

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

**CECILIA DIAZ aka PATRICIA GUTIERREZ, *Applicant***

**vs.**

**DON CARLOS JEWELRY; NATIONAL MINT OF AMERICA, INC.,  
and JDC NATIONAL, *Defendants***

**Adjudication Number: ADJ7873659  
Los Angeles District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Lien Claimant Tower Imaging DBA Tower Copy seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) in this matter on July 26, 2023. In that decision, the WCJ found that petitioner Tower Imaging DBA Tower Copy was reasonably and fully compensated prior to trial for their services and that lien claimant take nothing further.

Petitioner contends as follows:

Pursuant to the 05/16/2023 Minutes of Hearing Summary of Evidence ...two important issues listed for Decision by the Honorable WCALJ were medical-legal entitlement per LC §§ 4620 and 4621 along with reasonableness and necessity of services. Pursuant to LC §§ 4620, 4621 and the en banc decision of *Ashley Colamonico v. Secure Transportation*, 84 Cal. Comp. Cases 1059; 2019 Cal. Wrk. Comp. LEXIS 111, Provider's burden consists of a) proving there was a contested claim at the time of its services, b) that its services were for the purpose of proving or disproving the contested claim, c) that its services were reasonable and necessary at the time in which they were performed, and finally, d) the reasonable cost of its services.

In the case at bar, the Honorable WCALJ did not make any findings or decisions regarding whether or not there was a contested claim, nor any finding or decision on whether or not the services were for the purpose of proving or disproving a contested claim (i.e. medical-legal), nor whether the services themselves were reasonable and necessary. Instead, the Honorable WCALJ went directly to deciding the reasonable cost of services on "reimbursable subpoenas". Based on this, it can be presumed that the Honorable WCALJ did

find that there was a contested claim [and] that Tower's services were for the purpose of proving or disproving the contested claim and were therefore, reasonable and necessary.

However, the Honorable WCALJ also notes [in the Opinion on Decision] that the issue of medical-legal entitlement per LC §§ 4620 and 4621 is denied "because the parties failed in their burden of proof regarding the issues." ...Here the Honorable WCALJ does not explain what she means when finding that the parties failed to meet their burdens regarding medical-legal entitlement per LC §§ 4620 and 4621. The Honorable WCLAJ does not reference any evidence or lack thereof that has led her to such a conclusion.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied. The WCJ also recommended that we find that the petition was untimely due to improper filing.

We did not receive an answer from any other party.

We have reviewed the allegations in the Petition for Reconsideration, and the contents of the Report.

Based upon our preliminary review of the record, we will grant lien claimant's Petition for Reconsideration, and we will order that this matter be referred to a WCJ at the Appeals Board for a status conference. Our order granting reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

#### I.

Preliminarily, with respect to the WCJ's comment regarding lien claimant's failure to accurately identify the title of the initial document that it filed, we note that WCAB Rule 10517 (Cal. Code Regs., tit. 8, § 10517) provides that pleadings may be amended by the WCAB to conform to proof.

We observe that there are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be *filed* with (i.e., received by)

the Appeals Board within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) Here, according to the proof of service for the F&O, defendant State Compensation Insurance Fund was the sole party that was served with the decision. Pursuant to WCAB Rule 10628(a) (Cal. Code Regs., tit. 8, § 10628(a), lien claimant should have been served with the decision, and it was not. However, despite the defective service, lien claimant's Petition was timely filed.

## II.

We also highlight the following legal principles that may be relevant to our review of this matter:

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis

for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Labor Code section 5310 states in relevant part that: "The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. . . ." (See also Lab. Code, §§ 123.7, 5309.)

Here, it is unclear from our preliminary review whether the legal issues have been properly identified; whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary. Thus, we will order the matter to a status conference before a WCJ at the Appeals Board.

### III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125

Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Earley v. Workers' Comp. Appeals Bd.* (2023) 94 Cal.App.5th 1, 13-15 [88 Cal.Comp.Cases 769] [the Appeals Board has the authority to issue a final decision when it grants reconsideration but is not required to do so]; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

“No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its

own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...”

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

#### IV.

Accordingly, we grant lien claimant’s Petition for Reconsideration, order that this matter be set for a status conference, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant’s Petition for Reconsideration of the Findings of Fact and Order issued on July 26, 2023 by a workers’ compensation administrative law judge is **GRANTED**.

**IT IS FURTHER ORDERED** that this matter will be set for a Status Conference with a workers’ compensation administrative law judge at the Appeals Board. Notice of the date, time, and format of the conference will be served separately, to be heard in the Lifesize electronic platform, in lieu of an in person appearance at the San Francisco office of the Appeals Board.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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

**October 17, 2023**

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

**TOWER IMAGING DBA TOWER COPY  
STATE COMPENSATION INSURANCE FUND**

**LAS/ara**

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