

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

**SHAWN WASHINGTON, *Applicant***

**vs.**

**PALMDALE UNIFIED SCHOOL DISTRICT,  
permissibly self-insured,  
administered by ADMINSURE *Defendants***

**Adjudication Numbers: ADJ1262446; ADJ1814795  
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 WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**MARCH 28, 2022**

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

**ANTHEM BLUE CROSS  
MATTHIESEN, WICKERT & LEHRER  
FLOYD, SKEREN, MANUKIAN & LANGEVIN**

**PAG/abs**

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

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON  
PETITION FOR RECONSIDERATION: LIEN ISSUE**

**I.  
INTRODUCTION**

- |                                     |   |
|-------------------------------------|---|
| 1. Applicant's Occupation:          | Custodian                                 |
| 2. Applicant's Age:                 | N/A                                       |
| 3. Date of Injury:                  | 4-1-2004 to 4-1-2005; specific 12-3-2006  |
| 4. Body Parts Injured:              | Foot, trunk, psyche & sleep.              |
| 5. Manner In Which Injury Occurred: | CT claim and specific                     |
| 6. Identity of Petitioner:          | Defendant filed against Lien Claimant     |
| 7. Timeliness:                      | Petition was timely filed                 |
| 8. Verification:                    | Petition was verified per LC Section 5902 |
| 9. Date of issuance of Order:       | 01-06-2022                                |
| 10. Petitioner's Contention:        |   |

Petitioner contends the WCJ erred in finding that the amended lien filed by Anthem Blue Cross is valid after the original lien was dismissed by operation of law.

**II.  
STATEMENT OF FACTS**

The defense representative has done an admirable job in addressing the "facts" in this matter but has approached them in a way most helpful for his client. The WCJ is most likely approaching the "facts" in a way most helpful for upholding his decision. The WCJ is stating this disclaimer here, because he feels one's approach to the "facts" can have a significant influence on the outcome of the case.

On January 1, 2004 Senate Bill 228 became effective and it required almost all lien claimants in Workers' Compensation cases to pay a filing fee for each initial lien filed. This was codified in Labor Code (LC) 4903.05. Per 4903.05(b) only a handful of lien claimants were exempted in 2004 from having to pay a lien-filing fee, such as the Veteran's Administration, the Medi-Cal program and public hospitals. Between 2004 and 2007, Anthem Blue Cross (hereafter "Anthem") was NOT part of the handful of lien claimants who were exempt, so between 2004 and 2007 Anthem had to pay lien-filing fees in all of its Workers' Compensation cases, just like 99% of all other lien claimants.

On April 13, 2006 the applicant Shawn Washington filed a Workers' Compensation claim for a CT claim of 04-01-2004 to 04-01-2005. He later filed for a specific injury. The body parts which were allegedly injured included applicant's so-called trunk, foot, psyche and sleep. The applicant's claims were resolved by way of an Order Approving Compromise and Release for \$75,000.00 on 03-28-2012.

Anthem filed a lien on 11-30-2006 for \$6,355.49. Please see Joint Exhibit X1 (EAMS ID 39128134). Anthem failed to send any payment for the lien-filing fee that Anthem was required to pay simultaneously with filing during 2004-2007 in accord with LC4903.05. As a result, the lien Anthem filed on 11-30-2006 was immediately dismissed with prejudice by operation of law per Title 8 CCR 10250(e) (2) when Anthem attempted to file the lien on 11-30-2006 without paying the required lien-filing fee.

On January 1, 2008 a change in the law became effective and Anthem became exempt from paying lien-filing fees. The parties have stipulated to this fact in Trial Stipulation Number 9. On 05-23-2008 Anthem filed a lien for \$51,269.17. Please see Joint Exhibit X2. Anthem described this as an "amended" lien even though Anthem's original attempt to file a lien on 11-30-2006 resulted in a lien dismissed with prejudice.

Per Joint Exhibit X3, the most recent billing statement of Anthem, applicant continued to receive treatment charges through 02-19-2008 from Dr. Michael Kropf, which is only three or four months prior to the time of the filing of the Anthem lien of 05-23-2008 in Joint Exhibit X2. This would defeat any potential Statute of Limitations argument.

The case was tried for lien issues on the validity of the 5-23-2008 Anthem lien on 12-27-2021. The parties were allowed to file post-trial briefs until 01-05-2022; the briefs were filed a little sooner. The briefs were so professional and clear that the WCJ was able to be very prompt on providing his Opinion on Decision on 01-06-2022. The defendant filed a timely and verified Petition for Reconsideration on 01-25-2022.

### **III.** **DISCUSSION OF PETITIONER'S CONTENTIONS**

#### **PETITIONER CONTENDS THE WCJ ERRED IN FINDING THAT THE AMENDED LIEN FILED BY ANTHEM BLUE CROSS IS VALID AFTER THE ORIGINAL LIEN WAS DISMISSED BY OPERATION OF LAW.**

Whether the WCJ erred in finding that Joint Exhibit X2, the Anthem lien of 05-23-2008 is valid begs the question about whether this lien in Joint Exhibit X2 was an "amended" lien or a "new initial" lien. It is a hard question, and it could be answered either way. The WCJ feels the better way to answer it is to say that it was a new initial lien.

The old former initial lien of Anthem which was attempted to have been filed on 11-30-2006 was dismissed with prejudice when it was filed without payment of a required filing fee. The defendant even argues in a caption on page three of its Petition for Reconsideration, "Anthem Blue Cross cannot amend the lien filed on 11-30-2006 as it was dismissed by operation of law." The

WCJ agrees with the defendant's argument here, that a lien which is dismissed with prejudice cannot be amended.

However, the defendant then goes further afield and states: "Liens dismissed with prejudice by operation of law cannot just be revived by the filing of an amended lien ...." The defendant provides no case authority or citation of a statute for this proposition. Worse yet, the defendant assumes that Joint Exhibit X2 must be regarded as an amended lien instead of a new initial lien.

The old dismissed original lien in Joint Exhibit X1 was for \$6,355.49 and Trial Stipulations indicated that Joint Exhibit X2 for the subsequent lien (amended lien) of Anthem of 05-23-2008 was for \$51,269.17, over eight times as much money. Obviously it was for treatment which occurred above and beyond the charges in the lien of 11-30-2006 in Joint Exhibit X1. About 90% of the subsequent lien was for different charges than the original lien.

Although the subsequent lien in Joint Exhibit X2 contained the word "amended" on it, it was primarily for different charges. The WCJ felt it was a new initial lien. It could not be an amended lien when the old original lien did not even exist because the old original lien of 11-30-2006 had been eliminated, by being dismissed with prejudice.

The facts in this case could be viewed in a different light, but the WCJ believes he has made the right call in an area where reasonable minds can differ.

**IV.**  
**RECOMMENDATIONS**

For the reasons stated above, it is recommended the Petition for Reconsideration be denied.

DATED: January 31, 2022

**Robert F. Spoeri**  
WORKERS' COMPENSATION JUDGE