

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

JOSE ABREGO, *Applicant*

vs.

**TRI-STATE EMPLOYMENT; LUMBERMEN'S UNDERWRITING, in Liquidation,
Administered by CIGA, *Defendants***

**Adjudication Numbers: ADJ8995855; ADJ10748640; ADJ10749649
Marina del Rey District Office**

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Lien claimant San Diego Imaging, Inc., dba California Imaging Solutions seeks reconsideration of the Findings of Fact and Order (F&O) issued on November 2, 2023, wherein the workers' compensation administrative law judge (WCJ) found that lien claimant failed to meet its burden of proving that (1) it is entitled to an additional monetary payment from CIGA; and (2) its lien was reasonable and necessary.

The WCJ ordered that lien claimant take nothing.

Lien claimant contends that (1) the WCJ erroneously failed to try case numbers ADJ8995855, ADJ10748640 and ADJ10749649 together; and (2) the evidence establishes that its lien was reasonable and necessary.¹

We did not receive an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition and the Report. Based upon our review of the record, and for the reasons stated in the Report, which we adopt and incorporate, we will deny reconsideration.

¹ Lien claimant also argues that the WCJ erroneously opined that it failed to prove the existence of a contested claim at the time services were rendered. (Petition, p. 6:15-24 (quoting the Opinion on Decision).) The WCJ, however, did not issue a finding on that issue; and, therefore, the issue is moot. Accordingly, we do not address it.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact and Order issued on November 2, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 24, 2024

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

**CALIFORNIA IMAGING SOLUTIONS
WALL McCORMICK BAROLDI & DUGAN**

SRO/es

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 PETITION FOR RECONSIDERATION**

I

INTRODUCTION

- | | |
|------------------------------|--|
| 1. Date of Injury: | April 16, 2012 – March 22, 2013 |
| 2. Identity of Petitioner: | Lien Claimant San Diego Imaging, Inc. dba
California Imaging Solutions |
| 3. Petitioner’s Contentions: | a. The Judge acted without or in excess of her
powers
b. The Evidence does not justify the Findings of
Fact |
| 4. Timeliness: | The Petition is timely |
| 5. Verification: | The Petition is verified |

II

FACTS

A lien trial was set on August 14, 2023, and September 20, 2023, before WCJ Sandra Graper. On November 1, 2023, this judge issued a Findings and Order finding against the lien of San Diego Imaging, Inc. dba California Imaging Solutions (hereinafter “California Imaging”). The sole issue before the court is the alleged balance of California Imaging’s lien.

It is undisputed that all dates of service of the lien were initially paid, in part, by Lumbermen’s Underwriting (hereinafter “Lumbermen’s”). When Lumbermen’s went into liquidation and CIGA took over the case, California Imaging re-submitted its bill of its alleged balance to CIGA. California Imaging is attempting to prove its balance with an unauthenticated, partial market survey.

The Market Survey Analysis was identified as Lien Claimant Exhibit 10 at trial and objected to by Defendant for lack of foundation and as non-substantial evidence.

This judge admitted the Market Survey Analysis into evidence by way of her November 1, 2023 Findings and Order, over Defendant’s objection. Due weight and consideration was given to the Market Survey Analysis. This Report and Recommendation is in response to Lien Claimant’s November 27, 2023 Petition for Reconsideration.

III DISCUSSION

Lien Claimant, California Imaging, first argues that all three cases (i.e., ADJ8995855; ADJ10748640; ADJ10749649) should have been tried together and all its exhibits should have been entered into evidence.

This argument is baseless. California Imaging has an alleged balance on the same lien for all three ADJ#s. At the time of trial, the parties agreed that all of California Imaging's invoices on all dates of service were paid, in part, by Lumbermen's [August 14, 2023 MOH, p.2, lines 17-18]. There was no dispute by either party that the services were provided by California Imaging. The only issue before the court is California Imaging's alleged outstanding lien balance of \$3,840.29.

Next, California Imaging argues that it should be paid its lien balance, based solely on an in-house created Market Rate Analysis [Lien Claimant Exhibit 10]. This judge, in her November 1, 2023 ruling, set forth that the lien claimant did not prove that its balance was reasonably or necessarily incurred. All three cases involve the same issue of reasonableness and necessity of California Imaging's lien balance.

The court in *Ashely Colamonico v. Secure Transportation* (2019 Cal.Wrk.Comp.LEXIS 111; 84 Cal.Comp.Cases 1059)(en banc)) states that, "a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred."

Pursuant to *Labor Code §4620(a); §4621(a)*, the lien claimant must prove the medical-legal expense was reasonably, actually, and necessarily incurred [See §§3205.5, 5705; *Colamonico, supra; Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal.Wrk.Comp. LEXIS 160] (Appeals Board en banc)].

In this case, Lumbermen's paid the lien claimant's bills in excess of the current fee schedule, which fee schedule was operative shortly thereafter on July 1, 2015.

Lien claimant acknowledges receiving the EOB/EOR(s) statements for its invoices, within its objections to Lumbermen's thereto [Joint Exhibits G - I].

California Imaging relies on its Market Rate Analysis [Lien Claimant Exhibit 10] to prove that its charges are reasonable and necessary. However, California Imaging does not

provide any persuasive or valid legal argument for the court to rely on its market rate document, and there is no Labor Code section or regulation that expressly permits a copy service to use a market survey to support its billing charges. In addition, lien claimant did not provide a witness to authenticate the document or lay a foundation for its Market Rate Analysis.

Instead, California Imaging attached an Affidavit of Yvette Padilla to its Market Rate Analysis. Ms. Padilla is identified in California Imaging's Petition for Reconsideration as its Collection Supervisor. The Affidavit of Ms. Padilla states that, "On January 30, 2020, I compiled the following report by retrieving data from California Imaging Solutions internal database. For convenience only the first 5 pages of the report are included, and the rest of the report is available upon request" [*Ibid*, p.1, para. 2]. Thus, the Market Rate Analysis is an unauthenticated, incomplete document, which this judge has found not to be substantial evidence.

Also, California Imaging has submitted its invoices [Lien Claimant Exhibit 8], which do not include dates of service and detail multiple charges, fees and costs which are unexplained and incomprehensible. Further, without a witness to authenticate its documentary evidence, Defendant is denied its due process right of cross-examination.

Any award, order or decision of the Appeals Board must be supported by substantial evidence in light of the entire record (*Labor Code §5952(d); Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274,280 [39 Cal.Comp.Cases 310]). It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion ... It must be reasonable in nature, credible, and of solid value (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159,164 [48 Cal.Comp.Cases 566]).

Thus, the undersigned judge held that California Imaging's Market Analysis was not substantial evidence, in light of the entire record. This is the only document that lien claimant relied upon to substantiate its alleged balance of \$3,840.29. This judge found that the lien claimant did not prove that its balance was reasonable or necessary.

It was found that lien claimant California Imaging was adequately compensated for all dates of service and that it had not proven that it was entitled to additional monies for the alleged balance of its lien pursuant to the facts and law, *supra*.

For these reasons, and based upon the entire record, this judge held that lien claimant California Imaging take nothing by way of its alleged lien balance.

V

RECOMMENDATION

It is recommended that Lien Claimant's Petition for Reconsideration be denied.

DATED: December 7, 2023

HON. SANDRA L. GRAPER

Workers' Compensation

Administrative Law Judge