

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

ASENJI KESHESHI, *Applicant*

vs.

**EARLY BEHAVIOR INTERVENTION, LLC;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8750331
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Lien claimant Dental Trauma Center seeks reconsideration of the Findings of Fact issued on January 27, 2020, wherein the workers' compensation administrative law judge (WCJ) found that its lien is barred by the statute of limitations and that the September 21, 2017 stipulation between it and defendant is invalid.

Lien claimant contends that the evidence establishes that the parties settled its claim on April 13, 2017 through a Stipulation and Order to Pay Lien Claimant, rendering the issue of the statute of limitations not properly subject to determination by the WCJ. Lien claimant further contends that the evidence establishes that the September 21, 2017 agreement modifying the Stipulation is valid.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition for Reconsideration, the Answer, and the contents of the Report. Based upon our review of the record, and as discussed below, we will affirm the Findings of Fact, except that we will amend to find that no good cause exists to set aside the Stipulation and Order to Pay Lien Claimant, as modified on September 21, 2017, that lien claimant is entitled to

reimbursement in the amount of \$8,500.00, and that the issues of whether penalties and interest may accrue for defendant's failure to pay lien claimant are deferred and to be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of dispute, and we will order that defendant pay lien claimant \$8,500.00 and that the matter be returned to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

While employed as a behavioral therapist for defendant on January 10, 2012, applicant sustained injury to various disputed body parts and the parties resolved the claim by compromise and release. (Minutes of Hearing and Summary of Evidence, November 19, 2019, p. 2:3-9.)

On November 19, 2019, the matter proceeded to lien trial as to the following relevant issues: lien claimant's lien in the amount of \$17,707.03; penalties and interest arising from defendant's alleged failure to pay the amount required by the Stipulation and Order to Pay Lien Claimant; and whether the September 21, 2017 modification to the Stipulation, which was "entered into based upon information which was withheld" and not approved by a WCJ, is valid and enforceable. (*Id.*, p. 2:11-17.)

The WCJ admitted the Stipulation and Order to Pay Lien Claimant into evidence. (*Id.*, p. 2:23.) The Stipulation provides that lien claimant "filed a lien dated per EAMS in the sum of \$17,707.03," and that the "parties agree to accept the sum of \$8,500.00 as full payment . . . and said sum is inclusive of all penalties and interest if paid within thirty (30) calendar days from the date of approval." (Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017.)

The Stipulation's form language "if paid within thirty (30) calendar days from the date of approval" is crossed out by pen-stroke, with handwriting indicating "9/21/17" and what may be "3 months" appearing next to the crossed-out language. However, it is unclear whether "3 months" is actually what is written because it is partially illegible. (*Id.*)

At trial, defendant's lien representative, Ira Sherman, testified that on April 13, 2017, he appeared at the WCAB on three different cases and told lien claimant's representative, Saam Ahmadinia, that he would try to get to his lien. Later, Mr. Ahmadinia indicated that he wanted to resolve the lien so he could make an appearance in Marina Del Rey. (Minutes of Hearing and Summary of Evidence, November 19, 2019, p. 6:8-11.) When Mr. Ahmadinia handed him an itemized bill, he reviewed it and offered him \$8,500.00. When Mr. Ahmadinia accepted the offer,

each of them signed the stipulation. He did not realize that there was a statute of limitations issue until after he signed the stipulation. (*Id.*, p. 7:15-17.)

More specifically, he mistook the last entry on the itemized bill for a date of service when it was actually an entry for penalties and interest. Because the last date of service was October 30, 2013 and the lien was not filed until June 16, 2015, the lien was not timely. (*Id.*, p. 7:22-8:1.)

In the Report, the WCJ writes:

At the center of the dispute between [defendant] and [lien claimant] is a “Stipulation and Order to Pay Lien Claimant” form that was signed by parties at the two separate lien conferences; April 13, 2017 and September 21, 2017, and whether the signed form resulted in a valid and enforceable stipulation each time.

...

Mr. Sherman provided credible and un rebutted testimony at the lien trial regarding his discussions with Mr. Ahmadinia at [the April 13, 2017] lien conference.

...

After Mr. Ahmadinia left [the April 13, 2017 lien conference], Mr. Sherman testified that he then “determined that one of the dates of service had placed the lien outside of the statute of limitations. He then called Mr. Ahmadinia, and Mr. Ahmadinia told him that he couldn’t return as he was on his way to Marina Del Rey.” *Id.* at page 6, lines 14-16. Mr. Sherman then sent an email at 12:58 p.m. to Mr. Ahmadinia, memorializing their conversation, which was read into the record, and states as follows:

“Hi Saam,

This email to memorialize our conversation that the Dental Trauma Lien on this case appears to be outside of the Statute of Limitation. The last date of service is October 30, 2013 and the lien was filed on June 16, 2015, thus being outside the statute of limitations. I will not be able to have this settlement approved by a Judge based on this information. In fact the settlement of \$8,500 that we had previously signed will be null and void and we will be requesting a withdrawal of the lien. I apologize for this inconvenience and I wished I brought this to your attention sooner.

Thank you,

Ira.”

Defense Exhibit J and V.

The “Stipulation and Order to Pay Lien Claimant” form itself is in fact only signed by Mr. Ahmadiania and Mr. Sherman, and the judge's signature line is blank.

...

The lien conference was continued to September 21, 2017, at which time Mr. Ahmadiania returned on behalf of [lien claimant] . . . Mr. Ira Sherman did not appear [and] . . . Ms. Yvonne Martinez appeared on behalf of [defendant].

Mr. Sherman testified that it was his understanding that at the September 21, 2017 lien conference “Mr. Ahmadiania showed her (Ms. Martinez) a picture of the stipulation that the parties had signed.” “Minutes of Hearing and Summary of Evidence,” page 6, lines 24-25. When asked under cross-examination how it was he believed that Ms. Martinez was unaware of the statute of limitations issue, Mr. Sherman responded that it was because he had spoken to Ms. Martinez. Id. page 7, lines 18-19.

When Mr. Sherman was asked what he understood about Ms. Martinez signing the form, he responded that he believed “she didn’t realize that the agreement was null and void and that she thought she was saving [defendant] penalties and interest. He doesn’t think that Mr. Ahmadiania told Ms. Martinez about his statute of limitations argument.” Id. at page 7, lines 3-7.

Mr. Sherman was shown a copy of the “Stipulation and Order to Pay Lien Claimant” form, Lien Claimant’s Exhibit A, and confirmed that it included Ms. Martinez’ signature. The form itself has two sets of signatures: the first set having occurred at the first lien conference, with the parties signing on the respective signature lines for “Lien Claimant” and “Defendant.” The second set of signatures are at the bottom of the form, for which Mr. Ahmadiania and Ms. Martinez created their own signature lines and dated them “9/21/17.”

Further, under the second set of signatures, Ms. Martinez appears to have written the following:

“TODAY 9/21/17 Lien Claimant’s Representative, Mr. Ahmadiani, has agreed not to pursue penalties and interest although not paid within 30 days as set forth in body of document. Said language has been crossed out.” Lien Claimant’s Exhibit A.

Accordingly, the language in the stipulation regarding the penalties and interest was crossed out and dated “9/21/17.”

Following the second lien conference, Mr. Sherman testified that after he found out about what happened at the September 21, 2017 hearing, he “had a meeting at [defendant’s office] about whether they were going to fight or enforce the lien agreement.” Minutes of Hearing and Summary of Evidence, page 7, lines

6-7. Mr. Sherman called Mr. Ahmadinia “to confirm he had received his email, and Mr. Ahmadinia told him that his client was pushing him into continuing with the cause.” Id. at page 7, lines 10-13.

Mr. Sherman then sent a letter to Mr. Ahmadinia dated October 3, 2017, Defense Exhibits K and W, where he outlined their conversations regarding the lien, and included the following:

“Your misrepresentation to [defendant’s] attorney is not well taken. There are ethical concerns to consider if your intent was to enforce an agreement whereby [defendant] had clearly communicated to you that it could not enter into.”

(Report, pp. 2-4.)

DISCUSSION

In *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1], the Court annulled the WCAB’s decision to set aside the parties’ stipulation that applicant failed to assert a cumulative injury claim because the stipulation lacked evidentiary support and directed the WCAB to consider whether good cause to set aside the stipulation was shown. The Court reasoned:

Stipulations are designed to expedite trials and hearings and their use in workers’ compensation cases should be encouraged. . . . If one party could, as a matter of right, withdraw from a stipulation at any time before it was acted upon by the WCJ or the WCAB, other parties could not rely upon the stipulation and, rather than being expedited, hearings would be subject to uncertainty and disruption in order for the parties to gather and present evidence on issues thought to have been laid to rest by the stipulation.

(*Weatherall, supra*, Cal.App.4th 1114, 92 [65 Cal.Comp.Cases 1, 5] (citations omitted).)

In this case, lien claimant argues that the Stipulation resolved all factual disputes surrounding the lien claim, including the issue of whether the claim was barred by the statute of limitations; and, therefore, the issue was not properly subject to determination by the WCJ and cannot serve as grounds to set aside the stipulation.

In this regard, the record shows that the parties’ representatives appeared at the April 13, 2017 lien conference and signed the Stipulation, which provides that lien claimant “filed a lien dated per EAMS in the sum of \$17,707.03,” and that the parties agreed to settle the lien for \$8,500.00, inclusive of all penalties and interest so long as it was paid within 30 days of approval.

(Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017; Minutes of Hearing and Summary of Evidence, November 19, 2019, pp. 6:8-7:17.)

Here, we observe that contract principles apply to stipulations for settlement of workers' compensation disputes. (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].) Such stipulations constitute settlement documents that must be interpreted to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636.) Since the settlement document is a written contract, the parties' intention must be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639.)

Here, the Stipulation demonstrates the parties' intention to settle the lien, and we are thus persuaded that it is akin to that in *Weatherall*: Defendant may not withdraw from it even though it has not been approved by the WCJ unless it shows good cause to do so.

Good cause may be shown through competent evidence demonstrating fraud, duress, undue influence, mutual mistake of fact, mistake of law, invalidity of execution, or incompetency. (*Argonaut Ins. Exch. v. Industrial Acc. Com. (Bellinger)* (1958) 49 Cal.2d 706 [23 Cal.Comp.Cases 34]; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160 [50 Cal.Comp.Cases 311]; *Carmichael v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 311 [30 Cal.Comp.Cases 169]; *Silva v. Industrial Acc. Com.* (1924) 68 Cal. App. 510 [11 IAC 266]; *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691 (writ den.); *Bullocks, Inc. v. Industrial Acc. Com.* (1951) 16 Cal.Comp.Cases 253 (writ den.); *Pac. Indem. Co. v. Industrial Acc. Com. (Forrest)* (1946) 11 Cal.Comp.Cases 117 (writ den.).)

Here, the evidence shows that defendant entered into the Stipulation without realizing that lien claimant's claim could be barred by the statute of limitations. In particular, defendant's representative testified that he "determined that one of the dates of service had placed the lien outside of the statute of limitations," but did so only after executing the stipulation. (Minutes of Hearing and Summary of Evidence, November 19, 2019, p. 6:14-16.) In other words, defendant entered into the Stipulation without full knowledge of the relevant facts.

As explained in *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856 [44 Cal.Comp.Cases 798]:

Where a stipulation has been “entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation,” a court may exercise its sound discretion and set aside the stipulation. [citations omitted.] But, “[w]hen there is no mistake but merely a lack of full knowledge of the facts, which . . . is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief.” [citation omitted.].
(*Huston, supra*, 44 Cal.Comp.Cases at 804.)

Here, the Stipulation fails to identify the date lien claimant filed the lien and, instead, provides that the filing date may be found in “EAMS.” (Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017.) In addition, defendant’s representative testified credibly that he mistook the last entry on the itemized bill he received from lien claimant’s representative for a date of service when it was actually an entry for penalties and interest—and only realized his mistake after executing the Stipulation. (Minutes of Hearing and Summary of Evidence, November 19, 2019, pp. 7:15-8:1; Report, p. 2; *Garza v. Workmen’s Comp. App. Bd.* (1970) 3 Cal.3d 312, 317–319 [35 Cal.Comp.Cases 500].) Thus, defendant’s representative could have examined the record in EAMS or closely scrutinized the itemized bill in order to learn the service date of the lien before signing the Stipulation—but did neither. We are therefore persuaded that the reason defendant entered the Stipulation without full knowledge of the relevant facts was that it failed to exercise due diligence. Therefore, the record is insufficient to establish good cause to set aside the Stipulation. Accordingly, we will amend the Findings of Fact to find that no good cause exists to set aside the Stipulation and Order to Pay Lien Claimant.

We now turn to the issue of whether or not the Stipulation, as modified on September 21, 2017, is valid and enforceable based upon lien claimant’s alleged failure to inform defendant’s representative, Ms. Martinez, of defendant’s legal argument that the Stipulation was made null and void by operation of the statute of limitations. Here, the record shows that, through their respective representatives, Mr. Ahmadinia and Ms. Martinez, the parties agreed that defendant would not be subject to penalties and interest for failing to pay the \$8,500.00 settlement amount within thirty days. (Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017; Report, pp. 3-4.)

In addition, and as discussed above, the record shows that defendant’s representative, Mr. Sherman, became aware of the statute of limitations issue shortly after he executed the Stipulation on April 13, 2017. Mr. Sherman also testified that after he discovered that one of the dates of

service placed the lien outside of the statute of limitations, he informed lien claimant of defendant's position that the statute of limitations made the Stipulation null and void. (Report, p. 3.) Thus, through its representative, Mr. Sherman, defendant knew of its position with respect to the Stipulation on April 13, 2017, or approximately five months before it agreed to modify it. (See, e.g., *Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1231 [finding as a general rule that an attorney's knowledge is imputed to the attorney's client].) Since defendant knew of its position, we are unable to discern support for the finding that the Stipulation as modified on September 21, 2017 is void and unenforceable simply because lien claimant failed to remind defendant of the position it had taken following the previous lien conference. Thus, the record fails to establish good cause to set aside the Stipulation as modified on September 21, 2017. Accordingly, we will amend the Findings of Fact to find that no good cause exists to set aside the Stipulation and Order to Pay Lien Claimant, as modified on September 21, 2017.

However, we note that the record regarding the scope of the modification is unclear in that it includes not only the crossed-out thirty day payment period, the statement memorializing that modification signed by the parties, and the date of the modification agreement, "9/21/17," but also partially illegible handwriting that may indicate "3 months." (Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017.) Because the record is unclear regarding the scope of the time period in which defendant may not be subject to penalties and interest for failing to pay the settlement amount, we will amend the Findings of Fact to defer the issues of whether and when penalties and interest may accrue for defendant's failure to pay the amount required by the Stipulation. (Ex. A, Stipulation and Order to Pay Lien Claimant, April 13, 2017; Report, pp. 3-4.)

Accordingly, we will affirm the Findings of Fact, except that we will amend to find that no good cause exists to set aside the Stipulation and Order to Pay Lien Claimant, as modified on September 21, 2017, and that the issues of whether penalties and interest may accrue for defendant's failure to pay lien claimant are deferred and to be adjusted by the parties, with jurisdiction reserved in the event of dispute, and we will order that defendant pay lien claimant \$8,500.00 and that the matter be returned to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued on January 27, 2020 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

. . .

3. There is no good cause to set aside the Stipulation and Order to Pay Lien Claimant, as modified on September 21, 2017.

4. Lien claimant is entitled to reimbursement in the amount of \$8,500.00, and the issues of whether penalties and interest may accrue for defendant's failure to pay lien claimant that amount are deferred and to be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of dispute.

IT IS ORDERED THAT defendant pay lien claimant \$8,500.00 as provided by the Stipulation and Order to Pay Lien Claimant, as modified on September 21, 2017.

IT IS FURTHER ORDERED THAT this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 15, 2021

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

**THE DENTAL TRAUMA CENTER
SAAM AHMADINIA
STATE COMPENSATION INSURANCE FUND**

SRO/ara

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