WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SELSA HERNANDEZ, ***Applicant***

vs.

FJS, INC. dba ANABELLA HOTEL; HARTFORD INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INC., ***Defendants***

Adjudication Number: ADJ9757065
Van Nuys District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on our review of the record, and for the reasons stated in the WCJ's report and opinion, which are both adopted and incorporated herein, 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/ CRAIG SNELLINGS, COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 30, 2021

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

SELSA HERNANDEZ
RUSSEL LEGAL GROUP
TESTAN LAW

PAG/*pc*

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 DEFENDANT'S PETITION FOR RECONSIDERATION

I
INTRODUCTION

1.	Date of Injury	December 24, 2009
2.	Identity of Petitioner Timeliness: Verification:	Defendant filed the Petition. The Petition is timely filed. The Petition is verified.
3.	Date of Findings of Fact	9/7/2021.

4. Petitioner's contentions:
   (a) That the Order or Decision made and filed by the Workers' Compensation Administrative Law Judge is against the law;
   (b) That the Findings of Fact do not support the Order or Decision;
   (c) That the evidence submitted in the proceedings does not justify the Order or Decision; and
   (d) That Petitioner has discovered new evidence material to him or her that' could not with reasonable diligence have been discovered and procured at the hearing.

II
FACTS

Applicant filed an Application for Adjudication of Claim dated December 10, 2014, alleging injury to her bilateral shoulders while pushing a sofa[1] (EAMS Doc. ID# 13580305). The case in chief resolved and Applicant reached a Compromise & Release agreement ("C&R") with four defendants on four cases. An Order Approving Compromise & Release ("OACR") issued on May 10, 2017. (EAMS Doc. ID#63715821). In the C&R, the following language was included "[d)defendant' s reserve contributions [sic] rights against one another for amounts paid to date and for amounts to be paid towards lien claimants." *Id*. Everest Insurance administered by Sedgwick ("Sedgwick") was the carrier for the cumulative trauma date of injury bearing ADJ8838679, and the lien claimant in the instant matter for reimbursement. On September 26, 2019, Sedgwick filed a lien for reimbursement. (EAMS Doc. ID#30440972). On February 19, 2021, Sedgwick filed a Declaration of Readiness to Proceed ("DOR"). (EAMS Doc. ID#35626673). The matter was set for a lien conference on May 10, 2021,

[1] The court takes judicial notice of the pleadings pursuant to Evidence Code 452(d); *Faulkner v. WCAB* (2004) 69 CCC 1161 (writ denied) (permitting judicial notice of the DWC-1).

(EAMS Doc. ID#74 l 78903) and continued to June 10, 2021, and was then set for lien trial. (EAMS Doc. ID#74302993). Prior to the date of trial, the other codefendants settled with Sedgwick so the trial proceeded on the reimbursement as between Sedgwick and Defendant, Hartford Insurance Company only.

Defendant submitted as evidence a DWC-1 form dated December 25, 2009. (Defendant's Exhibit A). The DWC-1 was completed by the Applicant and employer representative, Lugia Jayas. *Id*. There is a comment in the employer section of the claim form that states, "[s)he did not want to go to the Dr. on 12/24." *Id*. Defendant also presented as evidence a copy of a denial letter dated December 29, 2009. (Defendant's Exhibit D). The denial was issued by a different carrier, CompWest Insurance Company, and states "[w]e are denying your claim of injury because ... coverage for your employer ended on 11/1/09. We have requested your employer file this incident with the correct insurance carrier." *Id*. The second page of the denial letter provides the claims adjustor's phone number, DWC website, a phone number to obtain recorded information and a list of offices and advises the Applicant that she has the right to consult with an attorney of her choice. *Id.*

The Applicant did not testify at trial, but was deposed twice. In her first deposition, she testified to pushing a sofa and twisting her left arm/shoulder pursuant to the DWC-1. (L.C.'s Exhibit 3, Depo. of Applicant Vol. I, 9/26/2014, Pgs. 44:8-25; 45:1-12). Her employer sent her to the clinic. (*Id*. Pgs. 45: 16-25; 46: 1-2). At the clinic, she was treated with ice (*Id*. at Pg. 45:23-25), but the pain in her shoulder never went away. (*Id*. Pg. 46:3-6). In her Volume II deposition, Applicant testified that she missed a couple of days of work after the injury. (L.C.'s Exhibit 4, Depo. of Applicant Vol. III 0/3/2014, Pg. I 02:2-9). She again testified that she went to a clinic and got ice, and also gel and pills. (*Id*. at Pg. 104: 1-7).

In connection with the claim, the Applicant saw QME Dr. Bill Yueng who issued two reports and found industrial injury to multiple parts including the left shoulder. (L.C.'s Exhibit 1 Pg. 20-2 I; L.C.'s Exhibit 2 Pg. 21). Applicant also treated with Dr. Julian Girod who found industrial injury to the left shoulder and apportioned injury to the December 24, 2009, shoulder injury. (Defendant's Exhibit C Pg. 4).

III
DISCUSSION:

Defendant's Petition for Reconsideration raises two primary issues that it argues ostensibly precludes Sedgwick from entitlement to reimbursement: 1) the WCJ erred in admitting Defendant's exhibits 5-30 into the records; and 2) the one-year statute of limitation should have applied pursuant to Labor Code §5405.

DID THE WCJ ERRONEOUSLY ADMIT LIEN CLAIMANT'S EXHIBITS 5-30

In the Findings and Award ("F&A"), the undersigned noted that although exhibits five through thirty were admitted into evidence, they were not relevant to the F&A[2]. Consequently, even if these exhibits were deemed inadmissible, the record was sufficient to issue an F&A. Assuming, however, or the sake of argument, that the records were relied upon, the undersigned still finds that the exhibits were listed with sufficient specificity and are admissible. Cal. Code Regs. tit. 8, § l 0759 establishes the method for filing and listing exhibits at the Mandatory Settlement Conference ("MSC"). Pursuant to the rules:

> [e]ach exhibit listed must be clearly identified by author/provider, date, and title or type ... with the exception that the following documents may be listed as a single exhibit unless otherwise ordered by the Workers' Compensation Appeals Board:
>
> A. Excerpted portions of physician, hospital or dispensary records, provided that the party [offering] the exhibit designates each excerpted portion by the title of the record or document, by the author or authors of the record or document, and by any available page number(s) ....

CCR§ 10759(b)(l).

Here, Sedgwick offered into evidence various portions of records from physicians, physical therapy, pharmaceuticals, interpreting agencies, medical bills, demand letters for attorney fees and permanent disability notices. In reviewing all the exhibits, the WCJ found that information contained within the exhibits were not vague or ambiguous and were sufficiently identified.

Defendant relies on the panel decision in *Jose Figueroa v. American Marine Corp./Arch Insurance*, ADJ I 1433178. In *American Marine*, the WCJ excluded several trial exhibits because defendant failed to timely serve, disclose, and identify them with specificity at the MSC. *Id.* In *American Marine*, defendant listed several exhibits in the Pre-Trial Conference Statement ("PTCS") but under dates, defendant wrote 'various dates'. At the MSC, and again at trial, applicant raised an objection to the exhibits as unserved and unspecified evidence. While Defendant is correct that several exhibits were excluded, there were various reasons for excluding the exhibits. The WCJ in American Marine Corp indeed found that one exhibit, 'payroll records' had been sufficiently identified as it appeared to relate to daily work and rate of pay. Ultimately, the WCJ excluded the payroll records for failure to serve not for lack of specificity.

[2] *See* F &A fn 1.

Further, Defendant appears to be raising the issue of failure to serve exhibits for the first time in its Petition for Reconsideration on the grounds that it could not reasonable have discovered this information before the trial. Based on Defendant's Petition for Reconsideration, Sedgwick's proof of service of trial exhibits alleged a service date of July 30, 2021. (Defendant's Petition for Reconsideration, EAMS Doc. ID#38463362 at Pg. 2). To further support that exhibits were not received, Defendant has provided two declarations[3] including 'Declaration of Paul Lee' from ICW Group attesting to the fact that ICW did not get the exhibits as per Sedgwick's proof of service.[4]

Any argument that exhibits were not properly served should be rejected because -this issue was not raised at trial by Defendant. *See Thompson v. County of Tulare*, 2015 Cal. Wrk. Comp. P.D. LEXIS 451 (holding that by not raising an objection to admissibility at trial for failure to be served, the issue has been waived.) Defendant's contention that it could not reasonably have discovered that exhibits had not been served is unpersuasive. On June 18, 2021, Defendant e-filed a joint PTCS. (EAMS Doc. ID#37120657). The PTCS listed all the exhibits proffered by Sedgwick. The trial in this matter was not held until almost two months later on August 19, 2021. Defendant had ample time to ascertain that it had not been served with exhibits by the day of trial and could have raised this issue at trial.

DID THE WCJ ERR BY FAILING TO APPLY THE LABOR CODE §5405 ONE-YEAR STATUTE OF LIMITATION

In the F&A, the undersigned found that the statute of limitation was tolled for failure to provide proper *Reynolds* notice and that the five-year statute of limitation under *McDaniels*[5] appeared to be instructive. Pursuant to Labor Code §5405:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> a) The date of injury.
> b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
> c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

[3] The second Declaration is from James Cook, Defendant's mailroom employee attesting that no records were received.
[4] As noted supra, ICW appears to be the wrong carrier that issued the denial Car lack of coverage.
[5] It should be noted that the undersigned found the tolling of the statute of limitation was also operative; accordingly, even if *McDaniels* is not applicable due to stipulation by the parties that no medical care was provided, the five-year statute is not determinative.

The inquiry of whether the one-year period applies requires further analysis by the court. A failure to serve the proper notices can have the effect of circumventing the one-year statute of limitations. *San Joaquin Community Hosp. v. WCAB*, 67 Cal. Comp. Cases 1653. The employer has the burden of proving when the injured employee gained actual knowledge of his workers' compensation rights. *Kaiser Foundation Hasps. Permanente Medical Group v. WCAB*, 39 Cal. 3d 57, 60, see also *Dunn v. Bright Pool Servs*., 2016 Cal. Wrk. Comp. P.D. LEXIS 200 (holding that the running of the statute of limitation is an affirmative defense, and therefore, the burden of proof as to whether an Application for Adjudication of Claim is untimely filed rests with defendant). The employer has the burden not only to assert the running of the statute of limitations but also to establish either that written notice was given to the employee or that the employee had actual notice of his workers' compensation rights. *Sidders v. WCAB*, 205 Cal. App. 3d 613, 622. If the employer cannot prove that it provided an employee with notice of workers' compensation rights and procedures, it may not rely on the affirmative defense of the statute of limitations to defeat an employee's claim. *See Colgate v. WCAB*, (Sanchez), 2013 Cal. Wrk. Comp. LEXIS 27 (writ denied).

A lien claimant may initiate workers' compensation proceedings by filing an Application, but there is only one statute of limitations period, and that is the period applicable to the injured employee. *Kaiser* supra at 68. The statute of limitations will be tolled for a lien claimant if it is tolled for the employee. *Id*. In San Joaquin, the applicant sustained an injury to his back on 1/19/1999 and filed a claim form on 1/24/99. *Id*. at 1654. Defendant sent a delay letter on 1/28/99 with a pamphlet "Facts of Injured Workers" and then a denial letter on 3/9/99. *Id*. On· April 14, 2020, the applicant filed an Application for Adjudication of Claim and Defendant alleged a statute of limitation defense. *Id*. The WCJ issued an F&A finding that Defendant was estopped from asserting the statute of limitations defense. *Id.* On appeal, the WCAB affirmed holding as follows:

> As noted in our prior opinion, Administrative Direction (AD) Rule 9812(i) [8 Cal. Code Reg. §9812(i)] requires notice of the 'claimant's remedies' when liability for the injury is denied, and AD Rule 9882(b)(5) [80 Cal. Code Reg. §9882(b)(5)] requires notice of 'time limits for ling a claim.' Case law also requires that the injured worker be provided with specific notices, including the time limits for filing a claim. The Court of Appeal stated the rule as follows in *Galloway v. WCAB* (1998) 63 Cal. App. 4th 880 ... "[I]n the event that the employer fails to give adequate notice, the one-year statute of limitations is tolled until the employee has such notice ... (citing *Reynolds v. WCAB* (1974) 12 Cal. 3d 726, 730). Statutes of Limitation are subject to the rule of liberal construction and to the principles of estoppel.

Id. at 1655 (parallel citation omitted).

The case goes on further to state that it is clear that California workers' compensation cases involve the filing of both "claim forms" and "Applications for Adjudication of Claim" and finding that the pamphlet provided by defendant did not distinguish between a claim form and an application, nor did it explain in even basic detail the specific time limits for those two separate filings or the requirement to file an application in the event the claim form is rejected. *Id*. at 1656.

Applying these facts to the case at hand, Defendant is estopped from asserting a statute of limitation defense since the statute of limitation in the above matter was tolled. Defendant's argument that there was no evidence offered that Applicant was unaware of her rights to file a claim is not the proper analysis. This statute of limitation defense is an affirmative defense and the burden falls upon Defendant to establish that Applicant was informed of her rights. The only evidence Defendant proffers in this regard is the denial letter issued by another carrier. First, this letter was not an unequivocal denial; rather, the Applicant was informed that her employer was being notified to file the claim with the proper carrier. Further, the letter does not comply with the *Reynolds* requirement. The letter did not make any distinction between the filing of a claim form or an Application and did not provide the time limit for filing a claim. Additionally, Labor Code §5401(b) mandates that required notices be given in English and Spanish and that they communicate notice of potential eligibility for several benefits, as well as the procedure to commence proceedings for the collection of compensation. Even if all the required information had been provided, the Applicant is a Spanish speaker as evidenced by the use of an interpreter in the deposition proceedings and signing of the C&R. As such, a letter in English could not assume that she knew of her rights. See *Alvarado v. Discovery Foods*, LLC, 2018 Cal. Wrk. Comp. P.D. LEXIS 62. Finally, Defendant argues that the Applicant declined treatment and appears to have received first aid in the form of ice. The claim form notes that treatment was denied on December 24, 2009, not indefinitely, and Applicant's deposition testimony and the medicals support that her injury does not fit the definition of a first-aid claim. Nonetheless, the Applicant still completed a claim form, and no proper denial or *Reynolds* notice was given.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be denied.

DATE: 10/12/2021

Josephine Broussard
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

INTRODUCTION

The issue presented before the court is whether Lien Claimant, Everest National Insurance administered by Sedgwick CMS, hereinafter ("Sedgwick") is entitled to recovery against its lien for reimbursement. The parties have raised several issues and defenses outlined *infra*.

Applicant filed an Application for Adjudication of claim dated December 10, 2014. (EAMS Doc. ID# 13580305). Defendant submitted as evidence a DWC-1 form dated December 25, 2009. (Defendant Exhibit A). The DWC-1 was completed by the Applicant and employer representative, Lugia Jayas. *Id* There is a comment in the employer section of the claim form that states "[s]he did not want to go to the Dr. on 12/24." Defendant also presented as evidence a copy of a denial letter. (Defendant Exhibit D). The denial letter was issued by a different defendant, Comp West Insurance Company, and denied for lack of coverage only. *Id* On May 10, 2017, the Applicant reached a Compromise & Release agreement ("C&R") with four defendants in four cases and Order Approving Compromise & Release ("OACR") issued. (EAMS Doc. ID #63715821). In the C&R, the following language was included ·'[d]efendants reserve contributions [sic] rights against one another for amounts paid to date and for amounts to be paid towards lien claimants." *Id*. Sedgwick was the carrier for the cumulative trauma date of injury bearing ADJ8838679. On September 26, 2019, Sedgwick filed a lien for reimbursement. The parties submitted as evidence of claim for reimbursement Sedgwick's Benefit Printout. (Joint Exhibit Y). On February 19, 2021, Sedgwick filed a Declaration of Readiness to Proceed ("DOR"). (EAMS Doc. ID#35626673). The matter was set for a lien conference on May 10, 2021, and continued. (EAMS Doc. ID#74178903). The matter: was continued to June 10, 2021, and was then set for lien trial. (EAMS Doc. ID#74302993). Prior to the date of trial, the other codefendants settled with Sedgwick. As such, the trial proceeded on the reimbursement as between Sedgwick and Defendant Hartford Insurance only.

The Applicant was deposed on September 26, 2014, and testified to pushing a sofa when she twisted her left: arm/shoulder. (L.C Exhibit 3, Depo. of Applicant Vol. I 9/26/2014, Pg. 45: 6-12). Her employer sent her to the clinic. (*Id*. Pgs. 45:16-25; 46:1-2). After this injury, the pain never went away. (*Id*. Pg. 46:3-6). She testified at her deposition that although the Concentra paperwork reflected the year 2010, that the incident happened on Christmas Eve 2009. (L.C Exhibit 4, Depo. of Applicant Vol. II 10/3/2014, Pg. 101: 8-14).

In connection with the claim, the Applicant saw QME Dr. Bill Yueng who issued two reports and found industrial injury to multiple parts including the left shoulder. (LC Exhibit I Pg. 20-21; L.C. Exhibit 2 Pg. 21). Applicant also treated with Dr. Julian Girod who found industrial injury to the left shoulder and

apportioned to the December 24, 2009, shoulder injury. (Defendant Exhibit C Pg. 4).

Prior to trial, Defendant filed a pre-trial brief. (EAMS Doc. ID#37894983). Sedgwick also filed a responsive trial brief. (EAMS Doc. ID#38023044). All matters are considered herein.

ADMISSIBILITY OF LIEN CLAIMANT EXHIBITS 5-30

Cal. Code Regs. tit. 8, § 10759 establishes the method for filing and listing exhibits at the Mandatory Settlement Conference ("MSC"). Pursuant to the rules:

> "[e']ach exhibit listed must be clearly identified by author/provider, date, and title or type ... with the exception that the following documents may be listed as a single exhibit unless otherwise ordered by the Workers' Compensation Appeals Board:
>
> A. Excerpted portions of physician, hospital or dispensary records, provided that the party offering the exhibit designates each excerpted portion by the title of the record or document, by the author or authors of the record or document, and by any available page number(s) ....

CCR § 10759(b)(1).

Here, Sedgwick has offered into evidence various excerpted portions of records from physicians and other providers. The exhibits all clearly identify the provider/title of the record or document but failed to include the dates of treatment/services covered by the records or documents. The WCJ is empowered to make or order rulings regarding admission of evidence and discovery matters. *Id.* Labor Code §5708 states "[a]ll hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. Here, Sedgwick listed all the exhibits on the pre-trial conference statement. The exhibits are inclusive of documents representative of the treatment or services as named on the pre-trial conference statement. The Court does not find that there was any information Defendant could not reasonably have anticipated based on the title of the documents. Therefore, pursuant to the authority granted by Labor Code §5708, this WCJ does not find failure to list the dates sufficient to warrant exclusion of the records[1].

INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

[1] The undersigned further notes that these exhibits were not relevant to the findings herein.

Based upon the medical reporting of QME Bill Yueng, M.D. dated August 29, 2015, and August 11, 2016, as well as reports of Dr. Julian Girod dated April 11, 2016, it is found that Applicant sustained industrial injury to her left shoulder as a result of the industrial injury of December 24, 2009.

STATUE OF LIMITATION §5405

Pursuant to Labor Code §5405, the application must be filed within one year of the last payment of benefits or the date of injury, whichever is later otherwise it is barred by the statute of limitations. However, the inquiry of whether the one-year period applies requires further analysis by the court. An employer's failure to provide required notices may in some instances, toll the statute of limitation. Labor Code §5401(d) provides that the filing of a claim form tolls the statute of limitations until the claim is denied or is presumed compensable. A failure to serve the proper notices can have the effect of circumventing the one-year statute of limitations. Moreover, when an employer or its insurance carrier advances money for payment of an injured employee's healthcare expenses knowing of a potential claim of workers' compensation benefits for an industrial injury, the payment tolls the normal Labor Code §5405 one-year limitation within which an original proceeding must be commenced and triggers the five-year limitation period of Labor Code §5410. See *McDaniel v. Workers' Comp. Appeals Bd*., 218 Cal. App. 3d 1011, 1013. Finally, an employer or carrier upon filing of the claim form, must notify a claimant of the denial of benefits, advise the claimant of his or her rights, and warn that failure to timely act could result in the loss of the rights to benefits. *Reynolds v. Workmen's Comp. Appeals Bd*., 12 Cal. 3d. 726.

Here, Defendant has submitted a claim form dated December 25, 2009, and a denial of claim dated December 29, 2009. The employer representative signed the claim form op the date after the injury. As evidence of denial, Defendant has presented a denial notice issued by CompWest Insurance Company, another carrier. CompWest Insurance Company issued a denial based on lack of coverage. According to the letter, coverage ended on November 1, 2009, and employer was directed to file the incident with the correct insurance carrier. This is not an unconditional denial of claim.

Further, *McDaniel* appears to be instructive in the case herein. The Applicant testified that after filing the claim form, her employer referred her to the medical clinic and she obtained treatment the following day. Given these facts, the court finds that the statute was tolled for failure to provide proper denial, that the five-year statute of limitation was triggered, and the application was filed timely on December 10, 2014.

PRESUMPTION OF COMPENSABILITY FOR UNTIMELY DENIAL

Labor Code §5401 obligates an employer to provide an employee with a claim form within one working day when the employer receives written notice or knowledge of an injury that has caused lost work time or required medical treatment beyond first aid. The filing of the claim form triggers a 90-day period for the employer to investigate and evaluate the claim *Honeywell v. WCAB* (*Wagner*) (2005) 70 CCC 97, 102. Labor Code §5402(b) establishes a presumption that an injury is compensable under the workers' compensation system if the employer does not deny liability within 90 days after the date the claim form is filed under Labor Code §5401.

The presumption of compensability applies once the employee establishes that he or she timely filed a claim form with the employer, and the employer failed to reject the claim within 90 clays of the filing See *SCIF v. WCAB* (*Welcher*) (1995) 60 CCC 717, 722. If the employer does not reject liability within that period, the injury is presumed compensable and may be rebutted only by evidence discovered later. *Honeywell supra*.

Here, pursuant to Defendant's Exhibit A, it is indisputable that a claim form was timely filed with the employer. Further, Defendant has failed to provide any evidence that it properly rejected the claim within 90 days of the filing of the claim form. Therefore, the undersigned finds it appropriate to apply the presumption of compensability.

TIMELINESS OF LIEN & FAILURE TO FILE A PETITION

There is no statute, regulation, nor judicially carved out law in workers' compensation regarding the timeframe for which to file a claim for reimbursement amongst defendants. As such, an analysis of this section requires careful analysis of potentially similar statutes.

Contribution may be likened to reimbursement but is different. Contribution involves a dispute between defendants who share liability in the Labor Code §5500.5 liability period. The employer has one year following an award or order approving a settlement to file a petition for contribution. *Volk v. WCAB* (*Osborne*) (1975) 40 CCC 152 (writ denied). However, unlike reimbursement disputes, contribution disputes are subject to mandatory arbitration. Reimbursement, unlike contribution, generally involves distinct date of injuries with overlapping body parts, and is subject to WCAB jurisdiction. *Lucky Stores v. Workers Compensation Appeals Bd.*, 60 Cal. Comp. Cases 1119. The timeframe carved out in Labor Code section 5500.5 and case law for contribution is not applicable to reimbursement claims.

Defendant argues that the provisions of lien filing pursuant to Labor Code §4903.5 is authoritative in this case. However, while §4903.5 provides a statute of limitations for filing a lien, it does not apply to liens for reimbursement. Labor Code §4903.5 provides that "a lien claim for expenses *as provided in subdivision*

(b) of Section 4903 shall not be filed after three years from the date the services were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after July 1, 2013." Labor Code §4903 became effective Jan. 1, 2003, and establishes the time limit for filing a lien claim for expenses under Labor Code §4903(b) which relates to claims for medical treatment and medical-legal expenses. It does not contain a time limit for any other type of lien. A claim for reimbursement is not a claim as outlined in subsection 4903(b).

Defendant argues in its brief that Labor Code §4903.5(a) should apply and the last date of service pursuant to the Benefit Printout attached to the lien claim filed by Sedgwick, reflects the last date of service as December 7, 2017, when $850 was paid to Tri-City Health. Liens under 4903.5(b) are the only liens subject to the period argued by Defendant and Sedgwick did not provide any service to which to apply the 'last date of service rule'. However, even arguendo Defendant's analysis is correct, then the last date of service for Sedgwick pursuant to the Benefit Printout is 5/20/2019 when $630 was issued to SAI Professional Services making the lien filing timely on 9/26/2019. (Joint Exhibit Y, Benefit Printout Pg. 5).

Finally, there is no authority to support that a lien for reimbursement is not valid absent a Petition for Reimbursement, and Defendant has not cited any authority in support of this argument. The proper way to seek reimbursement when there are two separate carriers for two separate injuries is to file a lien. CEB California Work Comp Practice Guide §23.53 but *cf. Lucky Stores v. Workers Compensation Appeals Bd*., 60 Cal. Comp. Cases 1119 (going as far as to suggest that even a lien is not required for the WCAB to address the rights and liabilities of carriers). In *Lucky*, the WCAB held that "it had jurisdiction under Labor Code section 5300 to 'determine rights as among and between various carriers', that [s]ection 5300(a) provides for proceedings before the Appeals Board concerning 'any right or liability arising out of or incidental' to the recovery of compensation, and that ·[p]resumably the rights and liabilities of carriers are contained therein."' *Lucky supra*.

Finally, while a workers' compensation judge is not bound by common law or statutory rules of evidence and procedure, in the absence of practice and procedures or rules adopted by the appeals board, the undersigned finds that where a statute of limitation to be applicable, that Cal. Code Civ. Proc. §338(d) would be most instructive on this matter. CCP§338(d) provides that the statute of limitation on an action for relief on the ground of fraud or mistake is three years. Sedgwick is seeking payments for reimbursement of payments made related to overlapping body parts owned and/or shared with another defendant.

Accordingly, the undersigned finds that Sedgwick filed its lien timely, and there is no requirement for an accompanying Petition for reimbursement.

REIMBURSEMENT CLAIM OF EVEREST NATIONAL/SEDGWICK

At trial, the issue before the court was Sedgwick's reimbursement of $27,434.58. The undersigned finds that Sedgwick is entitled to reimbursement from Hartford Insurance. Parties are to negotiate amounts for reimbursement and tile a DOR if further litigation is necessary.

LIABILITY FOR SELF PROCURED-MEDICAL TREATMENT

Based on the underlying finding of AOE/COE and Sedgwick's entitlement to reimbursement, this issue before the court is moot.

COSTS, SANCTIONS AND ATTORNEY FEE

Based on the underlying finding of AOE/COE and Sedgwick's entitlement to reimbursement, this issue before the court is moot.

DATE: 9/7/2021
Josephine Broussard

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE