

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

**GIDGET WAGNER, *Applicant***

**vs.**

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION legally  
uninsured, adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8520123  
Marina del Rey 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, and for the reasons stated below, we will deny reconsideration.

Code of Civil Procedure section 473(b) states, in pertinent part:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

The protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206 [57 Cal.Comp.Cases 149].) Section 473 relief based on attorney mistake, inadvertence, and/or "excuseable neglect" is discretionary, i.e., a court "may...relieve...[a] legal representative...from an order..." if the declared neglect is excusable. (Code Civ. Proc., § 473(b).)

In this case, we are not persuaded that lien claimant set forth sufficient basis for relief pursuant to section 473.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**MAY 16, 2022**

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

**BASSO PHARMACY  
PINNACLE LIEN SERVICES  
STATE COMPENSATION INSURANCE FUND**

**PAG/pc**

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

**REPORT AND RECOMMENDATION ON LIEN CLAIMANT BASSO PHARMACY'S  
PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

- |    |  |  |
|----|--|--|
| 1. | Applicant's Occupation   | Production Associate                             |
|    | Applicant's Age  | 49   |
|    | Date of Injury   | June 11, 2018                                    |
|    | Parts of Body Injured  | Right shoulder                                   |
| 2. | Identity of Petitioner   | <b><u>BASSO PHARMACY</u></b> filed the Petition. |
|    | Timeliness   | <b>The petition itself is timely filed.</b>      |
|    | Verification   | The petition is verified.                        |
| 3. | Date of Findings of Fact   | March 1, 2022                                    |
| 4. | Petitioner contends that the WCJ erred in finding that:  |  |
|    | a) Basso Pharmacy's lien is invalid pursuant to Labor Code §4903.8(e);   |  |
|    | b) Defendant's Statute of Limitations Defense is valid; and  |  |
|    | c) Lien Claimant's contention that the validity of their lien was not properly raised fails as it is a threshold issue regarding the raised issue of the Statute of Limitations. |  |

**II  
FACTS**

The facts in this matter are not disputed in that Basso Pharmacy failed to properly file their lien. In their Petition for Reconsideration, Basso Pharmacy admits that they improperly filed documents (Petition for Reconsideration, page 2, lines 10-11).

This matter first came on calendar for a lien conference on February 10, 2020 and was eventually set for trial (after 7 additional lien conferences) on November 4, 2021, with the matter finally being submitted (after 3 additional trial dates) on February 24, 2022.

The record was opened, evidence was offered and ordered admitted, there was no testimony taken, and the matter thereafter stood submitted on February 24, 2022.

On March 1, 2022, the Court issued its Findings of Fact in which Basso Pharmacy was found to not have a valid lien. It is from the finding that their lien was invalid that Lien Claimant seeks reconsideration.

**III  
DISCUSSION**

Lien Claimant's first argument is this WCJ erred in not applying California Code of Civil Procedure §473(b) which provides relief for a party based on their mistake, inadvertence, surprise, or excusable neglect. Labor Code §4903.8 clearly outlines the requirements for filing a valid lien, which includes an attached declaration that the attached billing statement accurately describes the services or products that were provided to injured employee. Failure to meet the requirements of Labor Code §4903.8 is specifically enunciated in paragraph (e) which provides that not complying with the requirements of the section results in the lien being deemed invalid and additionally it does not operate to preserve or extend any time limit for filing of the lien. Labor Code §4903.8 contemplates mistakenly filed liens and provides clear and unambiguous directions as to how those liens should be treated, which includes addressing an untimely corrective filing. Basso Pharmacy did not properly file their lien, and by application of Labor Code §4903.8, their lien is invalid. To relieve Lien Claimant of the strict requirements of Labor Code §4903.8 would negate the legislative intent outlined in the code section, which this WCJ does not find grounds to do.

Lien Claimant's second argument is that California Code of Civil Procedure §473(b) is applicable in situations of a default judgement. There are no default judgements in the workers' compensation system, and Basso Pharmacy had competent representation at the hearing in which they offered evidence and vigorously argued on behalf of Lien Claimant. This argument does not change the determination that, given the strict language of the Labor Code §4903.8, there are no grounds found to relieve Lien Claimant from the obligation to comply with same.

Lien Claimant's third argument is based on due process concerning the application of Labor Code §4903.8 which they contend they were not made aware of until the time of trial. Lien Claimant points out that Labor Code §4903.8 was not raised as an issue in the pre-trial conference statement and as such cannot form the basis for the court's determination. Whether a Lien Claimant has a valid lien is a threshold issue in any lien trial and failure to list same on the pre-trial conference statement is not grounds for vacating the requirement of having a valid lien. Regardless, in the instant case, the Statute of Limitations was listed as an issue, further putting Lien Claimant on notice that the issue of a timely, valid lien is to be addressed. When addressing the Statute of Limitation, it is incumbent on the court to determine on what date a valid lien was filed to determine whether or not it was timely. Lien Claimant's ignorance to the fact that their lien was invalid by operation of law and that the time period to correct the matter covered by Labor Code §4903.5 had long expired does not negate their requirement to have a valid lien nor does it entitle them to judicial relief.

In sum, the court found Basso Pharmacy to have failed to file a valid lien.

**IV**  
**RECOMMENDATION**

For the reasons stated above, it is respectfully requested that Lien Claimant's Petition for Reconsideration be Ordered Denied.

DATE: 3-24-2022  
HON. JARED E. KLIPFEL  
Workers' Compensation Judge