

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

DOROTHY GARCIA, *Applicant*

vs.

**VIRTU USA; AMGUARD INSURANCE COMPANY, Administered by GUARD
INSURANCE CO., *Defendants***

**Adjudication Number: ADJ11088046
Long Beach 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

MARGUERITE SWEENEY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2022

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

**PREMIER PSYCHOLOGICAL SERVICES
PAPERWORK & MORE
ALBERT AND MACKENZIE
GUARD INSURANCE CO.**

HAV/ara

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**

Dorothy Garcia, a 61-year-old customer service representative for Virtu USA, filed an Application for Adjudication on 11/8/17 alleging that during the period commencing 1/1/17 through 8/2/17, she sustained injury arising out of and occurring in the course of employment to her psyche and nervous system as a result of a hostile working environment. The claim was denied by the employer.

Lien Claimant Premier Psychological Services has filed a timely, verified, Petition for Reconsideration of the Findings and Order dated 4/7/22 alleging that:

1. The Court acted without or in excess of its powers, and;
2. The Findings of Fact do not support the Order.

Petitioner contends that Labor Code section 4603.2(b)(1)(B) is not applicable in this case because the Administrative Director has not implemented an exception for cases where a case is initially denied, but later accepted, as mandated by the statute.

**II
FACTS**

Applicant's claim was denied by the carrier on 11/15/17 (Defense exhibit A). The case settled by Compromise and Release on 8/14/18.

Petitioner served Defendant a bill on 8/28/19 for medical treatment services rendered during the period commencing 2/28/18 through 8/13/18 (Defense exhibit C). The bill dated 8/28/19 was the first request for payment submitted by Petitioner to Defendant (Stipulation 3a, Minutes of Hearing 3/4/22).

The Court issued a Findings and Take Nothing Order on 4/7/22 wherein it was determined that Petitioner's request for payment was barred pursuant to Labor Code section 4603.2(b)(1)(B).

**III
DISCUSSION**

Labor Code section 4603.2(b)(1)(B) states:

“Effective for services provided on or after January 1, 2017, the request for payment with an itemization of services provided and the charge for each service shall be submitted to the employer within 12 months of the date of service or within 12 months of the date of discharge for inpatient facility services. The administrative

director shall adopt rules to implement the 12-month limitation period. The rules shall define circumstances that constitute good cause for an exception to the 12-month period, including provisions to address the circumstances of a nonoccupational injury or illness later found to be a compensable injury or illness. The request for payment is barred unless timely submitted.”

In this case, it is undisputed that Petitioner did not submit its bill to the carrier within the statutory 12 month period. The last date of service was 8/13/18 and the bill was first submitted on 8/28/19.

The issue is whether the statute applies to Lien Claimant in this case since the claim was denied. Petitioner argues that the statute is contingent upon the Administrative Director adopting rules to address the situation where a claim is denied but later found to be compensable. However, the claim in this case was never found to be compensable. Therefore, even if the Administrative Director had adopted rules to cover the circumstance of an initially denied claim later found compensable, it wouldn't apply here.

Petitioner appears to argue that since the exceptions have not been defined or implemented as mandated by the statute, the entire statute is of no effect. The Court disagrees. The statute itself contains no language indicating that it is of no effect until such time that the Administrative Director adopts exception rules. The last sentence of the statute makes clear that a request for payment is barred unless timely submitted. The request for payment was not timely submitted in this case, and absent any exception, the request is barred per the plain meaning of the statute.

IV **RECOMMENDATION**

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 5/12/22

Jeffrey Morgan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE