

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

EDUARDO ALBERDIN, et al., *Applicant*

vs.

STATE COMPENSATION INSURANCE FUND, *Defendants*

Real Parties in Interest:

MED- 1 MEDICAL CENTER, INC., *Lien Claimant*

**Adjudication Number: ADJ2452007 (STK 0169879)
Lodi District Office**

**OPINION AND ORDER GRANTING PETITION
FOR RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Lien claimant Med-1 Medical Center, Inc. (lien claimant) seeks removal and/or reconsideration of the Findings of Fact, Order (F&O) issued on January 30, 2024 by a workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that on January 21, 2020 the WCJ issued an order that the 2005 stay of proceedings in all lien claimant's lien proceedings was lifted and that lien claimant had 30 days to file any new lien claims (the 30-day filing order); that lien claimant did not seek removal of this January 21, 2020 order that all liens be filed within 30 days; that lien claimant failed to comply with the 30-day filing order; that lien claimant failed to demonstrate good cause as to why relief from the 30-day filing order should have been granted; and, any liens filed after the 30 day deadline were not in compliance with the 30-day filing order. The WCJ then ordered that lien claimant is not relieved from the 30-day lien filing order.¹

¹ The Appeals Board therefore treats lien claimant's petition as one for reconsideration as the F&O contains a final order affecting the substantive rights and liabilities of lien claimant and defendant for all of lien claimant's liens filed after February 20, 2020. (Lab. Code, § 5900(a), 5902-5903; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 ["An order, decision, or award of the WCAB or workers' compensation judge is final for purposes of a petition for reconsideration where it determines any substantive right or liability of those involved in the case."].)

Lien claimant contends that whether or not it filed a petition for removal or not cannot be dispositive given that instead of excluding all liens filed beyond the 30-day lien filing order deadline, the WCJ set the issue of an extension for hearing which ultimately resulted in the F&O at issue herein; and, the evidence presented by lien claimant does not support the WCJ's findings that no good cause was demonstrated for an extension of the initial 30 days to EAMS-file (without rejection), and competently serve hundreds of twenty year old medical treatment liens.

Defendant State Compensation Insurance Fund (defendant or SCIF) filed an Answer to Petition for Removal and/or Reconsideration (Answer), and lien claimant filed a Reply Brief to State Compensation Insurance Fund's Answer to Petition for Removal and/or Reconsider of January 30, 2024 Opinion and Order (Reply). The WCJ filed a Report and Recommendation on Petition for Removal and/or Reconsideration (Report).

The Appeals Board has reviewed the record in this matter, the allegations in the Answer and the Petition for Reconsideration, and the contents of the Report. The Appeals Board did not consider the Reply because lien claimant failed to request permission to file a supplemental pleading pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964).² Based on our review of the record in this matter and for the reasons set forth below, the Appeals Board grants reconsideration.

It is our decision after reconsideration to rescind the F&O and substitute new findings of fact consistent with the WCJ's Findings of Fact 1 through 16 but also that lien claimant did file a Petition for Removal of the 30-day lien filing order which was not properly transmitted to the Appeals Board; that the Appeals Board would have granted removal to extend the time to file until April 10, 2020 to avoid violating lien claimant's due process rights to reasonable notice and opportunity to be heard on its liens following the particular history and circumstances of this matter; that because the Petition for Removal was not properly transmitted to the Appeals Board, the issue was instead set for hearing and thereafter continued multiple times beyond the March 19, 2020 Covid-19 shut-down; and, that good cause is therefore shown as to why the 30-day lien filing order was extended to June 9, 2020.

² "...supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board." (Cal. Code Regs., tit. 8, § 10964.)

I.

On January 21, 2020, the WCJ issued an order that lien claimant file all remaining liens within 30 days, i.e., February 20, 2020. (Minutes of Hearing, January 21, 2020, Supplement/Orders, p. 2, no. 2.) In addition, the WCJ lifted the stay of proceedings against lien claimant's liens. (*Id.*, at no. 1.)

On January 31, 2020, lien claimant filed in EAMS and at the WCJ at the District Office, and served on all parties, a letter stating the following:

On January 21, 2020 at 1:30 p.m., the parties appeared at a Status Conference. At that time, you ordered Med-1 to file all un-filed liens within 30 days or February 20, 2020. A copy of the January 21, 2020 Minute Order is attached. Since January 19, 2005, Med-1 has been stayed from filing any liens. We have been coordinating with EAMS to determine how to efficiently file approximately 280 liens regarding workers' compensation cases from more than 15 years ago. Unfortunately, we have determined that it will take approximately 20-25 business days to complete these lien filings. Toward that end, we request an extension of the February 20, 2020 deadline to April 10, 2020. The parties are scheduled to return on March 10, 2020 at 8:30 a.m. and we request that date be rescheduled to April 14, 21, or 28. The extension will cause no prejudice to the defendants as these liens have been stayed. since 2005.

On January 30, 2020, Med-1 counsel e-mailed Ryan Artola, State Fund's counsel, and Joe Patrica, CIGA's counsel, and inquired whether either party had any objection to the above request. Mr. Patrica objected to extending the 30-day deadline to file liens, but is agreeable to moving the March 10 hearing. As of the time of submitting this letter, we have not received any response from Mr. Artola.

(Lien Claimant Exh. 1, January 31, 2020 Letter, pp. 1-2.)

Defendant at the time, California Insurance Guarantee Association (CIGA), filed a Petition to Strike Request for Extension of Filing Deadline (Petition to Strike) on February 7, 2020, contending that the January 31, 2020 letter "is not a valid petition, and it is [*sic*] failed to follow all statutory and regulatory requirements for challenging an order;" and that lien claimant "simply submits an unverified claim and expects Judge Crawford to change his order based upon it." (Petition to Strike, p. 2.)

This matter went to trial on June 8, 2023 on the sole issue of: "Whether or not Med-1 is relieved from the 30 day Order, for lien filing completion, given by Judge Crawford on January

21st, 2020.” (Minutes of Hearing and Summary of Evidence (MOH), June 8, 2023, p. 3.) The following facts were stipulated to by the parties:

1. Criminal charges were filed regarding the corporate structure of Med-1.
2. In 2004 State Fund filed a Petition for Consolidation and Stay of Lien Filings.
3. January 19, 2005 acting Chief Judge Kenneth B. Peterson granted the insurer's Petition for Consolidation and Stay of Individual Lien Proceedings.
4. January 21, 2020 a status conference was held by Judge Crawford, at which time he issued the following order to the parties:
 - 1) Any stay of proceedings that may or may not have issued in and of the consolidated cases is hereby lifted.
 - 2) Lien claimant has 30 days from today's Order to file any new lien claims.
 - 3) At the next status conference lien claimant shall produce evidence that all lien activation fees and lien filing fees have been paid.
 - 4) Service is limited to parties in the consolidated action.
5. February 20, 2020 the deadline to filed liens Med-1 filed in batches 1 through 5.
6. February 22, 2020 to March 19, 2020 Med-1 filed liens 24 in batches 6 through 28.
7. March 19, 2020 COVID-shutdown order began.
8. May 28, 2022 to June 9, 2020 Med-1 filed liens in batches 29 through 35.
9. Prior to Judge Crawford's Order and on the day of the status conference a number of liens had been filed already.
10. By 2014 all files were returned to Med-1 after the criminal proceedings were completed.
11. In 2015 all Med-1 liens were dismissed by Presiding Judge Crawford.
12. The dismissal of liens was reconnect and the WCAB overturned the Order to Dismiss.
13. The matter was taken up to the Court of Appeals by SCIF.
14. In March of 2019, the Court of Appeals denied the appeal.
15. May of 2014 a remitter was requested, and that was 6-18462019.
16. DOR was filed in September of 2019, but not set until January of 2020, in front of Judge Crawford.
17. A Petition for Removal was not filed for relief of the 30 lien filing completion day order from Judge Crawford.

(MOH, June 8, 2023, pp. 2-3.)

The WCJ found that lien claimant did not comply with the 30-day lien filing order, and that lien claimant failed to demonstrate good cause as to why relief from the 30-day time period should have been granted. (F&O, Findings of Fact, Findings nos. 18-19.) Therefore, the WCJ found that all liens filed after February 20, 2020 are not in compliance with the January 21, 2020 order. (*Id.*, Finding no. 20.)

Lien claimant contends that the WCJ has ignored all the produced evidence of good cause to extend the 30-day lien filing order:

Med-I requested the 30-day deadline and underestimated how long the lien filing project would take and Med-I efficiently and effectively used its resources within reason to complete the task (which ended up only taking 34 business days). The Decision suggests that Med-1 should have tasked every employee in both law firms to e-file liens 24 hours a day to show good cause. That is not reasonable. Good cause means that Med-1 put forth a good effort to meet the deadline, which it did.

...

Med-1 spent considerable time in the beginning to develop a workflow that would result in successful lien filing (not rapid-fire lien filings that would be rejected). *See* Nichols Decl., pg. 2-3, 12-28, (**Exhibit 3**). Med-1 determined that 10-15 liens per day was the maximum it could file because it needed to serve the liens on the same day to comply with the Labor Code lien service requirements. *See* Nichols Decl., pg. 2-3, lines 20-23 (**Exhibit 3**); *see also* Transcript of Proceedings, June 8, 2023 trial, 109:25-110:21 (M. Yoshida).

Med-1's attorney testified that Med- I was concerned about errors with lien filings if staff were newly trained. *See* Transcript of Proceedings, June 8, 2023 trial, p. 83:17-84:9 (Witness M. Yoshida). Ms. Price, the lien specialist tasked with the lien filings, testified that it took her months of training before she was proficient at filing liens. *See* Transcript of Proceedings, June 8, 2023 trial, 50:8-11 (Witness J. Price). The Decision completely ignores this. One of the largest tasks in the lien filing was the mail service. *See* Med-1's Status Report re Lien Filings, pg. 3, lines 19-28 (**Exhibit 2**). Carlson & Jayakaumar ("C&J"), the firm tasked with serving the filed liens, determined early on that it could serve 10-15 per business day because of the restriction on same day proof of service. *See* Nichols Decl., pg. 2, lines 20-21 (**Exhibit 3**); *see also* Transcript of Proceedings, June 8, 2023 trial, 85:6-15, 109:25-110:21 (Witness M. Yoshida). Med-1 presented evidence that it prioritized staffing and had employees work additional hours. *See* Exhibit 3 at pg. 3, lines 1-7; *see also* Transcript of Proceedings, August 31, 2023 trial, 8:24-9:6 (Witness M. Noonan), 84:19-85:13 (Witness K. Nichols). The Decision ignores this evidence...[and] the fact that the lien filings needed to be accurate, or they would be rejected...Ms. Price had been filing liens since EAMS was created. Med-1 chose accuracy over expediency. Had Med-1 chosen expediency, the parties would likely be in the same place because of rejected liens. Med-1 prioritized the lien filing the best it could with the resources it had then. There was no evidence that Med-1 could have devoted more resources to the lien filings and failed to do so.

...

The Decision suggests that Med-1 should have tasked every employee in both law firms to e-file liens 24 hours a day to show good cause. That is not

reasonable. Good cause means that Med-1 put forth a good effort to meet the deadline, which it did.

Med-1 was not required to perform “Herculean” efforts to file twenty-year-old liens. It needed to exercise good judgment and good faith efforts, which it did. The issue is whether Med-1 acted with good cause. The Decision suggests that Med-1 should have prioritized the lien filings more and at the expense of other legal work - this is simply not reasonable. ... Med-1 did the best it could do under the circumstances. The following are the efforts that demonstrated good cause which the Decision ignores:

- Two law firms worked together to file the liens and developed a workflow at the outset that counsel reasonably believed was efficient and accurate;
- A lien filing specialist was tasked with all lien filings to maximize success in the lien filings;
- C&J increased staffing and prioritized the lien filings;
- The COVID-19 pandemic resulted in a temporary closure of C&J’s office which delayed the lien filings for a short period;
- The mail service of hundreds of liens was a labor-intensive process and Med-1 could only physically and practically serve 10-15 liens per day (even with the increased staffing);
- Avoiding the service of all parties would have been noncompliant with the Labor Code;
- Jennifer Price (the lien specialist) filed liens in the [mornings] because C&J needed to mail serve in the afternoon and it was not practical to file a lien in the afternoon and mail serve it the same day in compliance with the Labor Code;
- Both law firms spent more than 300 hours on the lien filing project and spent more than \$40,000 in lien filing fees;
- The lien filing project was unusual in that it involved more than 300 of pre-2005 liens; and
- Med-I did not file the liens earlier because a stay of lien filings had been in place from January 2005 to January 2020 and all of the liens were dismissed in 2015 (overturned and returned to the WCAB in 2019).

...

Med-1 filed approximately 325 liens, which results in about 163-245 hours of lien filings...*See* Nichols Decl., pg. 4, lines 6-9 (**Exhibit 3**). Applying this to 8-hour business days, the liens were estimated to take about 20 to 31 business days, which just past the February 21, 2020 deadline. Med-1 ended up taking 34 business days, as some of the cases had multiple lien filings. *See* Transcript of Proceedings, August 31, 2023, 52:6-8 (Witness K. Nichols)

Thus, both firms having all their employees working overtime (and abandoning other legal work and cases) is unreasonable. This case has been pending since

2004. While Med-1 would like the case finally litigated to a conclusion, there was no reason to employ two law firms to abandon other cases file the liens - more important, there was no evidence that the deadline would have been met if Med-1 did this. To the contrary, the same-day mail service requirement restricted the number of liens that could be filed each day (and only C&J could perform the mail service duties as Y &G does not have possession of the voluminous medical records and lien documents - even if Y&G had possession of these documents it would take their staff similar time to prepare the mail service). Med-I presented evidence that staffing was increased, and the lien-filing project was prioritized, which shows good cause. *See* Transcript of Proceedings, August 31, 2023 trial...(Witness M. Noonan)...(Witness K. Nichols). Med-1 demonstrated good cause with evidence that it decided to have an experienced lien specialist file the liens to avoid newly trained personnel from making errors (which would result in missing the deadline and having an unfiled liens [*sic*]). *See* Transcript of Proceedings, August 31, 2023 trial, ...(Witness K. Nichols)...(Witness M. Yoshida)...Med-1 tasked a lien filing specialist to input the liens on EAMS as well as a team of support staff helped to organize this information for the lien filings and performed the complicated and laborious mail service after each day of lien filings. *See* Med-1 Status Report re Lien Filings, pg. 4, lines 25-27 (**Exhibit 2**). *See also* Transcript of Proceedings, June 8, 2023...(Witness J. Price...(Witness M. Yoshida)...

...

There was no evidence that Med-1 was derelict or that it unreasonably delayed in its efforts to file the liens. Multiple witnesses testified to the reasonable and diligent efforts made to comply with the deadline and Judge Arendt found these witnesses credible and Statue Fund presented no evidence...

(Petition for Reconsideration, pp. 15-17, 20-22.)

The WCJ clarified the findings in the F&O in the Report as follows:

The sole issue for the trial was whether or not the Judge found good cause for the Petitioner/Med-1 to be relieved of the Judicial Order by Judge Crawford requiring any new liens to be filed by 2/20/2020.

...

Ms. Price testified that she did not start filing the liens until February of 2020. Presiding Judge Crawfords order to file all liens within 30 days was issued on 1/21/2020. The first thing that she recognized was that Med-1 did not have a UAN number prior to the lien filings. This constituted a large problem as it slowed the process down for them to receive a UAN number. A Petition for Removal of the Order was not filed after that realization.

Ms. Price worked a four-day work week and only one half of her day was dedicated to the Med-1 lien filings. She was tasked by her boss, to work on other

liens in their law practice the other half of the day. She testified that she could have worked the entire day on Med-1 liens but was never asked to do so. She was never asked to train anybody on the procedures of filing liens. She was never asked to train anyone in anticipation of this large, and voluminous deadline for the Med 1 lien filings.

...

Ms. Yoshida was present at the January 21, 2020 conference with Judge Crawford wherein she indicated that lien filings had begun. The judge was informed that they needed 30 to 45 more days to complete their task and he ordered 30 days per their stated recommendation. There was a question as to whether or not there had been a stay put in place regarding the lien filings however that is not relevant for discussion in today's trial issue. Judge Crawford issued a cautionary order indicating that if there was a stay in place, it was lifted (emphasis added).

...

Ms. Yoshida testified that her office including Jennifer Price was ready to go with filing the liens however they realized that Med-1 did not have a UAN number. This was a significant problem. Nevertheless, approximately 7-10 days after the status conference she realized that it was going to take more than 30 days to file the liens. A Petition for Removal To Be Relieved Of the Order was never filed by either law firm. An unverified correspondence letter was sent to Presiding Judge Crawford by Carlson & Jayakumar and filed in EAMS by Ms. Yoshida. This letter was not responded to by Judge Crawford and at no time were the parties ever relieved of the Judicial Order which issued on 1/21/2020.

...

After the criminal proceedings were completed, all files were returned to Med-1 in 2015. Ms. Yoshida was not aware if Judge Crawford was cognizant of the stay on the liens. She testified that, notwithstanding that fact, it did not prevent her office from doing work on the liens in preparation of filing. Despite having the files returned and knowledge that there were unfiled liens, there was no preparatory work done on the lien filings prior to January 2020.

...

The next witness called was Maureen Noonan. She was the office manager at the law firm of Carlson & Jayakumar. She was also found to be a credible witness. She was the office manager and is also in charge of overseeing the law clerks and their assignments. She testified that there was one full-time law clerk placed on the lien project and two part-time law clerks that helped him on their end. She also testified that the project was fully suspended in March 2020 due to Covid. (the filing deadline was 2/20/2020 prior to the covid shutdown).

...

Attorney Kathy Nichols from the law firm of Carlson & Jayakumar testified and was found to be credible. She testified that Med-1 requested a 30 to 40 day grant of time to complete all unfiled lien filings into EAMS. Ms. Nichols also realized roughly one week after the status conference with Judge Crawford that she would require additional time, perhaps another 2-3 weeks, to file the liens completely and appropriately. She did not file a Petition for Removal but instead sent an unverified letter via EAMS to Judge Crawford which was not responded to. A status conference was held at which time Judge Crawford ordered a trial to determine if there was good cause to be relieved of his order.

...

This WCJ did not find that Med-1 had demonstrated good cause to be relieved of the Order issued by Presiding Judge Crawford. Med-1 is the party who requested the exact time extension and was given the extra time. They did not act with due diligence and planned poorly for their lien tasks. They are now crying foul and bias as this judge did not find in their favor. This case has been going on since the late 1990s and while many issues have come up, regarding and around this matter, there is no reason why these liens could not have been filed timely with a little pre-planning, overtime and a full-time lien filing clerk. Pursuant to the state bar rules, an attorney is responsible for their staff's production. That is, even if they believe that lien filings are 'secretarial work'. Over the years these liens could have been filed and completed long ago as paper liens or after the files were returned to Med-1 when the criminal proceedings ended in 2015. Minimally, all of the prep work could have been completed for lien filing.

A Petition To Be Relieved of the Judicial Order was never filed despite the fact that one week after the order was issued the parties realized that they were having problems. They then wrote a correspondence (letter) to the Judge. This lackadaisical and unprofessional effort on Petitioner's part is improper and does not indicate any justification or good cause for their actions.

"Herculean" efforts were not required or necessary to complete the lien filings, but planning and good faith efforts to complete the task were required. The fact that even after the deadline expired the lien claimant continued to file liens is unacceptable and illustrates a complete disrespect for Judge Crawford's Order, the rule of law and the procedures in place for relief.

(Report, pp. 2-4.)

II.

We concur with lien claimant that the order of the WCJ is not supported by the Findings of Fact. First, and contrary to the WCJ's Finding of Fact number 17, lien claimant *did* seek removal

of the 30-day lien filing order issued on January 21, 2020 by way of the January 31, 2020 letter to the WCJ. (Lien Claimant Exh. 1.)

Labor Code section 5709 states that “No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division...” (Lab. Code, § 5709.) “All hearings and investigations...may make inquiry in the manner...*best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division.*” (Lab. Code, § 5708, emphasis added.) Necessarily, failure to comply with the rules as to details is not jurisdictional. (citation)” (*Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201 (*Rubio*); see, Cal. Code Regs., tit. 8, §§ 10517, 10617 .) Specifically, a petition for removal (or reconsideration) will not be rejected “solely on the basis that...(2) The document has been submitted without the proper form...” or is incomplete in form. (Cal. Code Regs., tit. 8, § 10617(a).) “If a party is disadvantaged by the insufficiency of a pleading, the remedy is to grant that party a reasonable continuance to permit it to prepare its case or defense. (citations)” (*Rubio, supra*, 165 Cal.App.3d at p. 200-201.)

Here, the WCJ received lien claimant’s January 31, 2020 letter, which was a formal request that its 30-day lien filing order be rescinded, amended, or otherwise resolved, and which was timely filed in EAMS with a proof of service establishing service on all parties. (Lien Claimant Exh. 1; see Cal. Code Regs., tit. 8, § 10955(d).) The WCJ acknowledges receipt of the timely filed letter seeking removal of the 30-day lien filing order but failed to respond to the letter or transmit the letter to the Appeals Board. Defendant then filed a Petition to Strike essentially identifying the letter as an invalid petition for removal. In defense, the WCJ states that the letter was improper, “lackadaisical and unprofessional.” (Report, p. 4.) In addition, the WCJ repeats several times that the letter was not “verified” which is a requirement of a petition for removal. (Cal. Code Regs., tit. 8, § 10955(b).)³ The WCJ should not have rejected lien claimant’s letter seeking removal because it was not presented in the proper form. (Cal. Code Regs., tit. 8, § 10617(a).) Lien claimant’s letter should have been transmitted to the Appeals Board because it was for the Appeals Board to determine whether applicant stated grounds for removal, i.e., extension of the 30-day lien filing order – *not the WCJ*.

³ Verification of a petition for reconsideration is not a jurisdictional requirement that mandates dismissal. (*Wings West Airlines v. Workers’ Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1047, 1055 [51 Cal.Comp.Cases 609].)

Instead of transmitting the January 31, 2020 removal to the Appeals Board, however, the WCJ set the matter for hearing at the trial level, and thereafter approved continuances of the issue until June 8, 2023 when the issue first raised on January 31, 2020 went to trial. However, the extension requested by lien claimant in its January 31, 2020 removal to file its remaining 325 liens from February 20, 2020 to April 10, 2020 was reasonable when initially requested under the circumstances presented by this case. First, as confirmed by the WCJ in the Report, the lien claimant is the party who actually suggested the original 30-day period in which to file the liens during the January 21, 2020 conference. It makes little sense to deny the request of the party who was asked to define the period to extend that period based on the lien claimant's re-evaluation of the time needed to complete the necessary filings, especially when presented to the opposing counsel and the WCJ within 10 days of the original order.

Next, given that the parties stipulated that a stay had been place on lien claimant and its liens since 2005, the WCJ's opinion that lien claimant should have been preparing its liens for filing during those 15 years and been ready to go the moment the stay was lifted appears to the Appeals Board to be an unreasonable expectation. This is also true given that most of the liens had been the subject of a 2015 writ of review to the Third District Court of Appeal, and all parties had been waiting for several years for a decision from that Court as to whether or not a certain portion of lien claimant's liens would be dismissed or not. The decision was finally issued by the Third District Court of Appeal on March 26, 2019, affirming the Appeals Board's decision to rescind a WCJ's order dismissing the liens, with remittitur issuing on May 29, 2019. A declaration of readiness to proceed was filed in September 2019 and the January 21, 2020 hearing was the *first* hearing after the termination of the appellate proceedings. It was *also* at this hearing that the 15-year stay was first lifted.

We also cannot agree with the WCJ that lien claimant's efforts to file and serve the remaining lien claims after February 20, 2020 was in any way "unacceptable" or that it "illustrates a complete disrespect for Judge Crawford's Order, the rule of law and the procedures in place for relief." (Report, p. 4.) Instead, lien claimant did the only thing it could do pending the outcome of its request for relief from the 30-day lien filing order – it continued to diligently file and serve its liens. The description of effort and care taken by lien claimant to prepare the 15-year old liens for filing that prioritized accuracy over expediency appears to be supported by substantial evidence in

the declarations and credible testimony⁴ of Jennifer Price, Maureen Noonan, T. Mae Yoshida, and Kathy Nichols. Overall, it took lien claimant 34 business days to file and same-day serve 325, 15-year liens, which as stated by lien claimants, is *not* evidence of dereliction or unreasonable delay in its efforts to file the liens. We do not credit the WCJ's interpretation of the statements and testimony given by these witnesses that they acted without organization or diligence, and concur with lien claimants that the WCJ overlooks the statements and testimony of witnesses the WCJ found credible regarding the time it took to file and serve the liens.

There is no prejudice or other objection stated by defendant, other than that the January 31, 2020 letter was not in the form of a proper petition for removal.

In addition, there is no dispute that lien claimant filed the majority of the liens prior to the requested extension of April 20, 2020 and prior to the COVID-19 shut-down on March 19, 2020. (MOH, June 8, 2023, Stipulated Facts, pp. 2-3, Facts 5-8.) All liens were filed by June 9, 2020. (*Ibid.*) Given the considerable pressures placed on the entire workers' compensation system and all parties, including all lien claimants, during the COVID-19 shut-down and especially during the early months of the shut-down, we find that lien claimant's efforts to file the remainder of its liens after March 19, 2020, and by June 9, 2020, to be reasonable.

Finally, to affirm the WCJ's decision in this matter would be in practical effect to issue default judgments in all liens filed after February 20, 2020. However, the law favors a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1207 [57 Cal.Comp.Cases 149].) We therefore grant reconsideration and as our decision after reconsideration we rescind the F&O and replace it with new findings of fact consistent with this decision.

We note that had we had the opportunity to consider lien claimant's removal of the 30-day lien filing order in 2020, removal would most likely have been granted. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that

⁴ The WCJ confirmed in the Report the credibility of lien claimant's witnesses.

reconsideration will not be an adequate remedy if a final decision averse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Even though removal of interlocutory decisions is not required, certain interlocutory decisions may be difficult to undo. The more likely it is that a decision cannot be undone, the more likely that the decision will result in substantial prejudice or irreparable harm.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A denial of a party's right to due process is sufficient and irreparable harm to justify granting removal; reconsideration cannot cure a denial of due process. The failure of the WCJ to transmit the January 31, 2020 removal to the Appeals Board constitutes a failure of due process in this case that cannot be remedied by this reconsideration. It is too late. The parties have now proceeded through three years of extended delay to wade through a full evidentiary trial on one simple issue of a 30-day extension of time to file 325, 15-year old liens that had been held under a 15-year stay *and* had been waiting for four years on the uncertain outcome of an appellate review.

Accordingly, the evidence does not support the WCJ's decision, and we therefore grant reconsideration. It is our decision after reconsideration to rescind the F&O and replace it with new findings of fact consistent with the WCJ's Findings of Fact 1 through 16 but also that lien claimant did file a Petition for Removal of the 30-day lien filing order which was not properly transmitted to the Appeals Board; that the Appeals Board would have granted removal to extend the time to file until April 10, 2020 to avoid violating lien claimant's due process rights to reasonable notice and opportunity to be heard on its liens following the particular history and circumstances of this matter; that because the Petition for Removal was not properly transmitted to the Appeals Board, the issue was instead set for hearing and thereafter continued multiple times beyond the March 19, 2020 COVID-19 shut-down; and, that good cause is therefore shown as to why the 30-day lien filing order was extended to June 9, 2020.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant Med-1 Medical Center, Inc.'s Petition for Reconsideration of the Findings of Fact, Order issued on January 30, 2024 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Order issued on January 30, 2024 by a workers' compensation administrative law judge is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Criminal charges were filed regarding the corporate structure of Med-1.
2. In 2004, State Compensation Insurance Fund filed a petition for consolidation and stay of lien filings.
3. On January 19, 2005, acting DWC Chief Judge Kenneth B. Peterson granted the insurer's Petition for Consolidation and stay of individual lien proceedings.
4. At the January 21, 2020 status conference held by WCJ Crawford, the following orders were issued to the parties:
 - a. any stay of proceedings that may or may not have issued in and of the consolidated cases is hereby lifted;
 - b. lien claimant has 30 days from today's order to file any new lien claims;
 - c. at the next status conference lien claimant shall produce evidence that all lien activation fees and lien filing fees have been paid; and,
 - d. service is limited to parties in the consolidated action.
5. On February 20, 2020 (deadline), Med-1 filed liens in batches 1-5.
6. On February 22, 2020 to March 19, 2020, Med-1 filed liens in batches 6-28.
7. On March 19, 2020, the Covid-19 shut-down order began.
8. From May 28, 2022 to June 9, 2020, Med-1 filed liens in batches 29-35.
9. Prior to the January 21, 2020 order referenced in Finding of Fact number 4, a number of Med-1 liens had already been filed.

10. By 2014, all files were returned to Med-1 after the criminal proceedings were completed.
11. In 2015, all Med-1 liens were dismissed by WCJ Crawford.
12. Med-1 sought reconsideration of the dismissal order to the Appeals Board; the Appeals Board granted reconsideration and as its decision after reconsideration, rescinded the order to dismiss Med-1's liens; State Compensation Insurance Fund sought reconsideration of the Appeals Board's decision to grant and rescind, but its reconsideration was denied on January 3, 2017.
13. State Compensation Insurance Fund then sought a writ of review with the California District Court of Appeals of the Appeals Board's January 3, 2017 order denying its reconsideration.
14. On March 26, 2019, the Court of Appeals denied the appeal and affirmed the Appeals Board's January 3, 2017 decision.
15. On May 29, 2019, the Third District Court of Appeal issued a remitter to the Appeals Board, and on June 18, 2019, the Appeals Board issued its Opinion and Order Awarding Costs and Decision after Remittitur.
16. Lien claimant filed a declaration of readiness to proceed on September 20, 2019, which was set for conference on January 21, 2020, in front of WCJ Crawford. At the request of all parties, the matter was continued and the orders outlined in Finding of Fact 4, *supra*, were issued.
17. Med-1 was stayed from filing any new liens between January 19, 2005 and January 21, 2020 when WCJ Crawford lifted the stay. As of January 21, 2020, Med-1 had approximately 325 new liens to file and serve for claims dating from 15 years earlier.
18. On January 30, 2020, Med-1 requested an extension to file the approximately 325, 15-year old liens to April 10, 2020 from counsel for State Compensation Insurance Fund, who failed to respond to the meet and confer request, and from counsel for California Insurance Guarantee Association, who objected to the request.
19. On January 31, 2020, Med-1 timely filed and served a letter to WCJ Crawford at the District Office seeking relief from the January 21, 2020 order outlined in Finding of Fact 4, *supra*. This letter was a petition for removal of the January 21, 2020 order. The WCJ did not properly transmit Med-1's January 21, 2020 removal to the Appeals Board.

20. There existed good cause to grant relief to extend the January 21, 2020 order to April 20, 2020 that lien claimant file approximately 325, 15-year old liens within 30 days after a 15-year stay of those liens was lifted, based on the due process right of all parties in workers' compensation to reasonable notice and opportunity to be heard on its claims and the public policy that the law favors hearings on the merits. No resulting prejudice was alleged by another party nor found in the record.

21. COVID-19 caused a state-wide shutdown on March 19, 2020, which resulted in considerable pressure being placed on the workers' compensation systems as well as on all parties in the system, including all parties to this matter. Therefore, there existed good cause based on the exigencies caused by the COVID-19 shutdown to grant further extension of the January 21, 2020 order from April 20, 2020 to June 9, 2020.

ORDER

IT IS HEREBY ORDERED THAT good cause was demonstrated to grant relief to extend the January 21, 2020 order that lien claimant file any new liens within 30 days to June 9, 2020 based on the due process rights of all parties to reasonable notice and an opportunity to be heard and the public policy that the law favors hearings on the merits.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 22, 2024

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

**MED- 1 MEDICAL CENTER, INC.
CARLSON & JAYAKUMAR
LAW OFFICES OF T. MAE YOSHIDA
STATE COMPENSATION INSURANCE FUND**

AJF/abs

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