

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

DINORA GUERRA, Applicant

vs.

TEXIS RESTAURANT, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ2175536 (LAO 0880962); ADJ2475481 (LAO 0880961)
Los Angeles 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

July 22, 2022

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

**STATE COMPENSATION INSURANCE FUND
WESTSTAR PHYSICAL THERAPY NETWORK**

MWH/oo

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

**JOINT REPORT AND RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

I

INTRODUCTION

Dinora Guerra, a 49-year-old cook for Taxis Restaurant Inc., filed two Applications for Adjudication on 9/24/07 alleging that on 5/20/07 and during the period commencing 5/20/06 through 5/20/07, she sustained injury arising out of and occurring in the course of employment to her neck, hands, shoulders, knees, psyche, and internal organs. The claims were accepted by the employer.

Lien Claimant WSPT Network has filed a timely, verified, Petition for Reconsideration of the Joint Findings and Order dated 4/25/22 alleging:

1. That by the Order, the WCAB exceeded its powers;
2. That the decision by the Appeals Board is not justified by the facts in this case, and;
3. That the Findings of Fact do not support the Order.

Petitioner contends that WSPT is the owner of the lien filed in its name in this case as required by Labor Code sections 4903.8(a)(1) and (a)(2).

II

FACTS

Petitioner WSPT Network generated a bill for reimbursement of aquatic therapy services provided to Applicant during the period commencing 2/22/17 through 6/8/17 (LC exhibit 1). The letterhead on the bill used the title “WSPT Network.” Under the address for WSPT Network, the name Matthew Perry RFT is referenced. The bill also instructs that payment should be remitted to West Star Physical Therapy¹. The aquatic therapy in this case was provided by an entity called Advanced Dynamic Therapies Inc., and physical therapist Matthew Perry (LC exhibits 2 and 3). Petitioner initially filed a lien on 8/15/17 which was dismissed by operation of law on 8/15/17 pursuant to Labor Code section 4903.05. Petitioner filed a new lien on 12/7/18. That lien represents that WSPT Network provided the physical therapy and states its license number is 1558858275.

¹ WSPT Network and West Star Physical Therapy are separate entities. West Star Physical Therapy is an actual medical provider which has many liens filed in workers’ compensation cases, but not this one.

A Fictitious Business Name Statement dated 11/19/20 for West Star Physical Therapy Network reflects additional names to include (but not limited to) WSPT Network and Advanced Physician Management (LC exhibit 5). A Statement of Information from the California Secretary of State dated 10/16/18 reflects that Advanced Physician Management is incorporated and in the business of billing and collections (LC exhibit 4).

The matter of Petitioner's lien was tried on 3/11/22 regarding the issue of entitlement to reimbursement of treatment expense in consideration of the restrictions set forth in Labor Code sections 4903.8(a)(1) and (a)(2). The Court issued a Findings and Order on 4/25/22 wherein Petitioner's lien was dismissed because it did not meet its burden to prove that it was the owner of the lien as required by sections 4903.8(a)(1) and (a)(2).

III

DISCUSSION

DOES PETITIONER OWN THE LIEN?

Labor Code section 4903.8(a)(1) and a(2) provide:

“Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred, who is the lien owner, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.

All liens filed pursuant to subdivision (b) of Section 4903 shall be filed in the name of the lien owner only, and no payment shall be made to any lien claimant without evidence that he or she is the owner of that lien.”

It is clear that WSPT Network itself was not the actual provider of medical services here despite the contrary representation on the lien itself. That entity was Advanced Dynamic Therapies.

In the recent panel decision of Robelleo v. New Care Inc., (ADJ9641796), also known as Robelleo II, it was held that section 4903.8 does not preclude a medical provider entering into a lawful contract and/or joint venture with a general corporation wherein the general corporation is contractually entitled to payment for the reasonable expenses incurred by applicant. The Court

takes no issue with that holding here and it does not change the plain meaning of the statute that Lien Claimant's must establish ownership of the lien. As such, it was necessary in this case for Petitioner to prove that it had a contract with Advanced Dynamic Therapies, the entity which provided the medical treatment services for which Petitioner seeks reimbursement. Petitioner argues there was such a contract without citing to the evidentiary record. Without any evidence of a contract, Petitioner does not meet its burden of proof.

The Court was unable to identify any contractual nexus between Petitioner and Advanced Dynamic Therapies. The bills in this case are from Petitioner and reference Matthew Perry R.P.T. No mention is made of Advanced Dynamic Therapies on the bill. It is noted that the SOAP notes for the aquatic therapy sessions at issue here are signed by Matthew Perry R.P.T. under the letterhead of Advanced Dynamic Therapies. But there are no other evidentiary documents tending to link Advanced Dynamic Therapies to Petitioner and certainly nothing tending to prove a contract. On the evidence actually provided to the Court, Petitioner appears to be nothing more than a billing or collection company, as reflected in the Statement of Information from the California Secretary of State.

Petitioner also argues that its alleged contract with Advanced Dynamic Therapies includes trade secrets and not subject to disclosure. While that may or may not be, there are ways to redact terms of a contract so that only the portions relevant to Petitioner's burden of proof can be read. Petitioner chose not to take this avenue and as such was left wanting in terms of meeting its burden of proof.²

Petitioner also asserts that the Court did not consider that two licensed physical therapists entered into the type of agreement that was referenced in Robolledo II. First of all, there was no evidence presented that Hussain Umar (the principal shareholder in Advanced Physician Management) is a licensed physical therapist. But assuming he is, Petitioner is correct in stating the Court didn't consider that fact. The reason why the Court didn't consider it is because there was not one shred of admitted evidence that Petitioner or Mr. Umar entered into an agreement with

² In Robelledo II, the matter was remanded for development of the record on due process grounds since the issue was not properly stated at the trial level ("no assignment of lien. Lien Claimant is not the original provider of services"). In this case, the issue was not framed in terms of assignment or original provider, but in terms of the statute itself. Thus Petitioner was on notice that it had to prove up the elements of section 4903.8(a) and (b) which requires proof of lien ownership. Apparently, even if the matter were to be remanded, Petitioner does not intend to prove up the contract since it is actively seeking a protective order from having to disclose the alleged provider agreement (Page 16 of the Petition).

Matthew Perry or Advanced Dynamic Therapies that would entitle Petitioner to reimbursement for the medical treatment services provided by Matthew Perry or Advanced Dynamic Therapies. It is impossible for the Court consider an agreement that has not been admitted into evidence in any fashion.

Petitioner goes on to argue that by examining the CPT codes in the Official Medical Fee Schedule (OMFS), there is somehow proof that Petitioner is the lien owner. The “practice expense” component of the Relative Value Unit (RVU) was parenthetically described by Petitioner as “the staff time and costs of maintaining an office.” Thus, that component could just as easily be applied to the office of Advanced Dynamic Therapies as it is to Petitioner. The argument made by Petitioner that this is proof of a contractual arrangement is quite a stretch. But to take it further, Petitioner argues that the duties of the alleged agreement with its contracted providers are consistent with the practice expense component, thus providing additional evidence of ownership. However, of course, the alleged agreement, which presumably would specify said duties, was not offered into evidence, so the Court has no information as to the duties in that regard.

Finally, Petitioner argues that the Court should join Advanced Dynamic Therapies to the case. No petition to join was ever filed nor was joinder raised at trial. Petitioner inappropriately cites language from the decision in *Robelleo I*, which was rescinded, and attributes the cited language to the decision in *Robelleo II* (see page 15 of the Petition for Reconsideration). Although the WCAB in *Robelleo II* declined to formally decide the joinder issue, the dicta in that case suggests that the WCAB has the power to amend the lien to include the potentially proper medical provider. The en banc decision in *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 1466, was cited in support of that proposition. However, in the *Coldiron* case, the pleadings were permitted to be amended because of human error in properly identifying the correct defendant.³ The Court does not see a parallel here. Petitioner does not assert any type of error in its pleadings. To the contrary, Petitioner asserts that it, and not the medical provider, is the owner of the lien (Petition for Reconsideration, page 6, lines 9-10)⁴. As such, there does not appear to be a basis in line with the rationale in Coldiron for joinder of Advanced Dynamic Therapies.

³ Sanctions were also imposed in that case. Thus, if a parallel is found, presumably Petitioner could be sanctioned for mistakenly identifying the incorrect medical provider. However, for reasons explained above, there appears to be no mistake as Petitioner maintains its position that it is the lien owner.

⁴ Although it is noted that the invoice from WSPT Network instructs Defendant to pay West Star Physical Therapy who is not a party to this case, not a DBA of West Star Physical Therapy Network, did not actually provide any medical treatment services, and is not purported to be a party to the alleged agreement with Petitioner.

In conclusion, this case is really about burden of proof. Petitioner was given plenty of notice and opportunity to prove up its alleged lien ownership. Petitioner admits that it has no inclination in submitting the alleged contract to support its claim for reimbursement. It is well settled that Lien Claimants carry the burden of proof by a preponderance of the evidence for all elements of its lien (see *Torres v. AJC Sandblasting* (2012) 77 CCC 1113 (appeals board en banc); *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 CCC 1588, 1592 (appeals board en banc); *Boehm & Associates v. WCAB (Brower)* (2003) 68 CCC 548, 557; *PM & R Associates v. WCAB* (2000) 65 CCC 347, 357-58; *Hand Rehabilitation Center v. WCAB (Obernier)* (1995) 60 CCC 289, 292; *Gutierrez v. Cedars-Sinai Health System* (2008) 36 CWCR 61 (panel decision); *Bean v. County of San Bernardino*, 2012 Cal. Wrk. Comp. P.D. LEXIS 501; *Molina v. Pulido Farms*, 2020 Cal. Wrk. Comp. P.D. LEXIS 290.), and that burden includes proof that it is the lien owner. Here, Petitioner attempts to meet that burden by simply saying it is so. But the evidence doesn't back up the claim.

IV

RECOMMENDATION

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 6/1/22

Jeffrey Morgan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE