

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

JOSE GUZMAN, *Applicant*

vs.

**DE LA TORRE LANDSCAPE & MAINTENANCE;
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ6693717
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, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 5, 2022

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

**COLLECTIVE RESOURCES
LEWIS BRISBOIS BISGAARD & SMITH**

AH/oo

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

**REPORT AND RECOMMENDATION ON LIEN CLAIMANT PROFESSIONAL
INTERPRETING’S PETITION FOR RECONSIDERATION**

I

INTRODUCTION

- | | | | |
|----|---|---|---|
| 1. | Applicant’s Occupation | : | Construction Worker |
| | Applicant’s Age | : | □ |
| | Date of Injury | : | April 20, 2007 to November 3, 2008 |
| | Parts of Body Injured | : | Low Back |
| 2. | Identity of Petitioner | : | <u>PROFESSIONAL INTERPRETING</u> filed the Petition. |
| | Timeliness | : | The petition itself is timely filed. |
| | Verification | : | The petition is verified. |
| 3. | Date of Findings of Fact | : | May 19, 2022 |
| 4. | Petitioner contends that the WCJ erred in finding that: | | |
| | a) | Professional Interpreting’s lien was dismissed pursuant to Labor Code §4903.05(c)(3). | |

II

FACTS

The facts in this matter are not disputed in that Professional Interpreting did not comply with Labor Code §4903.05(c)(3). It is their position that they are not required to comply with Labor Code §4903.05(c)(3) because they filed a lien activation fee as opposed to a filing fee based on the initial lien being filed on August 1, 2012, with the activation fee being filed on January 14, 2015. Professional Interpreting contends that the distinction of an activation fee versus a filing fee excludes them from compliance with Labor Code §4903.05(c)(3) based on the plain language of the code section which only references liens for which a filing fee has been paid.

This matter first came on calendar for a lien trial on June 8, 2021 and was eventually submitted after parties prepared trial briefs on May 17, 2022.

The record was opened, evidence was offered and ordered admitted, there was no testimony taken, and the matter thereafter stood submitted on May 17, 2022.

On May 19, 2022, the court issued its Findings of Fact in which Professional Interpreting’s lien was found to have been dismissed on July 3, 2017, at 5:01 p.m. It is from the finding that their lien was dismissed that Lien Claimant seeks reconsideration.

III **DISCUSSION**

Lien Claimant's first argument is this WCJ erred in applying Labor Code §4903.05(c)(3) to their lien. This very issue was just recently addressed in Ida Montelongo vs. Gelson's Market, 2022 Cal. Wrk. Comp. P.D. Lexis 41, which found that the requirement of Labor Code §4903.05(c)(1) applies to all liens filed between July 12, 2006 and January 1, 2013. The Commissioners held that the purpose of the lien filing fee of §4903.05 and the lien activation fee of §4903.06 are not qualitatively different and as such they will not upset the legislative intent of the declaration requirement as requested by lien claimant.

Lien Claimant's second argument is that the lien claim should be litigated on its merits as opposed to being essentially dismissed summarily by operation of law. One cannot litigate a lien on its merits if it is an invalid or dismissed lien without simply flouting the legislature's intent to regulate liens in the workers' compensation system.

In sum, the court found Professional Interpreting's lien to have been dismissed by operation of law based on the recent opinion of the Commissioners in Ida Montelongo vs. Gelson's Market, 2022 Cal. Wrk. Comp. P.D. Lexis 41.

IV **RECOMMENDATION**

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

Date: 6/7/2022

HON. JARED E. KLIPFEL
Workers' Compensation Judge