

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

WONDA BRAZILE TRAYLOR, *Applicant*

vs.

**COUNTY OF LOS ANGELES/PUBLIC HEALTH
SERVICES, permissibly self-insured; administered by
TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Number: ADJ9873183
Los Angeles 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 and the opinion and decision 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 and the opinion on decision, both of which we adopt and incorporate, we will deny reconsideration.

The WCJ correctly states in the Report that the Copy Service Fee Schedule does not control the fee in this case because the services were provided before the July 1, 2015 effective date of that fee schedule. (Cal. Code Regs., tit. 8, § 9981(a).) When the value of the services that were provided is not established by a fee schedule, as in this case, the lien claimant must present evidence of the reasonable value of those services in order to support recovery. (See, *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc); *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board en banc) (*Kunz*); *Tapia v. Skill Masters Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc) (*Tapia*).)

Based on the reasons stated by the WCJ in the report and opinion on decision, we are persuaded that lien claimant met its burden of proof. Therefore, we will not disturb the WCJ's finding regarding the reasonableness of lien claimant's charges.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 12, 2021

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

**MED-LEGAL PHOTOCOPY
LAW OFFICES OF EDWARD DE LA LOZA**

PAG/abs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I. INTRODUCTION:

Applicant, [REDACTED] worked as a senior typist clerk when she alleged a cumulative trauma injury from 1989 through 1/30/2015 to her neck, wrists, shoulders, and elbows. Applicant later alleged injury by way of headaches as a compensable consequence to that injury and defendant denied that portion of the claim (*Lien Claimant's Exhibit 11*).

Defendant is the Petitioner herein, and filed a timely, verified, Second Petition for Reconsideration (hereinafter, the "Petition"), on 1/12/2021. Petitioner takes issue with this court's 2nd Findings and Award dated 12/16/2020. In that 2nd Findings and Award, the undersigned WCJ found that defendant is liable for the reasonable amount of the bill for invoice number 1313134 (*Lien Claimant's Exhibit 6*), in the amount of \$1,179.45 plus penalties and interest pursuant to Labor Code §4622(a)(1). Petitioner contends that the undersigned WCJ erred in so doing, contending that the amount billed by lien claimant was not reasonable, that the undersigned WCJ used an improper standard to determine the reasonable value of the services at issue, that lien claimant's evidence does not establish the reasonable value of the services at issue, and that the Copy Service Fee Schedule is a better benchmark for the reasonable value of the services at issue.

II. STATEMENT OF FACTS:

This claim involves a partially accepted orthopedic cumulative trauma injury, with defendant subsequently disputing Applicant's claim to injury to her headache complaints. Defendant disputed that portion of the claim by way of letter dated 3/31/2015 (*Lien Claimant's Exhibit 11*).

Lien claimant, Med-Legal, LLC, provided copy services for several locations at various medical providers and the employer for both medical records and personnel records. These services were performed both before and after defendant issued the letter disputing Applicant's headache related complaints. The one date of service at issue in the instant Petition deals with a subpoena issued for records from the employer. The subpoena duces tecum for this date of service was personally served on the employer on 4/9/2015 and simultaneously served by mail on the carrier, Tristar (*Lien Claimant's Exhibit 3*). The employer complied with the subpoena, and the records were produced, on 4/29/2015 (*Lien Claimant's Exhibit 3*). Lien claimant, Med-Legal, LLC, served their invoice, with a proof of service attached, for that date of service on Tristar on 5/6/2015 (*Lien Claimant's Exhibit 6*). Defendant made payment for this date of service, in the amount of \$237.30, on 7/21/2015 and issued an explanation of review for that payment (*Defendant's Exhibit C*).

On 9/6/2017, the case in chief settled by way of stipulation with request for award.

On 4/4/2019, the parties appeared before the undersigned WCJ for the first lien trial, indicating that they were unable to resolve the pending lien claim dispute. After marking all the evidence for the record and identifying the stipulations of the parties, the parties proceeded to trial on the issues of the lien claim of Med-Legal, LLC, the reasonableness and necessity of the services provided, the value of the services charged, and penalties and interest pursuant to Labor Code

§4622. Neither party offered any testimony and the matter stood submitted for a decision at that time.

On 5/21/2019, the undersigned WCJ issued the First Findings and Award and Opinion on Decision. In those Findings, the undersigned WCJ ruled that defendant was not liable for the medical legal charges alleged for two of the dates of service at issue, but was liable for the third date of service for invoice number 1313134 (*Lien Claimant's Exhibit 6*). The undersigned WCJ found that for that date of service, defendant failed to issue timely payment for the undisputed amount of the bill according to defendant's explanation of review, and defendant waived any objection to the amount of the billing pursuant to CCR §10451.1(f)(1)(A)(i). Defendant was ordered to pay lien claimant, Med-Legal, LLC, for the full amount of the bill, less payments already made and plus penalties and interest pursuant to Labor Code §4622(a)(1).

On 6/11/2019, defendant filed the First Petition for Reconsideration. Petitioner contended that any issue related to a dispute regarding "amounts payable" are subject to the mandatory independent bill review procedures, that the denial letter contained in *Lien Claimant's Exhibit 11* does not create a contested claim, that the requirements to claim a medical legal expense contained in Labor Code §§ 4620 & 4621 were not met at the time the services were requested, and that defendant timely paid the disputed invoice according to their explanation of review. Petitioner's prayer for relief is that the appeals board, on its own motion, make a ruling on the issue of statute of limitations and the issue of costs and sanctions against lien claimant, which were never raised as issues for the undersigned WCJ to adjudicate.

On 2/24/2020, the Appeals Board issued the Opinion and Decision After Reconsideration. The Board affirmed most of the undersigned WCJ's Findings, but returned the matter to the trial level "for a hearing on the reasonable value of invoice 1313134" (*Opinion and Decision After Reconsideration*, dated 2/24/2020, page 5, line 19 to 20).

After further proceedings on this matter, a second lien trial was held on 10/27/2020. At that time, neither party offered any additional evidence, with lien claimant relying on the previously offered *Lien Claimant's Exhibit 10*. The matter stood re-submitted for decision at that time, on the limited issue of the reasonable value of the services provided by lien claimant, Med-Legal Photocopy, for invoice number 1313134.

On 12/18/2020, the undersigned WCJ issued the 2nd Findings and Award and 2nd Opinion on Decision. As indicated above, the undersigned WCJ found that defendant is liable for the reasonable amount of the bill for invoice number 1313134 (*Lien Claimant's Exhibit 6*), in the amount of \$1,179.45 plus penalties and interest pursuant to Labor Code §4622(a)(1).

On 1/12/2021, defendant filed the 2nd Petition for Reconsideration at issue herein. Petitioner contends, as indicated above, that the amount billed by lien claimant was not reasonable, that the undersigned WCJ used an improper standard to determine the reasonable value of the services at issue, that lien claimant's evidence does not establish the reasonable value of the services at issue, and that the Copy Service Fee Schedule is a better benchmark for the reasonable value of the services at issue.

No answer to the Petition has been received from lien claimant, Med-Legal Photocopy, to date.

III. DISCUSSION:

A. The amount lien claimant, Med-Legal Photocopy, billed was not “grossly disproportionate”:

Defendant contends that “the claimed fee for invoice #1313134 is ‘grossly disproportionate’ at more than 500% above the amount assessed as reasonable” (*Petition*, page 2, lines 25 to 26). As a basis for their calculation, Petitioner simply uses the amount Defendant paid on that invoice to calculate their “500%” figure, and as a basis to claim that the amount billed was “grossly disproportionate” to what is a reasonable amount owed. As indicated below, the undersigned WCJ does not agree that Defendant paid a reasonable amount for this invoice. The undersigned WCJ does not agree, therefore, with Petitioner’s contention that this amount should be used to determine what is “grossly disproportionate.”

B. Lien claimant provided sufficient basis to establish the reasonable value of the services provided by this lien claimant and reimbursed by this Defendant:

Defendant contends that “the WCJ’s rationale and reasoning used to arrive at a ‘reasonable amount’ is not enunciated by the standards set forth by the Board and devoid of any of the factors necessary for an establishment of reasonableness of a claimed fee as defined by Kunz” (*Petition*, page 3, lines 21 to 24). Petitioner is correct that the undersigned WCJ did not use the rationale and factors outlined in the *Kunz* decision in arriving at the reasonable value of the services provided by this lien claimant. This is because lien claimant, Med-Legal Photocopy, provided more specific documentary evidence than that which is outlined by Petitioner. Lien claimant, Med-Legal Photocopy, provided an extensive sampling of the charges invoiced by this lien claimant, Med-Legal Photocopy, in other cases, and the payments made by this defendant, Tristar Risk Management, for the same or similar services (*Lien Claimant’s Exhibit 10*). This evidence is sufficient to establish a reasonable fee allowable between this provider and this defendant, based upon past payment history for the same or similar services. This evidence is much more specific and persuasive than the standard that petitioner contends the undersigned WCJ should have used instead.

C. The evidence provided does just the findings of fact:

Petitioner makes two rapid-fire arguments in regards to why the evidence presented by lien claimant is not sufficient in this case. The first is that the “billing history does not make a showing of any itemized charges characteristic of those in invoice #1313134” (*Petition*, page 4, lines 5 to 6). Lien claimant, Med-Legal Photocopy, provides photocopy services. The services lien claimant provides and the “characteristic” charges it makes in the invoices are for photocopy services. If defendant had any doubt that the invoices referenced in *Lien Claimant’s Exhibit 10* were not for photocopy services, then defendant could have provided copies of the Explanation of Reviews for the payments made by defendant for the invoices referenced. The check numbers for each of the payments made by defendant are listed in that exhibit. Defendant provided no evidence to dispute the payments referenced in *Lien Claimant’s Exhibit 10* or to distinguish any of the services therein.

The second argument is that *Lien Claimant Exhibit 10* “does not include any payments made by this defendant” (*Petition*, page 4, lines 7 to 8). This is false. There is a five year history of payments made by this defendant listed in *Lien Claimant Exhibit 10*. This information is easy to locate as it is under the “Payment” heading contained in *Lien Claimant Exhibit 10*. Again, if defendant wanted to dispute any of these payments, defendant was free to offer evidence to that affect. Defendant chose not to.

D. The findings of fact do justify the Award:

Petitioner contends that the evidence the undersigned WCJ relied upon to form the basis of the 89.3% reasonable allowance for the invoice in question does not justify the Award, as defendant contends that the court should have instead used the “objective standards codified in the Copy Service Fee Schedule as a benchmark to assess a reasonable fee” (*Petition*, page 4, lines 21 to 22). The undersigned WCJ disagrees that the Copy Service Fee Schedule is the relevant standard to be applied to the invoice at issue herein.

Firstly, the Copy Service Fee Schedule was not in effect at the time the services were provided by lien claimant, Med-Legal Photocopy. As indicated above, the subpoena duces tecum for this date of service was personally served on the employer on 4/9/2015 and simultaneously served by mail on the carrier, Tristar (*Lien Claimant’s Exhibit 3*). The employer complied with the subpoena, and the records were produced, on 4/29/2015 (*Lien Claimant’s Exhibit 3*). Lien claimant, Med-Legal, LLC, served their invoice, with a proof of service attached, for that date of service on Tristar on 5/6/2015 (*Lien Claimant’s Exhibit 6*). The Copy Service Fee Schedule contained in CCR § 9983 did not become operative until 7/1/2015.

In addition, there was no evidence provided by Defendant to indicate why it would be reasonable to apply the Copy Service Fee Schedule retroactively to the services provided by this claimant. Defendant could have provided evidence that Defendant paid, and lien claimant accepted, the Copy Service Fee Schedule value of the services provided by lien claimant for other services prior to the operative date of that fee schedule. No such evidence was offered to this court, however. There is no basis, therefore, to apply the Copy Service Fee Schedule to services prior to the operative date of that fee schedule. Defendant’s calculations contained in the *Petition* that are based on that fee schedule are not reasonable for the invoice at issue herein.

IV. RECOMMENDATION:

The undersigned WCJ recommends that the Defendant’s 2nd *Petition for Reconsideration* filed 1/12/2021, be denied.

Date: January 25, 2021

Peter M. Christiano
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

REASONABLE VALUE OF THE SERVICES CHARGED:

The only issue remaining is the value of the service contained in invoice number 1313134 (*Lien Claimant's Exhibit 6*). For this service, the provider served a copy of the invoice and supporting documents on 5/6/2015 (*Lien Claimant's Exhibit 6*). Defendant issued payment along with the explanation of review on 7/21/2015 (*Defendant's Exhibits B and C*), which is not timely pursuant to the timeframes listed above in Labor Code §4622(a)(1).

Lien claimant, Med-Legal LLC, submitted evidence of payments made by this same defendant, Tristar Risk Management, to lien claimant, Med-Legal LLC, for the periods 2010 through 2015 (*Lien Claimant's Exhibit 10*). That evidence establishes that this defendant paid, and lien claimant accepted close to, but less than, the total of the amounts billed in the invoices for those services. That evidence establishes that lien claimant accepted from this defendant, on average, 89.3% of the amounts billed for invoices in 2015, which is the relevant time period for invoice number 1313134 (*Lien Claimant's Exhibit 6*) at issue herein. Based upon this average paid by defendant, it is found that 89.3% of the amounts billed for invoice number 1313134 (*Lien Claimant's Exhibit 6*) of \$1,320.77 is the reasonable value of the services charged by lien claimant. This would equate to a reasonable value of the services for invoice number 1313134 (*Lien Claimant's Exhibit 6*) of \$1,179.45.

Based upon the above, it is found that for invoice number 1313134 (*Lien Claimant's Exhibit 6*), lien claimant, Med-Legal, LLC, is entitled to the reasonable amount of the bill of \$1,179.45, less amounts already paid by defendant for that invoice, and plus penalties and interest on the delayed amount retroactive to the date of receipt of the invoice pursuant to Labor Code §4622(a)(1).

Date: December 16, 2020

Peter M. Christiano
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE