that lien claimant did not establish the reasonable value of the services it provided. The WCJ ordered that lien claimant's lien be disallowed.

Lien claimant contends that the WCJ exceeded his powers when he stated in his Opinion on Decision (Opinion) that there was no contested claim at the time of lien claimant's services in November 2014, which was not an issue upon remand; that the WCJ's statement in his Opinion that invoices 3738-4, 3738-5, and 3738-6 were not reasonable and necessary was inconsistent with his finding that invoices 3738-1, 3738-2, 3738-3, and 3738-8 were reasonable and necessary; and that the WCJ's conduct of the lien hearing on September 19, 2020, was not consistent with *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc).<sup>1</sup>

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<sup>1</sup> In making its *Hamilton* arguments, lien claimant appears to imply that the onus is on the WCJ to create a proper record. By way of clarification, we held in *Hamilton*, which lien claimant also cited to in its Petition, that the parties and the WCJ are responsible for creating a proper record. (*Hamilton, supra*, at \*\*5-6; Petition, *supra*, at p. 12:5-6.) There is no record that lien claimant raised any objections based on *Hamilton*.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, 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 grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

### **FACTUAL BACKGROUND**

On April 29, 2020, we issued our Opinion and Decision After Reconsideration (Decision After Reconsideration).<sup>2</sup> As relevant herein, we discussed the application of Labor Code section 4620 and concluded that there had been a contested claim since November 17, 2014, if not earlier.<sup>3</sup> (Decision After Reconsideration, April 22, 2019, pp. 4:23-5:10.) We affirmed the Findings of Fact of August 22, 2019, except that we deferred the issue of lien claimant's lien; in particular, we explained that lien claimant had the burden of proof pursuant to sections 4621 and, if necessary, 4622. (Lab. Code, §§ 4621 & 4622.)

On September 19, 2020, the WCJ held a lien hearing. The minutes of hearing contain a typewritten statement as follows:

“Defendant and lien claimant [Citywide] Scanning to file Points & Authorities on the issues raised in the [Opinion] and Decision After Reconsideration by October 8, 2020. The matter will be resubmitted as of October 9, 2020.”

### **DISCUSSION**

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp.

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<sup>2</sup> We provided a detailed factual background of this case in our Decision After Reconsideration. (See Decision After Reconsideration, *supra*, at pp. 2:13-4:10.)

<sup>3</sup> All further statutory references are to the Labor Code unless otherwise stated.

LEXIS 4947] (Appeals Board en banc), “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (Citation omitted.) (*Id.* at p. 476.)

The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Part of the WCJ’s responsibility is to “frame the issues and stipulations for trial.” (*Id.* at p. 475.)

The issue that we face on reconsideration is that there is an insufficient record to evaluate lien claimant’s Petition for Reconsideration or the WCJ’s F&O. In particular, the WCJ did not adequately frame the issues. After the Decision After Reconsideration, the WCJ held a conference and directed the parties to file Memoranda of Points and Authorities “on the issues raised” in the Decision After Reconsideration. Simply referring to the issues stated in the Decision After Reconsideration, without any context, does not provide sufficient guidance to an appellate body as to the issues that were adjudicated. The WCJ should have held a hearing to allow the parties to frame the issues for the WCJ based on the Decision After Reconsideration, enter into any stipulations, and submit any exhibits, if necessary, for the WCJ to make a determination on their admissibility. Had the WCJ held a hearing and created a proper record with the parties, many of the issues before us could have been addressed properly in the first instance at the trial level.

For example, the WCJ addressed the admissibility of lien claimant’s new exhibit; a Market Rate Analysis dated September 14, 2020, that was referenced in its October 8, 2020 Memorandum of Points and Authorities. Without a proper record, we are unable to address this issue.

As noted by lien claimant in its Petition, in his November 23, 2020 Opinion, the WCJ addressed the “contested claim” issue pursuant to section 4620. However, it is unclear why the WCJ addressed the “contested claim” issue when we had explained in our Decision After Reconsideration that a contested claim existed and the basis for our conclusion. The WCJ did not cite to any basis for his legal authority that allows him to change our findings or conclusions.

Furthermore, the WCJ found that lien claimant performed actual, reasonable, and necessary services in regards to invoices 3738-1, 3738-2, 3738-3, and 3738-8. (Finding of Fact 1, Findings of Fact and Order, November 23, 2020.) This finding, however, appears to be inconsistent with the WCJ's statement in his Opinion that lien claimant failed to prove by a preponderance of the evidence that a contested claim existed at the time lien claimant provided its services in November 2014. That is, in finding that lien claimant's services related to these four invoices were actual, necessary, and reasonable, the WCJ must have also concluded that a contested claim existed related to these four invoices.<sup>4</sup> (See *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059, 1062-1063 (Appeals Board en banc) ("Assuming a lien claimant has met its burden of proof pursuant to section 4620(a), it has a second hurdle to overcome; the purported medical-legal expense must be reasonably, actually, and necessarily incurred".).)

Likewise, the WCJ addressed the reasonableness and necessity of lien claimant's invoices regarding the California Secretary of State (3738-5) and EDEX (3738-6) (Ex. 6, Invoices, 3738-5 & 3738-6), which appears to be inconsistent with his statement in his Opinion that a contested claim did not exist at the time of lien claimant's services in November 2014 .

Upon return to the trial level, we recommend that the parties and WCJ clearly frame each of the stipulations and issues.<sup>5</sup> The onus is on the parties to understand the applicable statutes and regulations and to make coherent legal arguments based on the evidence. The parties must make sure that any objections are properly lodged in the record so that they are preserved on reconsideration or removal. The parties may submit evidence at that time, and the WCJ can make a determination on its admissibility.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

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<sup>4</sup> Although the WCJ discussed the "contested claim" issue in his Opinion, the F&O does not contain a finding of fact or order regarding the "contested claim" issue. The Opinion provides the rationale for the F&O, but the actual findings of fact and orders must be contained in the F&O. The parties are only bound by those findings and orders in the F&O; not by the Opinion.

<sup>5</sup> Section 5702 states, in part, that the parties "may stipulate to facts relative thereto in writing and file such stipulations with the appeals board." (Lab. Code, § 5702.) Where possible, we encourage the parties to enter into stipulations so that they and the WCJ do not need to spend any time on issues that are not seriously contested by either party. Accordingly, based on our review of the record, the parties may want to narrow the issues and stipulate that a contested claim existed (Lab. Code, § 4620), which invoices are at issue and whether lien claimant's services were reasonable and necessary and actually incurred (Lab. Code, § 4621), and the amounts in dispute (Lab. Code, § 4622).

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the November 23, 2020 Findings of Fact and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 23, 2020 Findings of Fact and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



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

**February 12, 2021**

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

**ADRIAN HERNANDEZ  
CHERNOW & LIEB  
CITYWIDE SCANNING SERVICE  
ZENITH INSURANCE COMPANY**

**SS/abs**

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