

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

MARIA AGUILERA DE GONZALEZ, *Applicant*

vs.

**AERO ELECTRIC CONNECTOR, INC.;
TRAVELERS INSURANCE, *Defendants***

**Adjudication Numbers: ADJ8904686; ADJ8196287
Long Beach District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision after Reconsideration.

Barrington Psychiatric (lien claimant) seeks reconsideration of the Joint Order to Pay Attorney's Fees and Costs (Joint Order) issued by the workers' compensation administrative law judge (WCJ) on November 24, 2020. As relevant herein, the WCJ found good cause and ordered Barrington Psychiatric and/or Tina Dyck, jointly and severally, to pay Travelers Insurance (defendant) \$10,652.00 for attorney's fees and costs for defendant's defense of lien claimant's "invalid and baseless" lien.

Lien claimant contends that it is not liable for defendant's litigation costs of a lien that has been withdrawn; that defendant has not offered any evidence in support of its cost petition; that the Joint Order is based on false or inaccurate information; and that the WCJ's Joint Order was made in violation of *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).

Defendant filed an Answer. The WCJ did not issue a Report and Recommendation on Petition for Reconsideration (Report).

We have considered the allegations of the Petition for Reconsideration and the Answer. Based on our review of the record, and for the reasons discussed below, we will rescind the Joint Order and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On June 21, 2019, the WCJ issued a Findings and Order (F&O). The WCJ made four findings: 1) that lien claimant failed to set forth facts and evidence to support its claim for costs and sanctions against defendant; 2) that lien claimant engaged in frivolous conduct that caused unnecessary delay and unnecessary use of the Court's resources by improperly filing a lien and failing to attend prior trial proceedings; 3) that the WCAB maintains jurisdiction over all issues raised by the parties in the pre-trial conference statement regardless of whether or not an alleged lien claimant withdraws its lien; and 4) and that there was good cause to impose sanctions jointly and severally against Tina Dyck and lien claimant in the amount of \$800.00. The WCJ ordered that lien claimant's petition for costs and sanction be denied; and that defendant's petition for costs and sanctions be granted, subject to defendant's filing of a Bill of Particulars. The WCJ also found good cause to impose \$800.00 as sanctions against lien claimant and Tina Dyck, jointly and severally. (Findings and Orders, June 21, 2019.)

On July 31, 2019, lien claimant filed a Petition for Reconsideration of the June 21, 2019 Findings and Order.

On September 30, 2019, we issued our Opinion and Order Denying Petition for Reconsideration (Opinion Denying Petition). We note that lien claimant did not seek a writ of review pursuant to section 5950. (See Lab. Code, § 5950.)

On November 6, 2019, defendant filed its Amended Bill of Particulars. Defendant attached twelve invoices as Exhibit A in support of the Amended Bill of Particulars. Six of the invoices are for services in 2018, and the remaining six invoices are for services in 2019.

On December 6, 2019, the WCJ issued a "Notice of Intention to Grant/Order Amount of Attorney's Fees and Costs re: Defendant's Bill of Particulars" (NIT).

On December 12, 2019, the WCJ issued an order vacating the December 6, 2019 NIT.

On December 19, 2019, lien claimant filed an objection to the NIT. Lien claimant argued, as relevant herein, that defendant's charges were unreasonable, unnecessary, and excessive. For example, lien claimant alleged that defendant had billed over \$4000.00 to make an appearance to file a pleading that could have been filed for free through Electronic Adjudication Management System (EAMS); that there was no need to prepare a notice of hearing on January 24, 2018, because the WCAB had already served the notice; that there was no need to bill \$152.00 for almost two hours for an analysis of outstanding liens; and that there was no telephone call to lien claimant

on March 20, 2018. We note that these are a sampling of lien claimant's objections to defendant's invoices. (Objection to NIT, December 19, 2019.)

On March 12, 2020, the WCJ issued a second NIT.

On April 7, 2020, it appears that lien claimant filed a timely objection to the March 12, 2020 NIT.¹ Lien claimant objected to the March 12, 2020 NIT based on the same reasons it raised in its objection on December 19, 2019.

On October 12, 2020, the WCJ held a status conference. In the comments of the minutes of hearing, there is a handwritten statement as follows: "Review/Issue Decision/Order re: Costs/5813. See TASE#14326847." (Minutes of Hearing, October 12, 2020.)

On November 24, 2020, the WCJ issued the Joint Order, which states in its entirety:

IT APPEARING THAT pursuant to the NOTICE OF INTENTION TO GRANT/ORDER AMOUNT OF ATTORNEY'S FEES AND COSTS RE: DEFENDANT'S AMENDED BILL OF PARTICULARS, dated 03/12/2020, and there being no good reasons to the contrary offered by BARRINGTON PSYCHIATRIC and/or TINA DYCK at the 10/12/2020 hearing, and as previously set forth in the Findings and Order issued 06/21/2019, as well as the reasons stated in the Report on Reconsideration, dated 09/05/2019, and

GOOD CAUSE APPEARING;

IT IS ORDERED THAT pursuant to Labor Code Sec. 5813, BARRINGTON PSYCHIATRIC and/or TINA DYCK, jointly and severally, shall pay to TRAVELERS INSURANCE the amount of \$10,652.00 within twenty (20) days of service of this Order, as attorney's fees and costs Travelers Insurance incurred in defending against the invalid and baseless lien of Barrington, filed on their behalf by their then legal representative/employee Tina Dyck and for her actions on behalf of Barrington thereafter, as set forth in the previous Findings and Order and Report on Reconsideration set forth above.

DISCUSSION

Section 5950 provides: "Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or

¹ According to the March 12, 2020 NIT, it was served on March 23, 2020, making April 7, 2020, the fifteenth day.

reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration." (Lab. Code, § 5950.) "The failure of an aggrieved party to seek judicial review of a final order of the [Board] bars later challenge to the propriety of the order or decision before either the [Board] or the court." (*State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (2013) 218 Cal.App.4th 258, 261 [159 Cal. Rptr. 3d 779].)

Here, lien claimant did not seek a writ of review of our Opinion Denying Petition. Thus, lien claimant cannot challenge the findings or orders in the June 21, 2019 Findings and Order in its Petition for Reconsideration. There was only one issue that was deferred to the trial level; the reasonable value of defendant's costs pursuant to section 5813. Accordingly, that is the only issue that is before us on reconsideration.

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton, supra*, at p. 475, "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." 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." (Citation omitted.) (*Id.* at p. 476.)

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Ibid.*) Part of the WCJ's responsibility is to "frame the issues and stipulations for trial." (*Id.* at p. 475.)

The issue we face on reconsideration is that there is an insufficient record to evaluate the WCJ's Joint Order. In the Joint Order, the WCJ concluded that neither lien claimant nor Ms. Dyck offered good reasons at the October 12, 2020 hearing in opposition to the NIT. The problem is that the October 12, 2020 minutes of hearing do not provide sufficient detail to support this conclusion

in the Joint Order. There is no mention of the arguments made by the parties at the hearing. Thus, it is unclear if the objections raised by lien claimant did or did not rise to the level of good cause. Furthermore, the minutes of hearing do not reference lien claimant's objections dated December 19, 2019, or April 7, 2020; and the WCJ did not reference lien claimant's objections on December 19, 2019 or April 7, 2020 in the Joint Order. Thus, it is unclear if the WCJ considered these objections in his deliberations.²

Additionally, it is unclear how the WCJ determined that \$10,652.00 was the reasonable amount for defendant's attorney's fees and costs. We recognize that defendant's Amended Bill of Particulars included various invoices attached as Exhibit A. However, there is no record that these invoices were admitted by the WCJ as evidence into the record. Furthermore, the WCJ did not explain how he determined that the invoices were reasonable. Unfortunately, the WCJ did not issue a Report, and a Report could have addressed and resolved many of the *Hamilton* issues. Upon return to the trial level, we recommend that the parties and WCJ create a proper record as discussed in *Hamilton*.

Accordingly, we rescind the Joint Order and return the matter to the WCJ for further proceedings consistent with this decision.

² If lien claimant failed to lodge any objections to the WCJ's NIT, the WCJ should clearly state this in the minutes.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 24, 2020 Joint Order to Pay Attorney's Fees and Costs is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 26, 2021

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

**MARIA AGUILERA DE GONZALEZ
BARRINGTON PSYCHIATRIC CENTER
TINA DYCK, C/O BARRINGTON PSYCHIATRIC CENTER
TRAVELERS INSURANCE
SCHLOSSBERG UMHOLTZ**

SS/abs

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