

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

**JAVIER COLLINS, *Applicant***

**vs.**

**SUKHDEEP SINGH - HARNISH KAUR  
and  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ1503918**

**Long Beach District Office**

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

We previously granted lien claimant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case.<sup>1</sup> This is our Opinion and Decision After Reconsideration.

Sidhu Chiropractic Inc, (lien claimant) seeks reconsideration of the Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on November 22, 2019, wherein the WCJ found in pertinent part that lien claimant failed to meet its burden of proof that applicant was employed by defendant; that lien claimant failed to meet its burden of proof that applicant's alleged injury arose out of and occurred in the course of employment; that the services provided by lien were neither reasonable nor necessary so lien claimant is not entitled to payment for said services; and that the issue of sanctions against lien claimant for failure to timely comply with declaration requirements of Labor Code section 4903.8(d) was deferred.<sup>2</sup>

Lien claimant contends that the issue of injury was not raised at trial; and that defendant was not prejudiced by the 2019 filing of the section 4903.8(d) declaration.

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<sup>1</sup> Commissioner Sweeney who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place. Also, Commissioner Dodd who was previously a panelist is not presently available to review the matter; a new panel member has been assigned in her place.

<sup>2</sup>All further statutory references are to the Labor Code unless otherwise noted.

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

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will affirm the Findings, except that we amend Finding of Fact 4 to remove the reference to employment.

### **BACKGROUND**

Javier Collins (applicant) claimed to have injured his left hand while employed by defendant as a manager on July 18, 2000. He received treatment from lien claimant starting on May 29, 2001. (See LC Exh. 5, Ziyad Alam, D.C., May 29, 2001, Doctor's First Report of Injury.)<sup>3</sup> On October 6, 2008, defendant issued correspondence to lien claimant stating that, "State Compensation Insurance Fund objects to your lien in the amount of \$2117.13, received on September 15, 2008." (Def. Exh. A [incorrectly identified as LC Exh. A], Objection to Lien, October 6, 2008.)

The WCJ issued a Notice of Intent to Dismiss due to applicant's failure to appear at the May 23, 2019 Mandatory Settlement Conference. On July 18, 2019, having not received an objection to the Notice of Intent, the WCJ issued an Order Dismissing Case.

Lien claimant and defendant proceeded to trial on October 1, 2019. They stipulated that "while allegedly employed" by defendant, applicant claimed that he sustained an injury arising out of and occurring in the course of employment (AOE/COE) to his left hand. The issues submitted for decision included injury AOE/COE, lien claimant's lien; whether the treatment at issue was reasonable and necessary; and whether there was a presumption of compensability. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 1, 2019, p. 2.) Defendant did not separately raise the issue of whether applicant was an employee on the date of the injury.

### **DISCUSSION**

Where a lien claimant (rather than the injured employee) is litigating the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the

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<sup>3</sup> Each of lien claimant's treatment notes indicate they were served on applicant's counsel, but not on defendant. Also, defendant was not served the Notice of Lien; (See LC Exhs. 5 – 8; see LC Exh. 1, Notice and Request for Allowance of Lien, June 6, 2003, p. 2.)

shoes of the injured employee and the lien claimant must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien. (Lab. Code, §§ 3202.5, 5705; *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc).) A lien claimant medical provider's burden of proof includes the burden of showing that the medical treatment provided was "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com.* (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461].)

Absent stipulations regarding the alleged injury and the injured body parts, a lien claimant must prove that the applicant sustained an industrial injury. A lien claimant has the burden of proving by a preponderance of the evidence that the claimed injury arose out of and occurred in the course of employment. (*Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34 Cal.App.4th 1204, 1212-1213 [60 Cal.Comp.Cases 289, 291-292]).

Pursuant to section 3357, "Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee." (Lab. Code, § 3357.) Here, the only evidence offered by lien claimant that applicant was employed by Sukhdeep Singh is contained in Dr. Alam's first report, which identifies Sukhdeep Singh as the employer and contains a hand-written statement about how the alleged injury occurred. It states as follows:

THE OWNER WAS PUSHING ME, PRESSURING ME TO HURRY UP TO DO EVERYTHING FAST, HE WAS BEHIND ME WHEN I FELL ON THE STAIRS. MY LEFT HAND HIT THE CEMENT AND BROKE MY HAND. (LC Exh. 5.)

Defendant's December 13, 2001 denial of applicant's claim states as follows:

State Compensation Insurance Fund, the claims administrator for Sukhdeep Singh, is handling your workers' compensation claim. This notice is to advise you of the status of your workers' compensation claim for your injury of July 18, 2000.

After careful consideration of all available information, we are denying all liability for your claim of injury because you failed to attend the medical examination scheduled for you on December 10, 2001 with Dr. Norman Zemel. Therefore, you have denied your employer his rights under Labor Code Section 4050-4053 by failing to appear for a medical examination pertinent to your claim for benefits for your alleged work related injury(ies). We will re-consider our decision when you are prepared to submit to a medical examination with Dr. Norman Zemel. (Def. Exh. C, p. 1.)

In defendant SCIF's October 6, 2008 objection to lien claimant's bills, it stated in pertinent part as follows:

This is a denied case. Defendant denies that any injury or need for treatment arose out of or occurred within the course and scope of applicant's employment. Defendant contests this lien and will not make any payment for treatment. (Def. Exh. A.)

Thus, lien claimant met its initial burden to show that applicant was "rendering service for" Sukhdeep Singh, and the burden then shifts to defendant to show that it was not the employer on the date of the claimed injury. Here, the only evidence offered by defendant seems to support that applicant was employed by defendant on the date of the claimed injury and does not support that defendant was not the employer. However, lien claimant must show that the claimed injury arose out of and in the course of applicant's employment (AOE/COE), and here, without more, the medical evidence is not sufficient to meet that burden. Thus, we agree with the WCJ that lien claimant did not meet its burden to show that the claimed injury was AOE/COE.

Lien claimant also argues that it is entitled to payment based on section 5402(c). Pursuant to sections 5400 and 5403:

Except as provided by sections 5402 and 5403, no claim to recover compensation under this division shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, there is served upon the employer notice in writing, signed by the person injured ...  
(Lab. Code, § 5400.)

The failure to give notice under section 5400, or any defect or inaccuracy in a notice is not a bar to recovery under this division if it is found as a fact in the proceedings for the collection of the claim that the employer was not in fact misled or prejudiced by such failure.  
(Lab. Code, § 5403.)

Here, our review of the record indicates that the only DWC-1 claim form in the record is dated May 1, 2001, well more than thirty days from the July 18, 2000 claimed date of injury. Also, there is no indication that the DWC-1 form was submitted to the employer, and there is no finding that the employer was not in fact misled or prejudiced by applicant's failure to timely submit the DWC-1 claim form. This is additional support for the WCJ's determination that lien claimant did

not meet its burden of proof that its treatment of applicant was “reasonably required to cure or relieve” him from the effects of an industrial injury. (Lab. Code, § 4600(a).)

Finally, regarding lien claimant’s argument about section 4903.8(d) sanctions, the Findings state, “Potential sanctions against Sidhu Chiropractic for failure to timely comply with declaration requirements of Labor Code § 4903.8(d) are deferred.” (Findings, p. 2, Finding #5.) Since the issue of sanctions was deferred, not addressed by the Findings, the issue is moot and will not be addressed.

Accordingly, we affirm the Findings, except that we amend Finding of Fact 4 to delete the reference to employment.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 22, 2019 Findings of Fact is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

4. Lien Claimant Sidhu Chiropractic failed to meet its burden of proving that applicant's alleged injury arose out of and in the course of employment. Consequently, the alleged services related to the lien of Sidhu Chiropractic of \$2,117.13 are neither reasonable nor necessary and Sidhu Chiropractic is not entitled to payments from SCIF.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**December 7, 2023**

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

**PAPERWORK AND MORE  
STATE COMPENSATION INSURANCE FUND  
SIDHU CHIROPRACTIC, INC.**

**TLH/mc**