

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

**MAHNAZ KOUTAL, *Applicant***

**vs.**

**BERNINI, INC.; TRAVELERS INSURANCE, *Defendants***

**Adjudication Number: ADJ7968475  
Long Beach District Office**

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

Cost petitioner Supreme Copy seeks reconsideration of the November 2, 2023 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a store manager on November 12, 2010, sustained industrial injury to the neck, upper extremities, trunk and lower extremities. The WCJ found in relevant part that Supreme Copy is "unable to file a Petition for Non-IBR via Title 8, California Code of Regulations §10786 as it did not meet its burden of proving this was a contested claim as per Labor Code §4620."

Supreme Copy contends that the only issue framed was whether it could file a petition for reimbursement of medical legal expenses pursuant to Title 8, Cal. Code Regs. § 10786(b), and that the WCJ's decision addressed issues beyond those framed for decision.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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 discussed below, we will grant Supreme Copy's petition, rescind the November 2, 2023 Findings of Fact, and substitute new findings of

fact that cost petitioner is entitled to file a petition for reimbursement of medical-legal expenses, and deferring the issue of the merits the petition for medical-legal expenses.

The sole issue framed for decision from trial held on September 19, 2023, was “whether Supreme Copy is required to file a lien for its 2011 dates of service, or can Supreme Copy file a Petition for Non-IBR, via Title 8, California Code of Regulations 10786.” (Minutes of Hearing, dated September 19, 2023, at 2:11.)

The WCJ’s November 2, 2023, Findings of Fact determined that Supreme Copy was precluded from filing a petition under 10786(b) for reimbursement of medical-legal expenses because it failed to establish that the underlying claim was contested within the meaning of section 4620. (Finding of Fact No. 2; Opinion on Decision, at p. 2.)

Supreme Copy’s Petition for Reconsideration (petition) contends the WCJ’s decision exceeds the scope of the issues presented for trial, and that Supreme Copy’s rights to due process were violated because it was not allowed to submit evidence at trial responsive to the issues ultimately decided by the WCJ. (Petition, at pp. 5-6.)

We agree. A medical-legal provider seeking reimbursement has a dual remedy available to them. The provider may file a lien pursuant to section 4900 et seq., or the provider may file a petition for reimbursement of medical-legal expenses pursuant to Workers’ Compensation Appeals Board (WCAB) Rule 10786(b). (Title 8, Cal. Code Regs., § 10786(b).)

If the provider chooses to file a petition pursuant to WCAB Rule 10786(b), the provider has the initial burden of proof that: 1) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to section 4620; and 2) its medical-legal services were reasonably, actually, and necessarily incurred pursuant to section 4621(a).<sup>1</sup> (*Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Board en banc).)

Here, however, the issue framed at trial was limited to whether the Supreme Copy has a right to seek reimbursement pursuant to WCAB Rule 10786, not whether the provider has met their burden of proving that right to reimbursement. (Minutes of Hearing, dated September 19,

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<sup>1</sup> We also observe that a contested claim is not limited to those instances where the claims administrator has rejected all liability for a claim. A contested claim includes instances where the claims administrator has rejected liability for a specific claimed benefit, or has not timely accepted liability for claim, or where the claims administrator has admitted liability for the claim and a disputed medical fact exists, e.g., a dispute regarding the nature and extent of the injury. (Lab. Code § 4620(b); Cal. Code Reg., tit. 8, § 9793(b).)

2023, at 2:11.) To the extent that the WCJ’s decision purports to decide the underlying merits of the claimed reimbursement, it denies the parties notice of a clearly framed issue, and the opportunity to offer evidence responsive to the issue.

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].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, the medical-legal provider filed a petition for reimbursement of alleged medical-legal expenses pursuant to WCAB Rule 10786(b) on May 26, 2023. The question of whether the provider has met their burden of proof under *Colamonico, supra*, requires that all parties be allowed to present evidence responsive to a properly identified issue. Pursuant to Labor Code section 5313 and *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.* at p. 475.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at pp. 475-476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Thus, the merits of the petition should be decided only after the WCJ has identified the issue of the sufficiency of the petition, has provided appropriate notice to the parties, and has afforded the parties the opportunity to marshal evidence responsive to the properly identified and noticed issue. (*Rucker, supra*, at pp. 157-158.)

Accordingly, we will rescind the November 2, 2023 Findings of Fact, and substitute new findings that Supreme Copy is entitled to file a petition for reimbursement of medical-legal expenses in accordance with WCAB Rule 10786(b), and that the issue of the merits of the petition is deferred.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of November 2, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of November 2, 2023 is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

**FINDINGS OF FACT**

1. Cost petitioner Supreme Copy is entitled to file a petition for reimbursement of medical-legal expenses.
2. The issue of the merits of cost petitioner Supreme Copy's petition for reimbursement of medical-legal expenses is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

**I CONCUR,**

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**January 26, 2024**

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

**SUPREME COPY  
DIMACULANGAN AND ASSOCIATES**

**SAR/abs**

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