

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

SALVADOR ESCOBAR, *Applicant*

vs.

**ROBERTSON'S READY MIX, Permissibly Self-Insured, Administered by
YORK RISK SERVICES GROUP, *Defendants***

**Adjudication Number: ADJ10877533
San Bernardino District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings and Order of February 4, 2020, the workers' compensation judge ("WCJ") found that on January 19, 2017, applicant sustained industrial injury in the form of bilateral carpal tunnel syndrome, and that the lien claimant, Joyce Altman Interpreting, failed to prove that it actually provided services and failed to prove that the applicant actually received medical treatment. The WCJ also found a failure of proof that the lien claimant's services were reasonable and necessary.

The lien claimant, Joyce Altman Interpreting ("petitioner"), filed a timely Petition for Reconsideration of the WCJ's decision. Petitioner contends, in substance, that the WCJ erred in rejecting petitioner's attempt at proving the lien by offering declarations signed by the applicant, and that the WCJ erred in disallowing petitioner's lien for failure to produce applicant to testify in support of the lien.

The WCJ submitted a Report and Recommendation ("Report").

We have considered the allegations of the lien claimant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below and in the WCJ's Report, which we adopt and incorporate to the extent

set forth in the attachment to this opinion, we will affirm the Findings and Order of February 4, 2020.

In reference to petitioner's allegation that the WCJ erred in excluding from evidence various declarations signed by the applicant in support of petitioner's lien, we note that trial Exhibit One consists of records documenting treatment allegedly provided by Sidhu Chiropractic for various dates of service in 2017 and 2018. Each record includes an attestation, signed by applicant, in which he declared that he required interpreting services for the medical visits in question and that he authorized petitioner to provide those services.

Reviewing the WCJ's Opinion on Decision and Report, we further note the WCJ takes an inconsistent approach in addressing the admissibility of petitioner's trial Exhibit One. In her Opinion on Decision, the WCJ states that Exhibit One was excluded from evidence based on defendant's allegation that applicant was required to testify in person that his signature is the one that appears on the records in Exhibit One. In her Report, however, the WCJ states on one hand that applicant was required to testify to authenticate his signature on the records, yet on the other hand the WCJ states that she reviewed and considered the records within Exhibit One.

To the extent the WCJ excluded or refused to consider the records within Exhibit One based on the lack of authentication of applicant's signature, we conclude that the WCJ is incorrect. This is because the need for authentication was not established by defendant or by the WCJ, as neither of them referred to anything in the record raising doubt about whether it was applicant who actually signed the records within Exhibit One. (*Marroquin v. Oakwood Cemetery* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 364 [lien claimant's declaration under Labor Code § 4903.8(d) not invalid for lack of declarant's personal knowledge of facts in declaration].) Moreover, the documents in Exhibit One are admissible under Labor Code section 5708, which provides that the Board "may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions" of workers' compensation law.

Notwithstanding the WCJ's apparent exclusion of Exhibit One for lack of authentication of applicant's signature, we remain persuaded that the WCJ's disallowance of petitioner's lien should be affirmed. The WCJ correctly framed the issue as whether petitioner met its burden of proving all elements necessary to establish entitlement to reimbursement for its interpreting

services. (*Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 234 [Appeals Board en banc].)

Here, as discussed in the part of the WCJ's Report attached to this decision, the treatment records in petitioner's Exhibit One – even if admissible because applicant's signature on them did not require authentication - are contradicted by the history applicant gave to Dr. Sophia. Petitioner billed for interpreting services allegedly provided at numerous acupuncture appointments, but Dr. Sophia reported that applicant told him he had not received any type of treatment. Again, the issue is not admissibility but the credibility or weight to be accorded the treatment/interpreting records signed by applicant. In relying upon Dr. Sophia's statements that applicant told the doctor he did not receive any treatment, the WCJ was within her fact-finding discretion to conclude that petitioner's evidence, when weighed against the evidence opposed to it, did not have more convincing force or the greater probability of truth. (Lab. Code, § 3202.5.) We agree with the WCJ that petitioner failed to meet its burden of proving that its interpreting services were reasonably and necessarily incurred. Accordingly, we affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order of February 4, 2020 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 1, 2023

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

**JOYCE ALTMAN INTERPRETERS
SILBERMAN LAW OFFICES**

JTL/ara

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
PETITION FOR RECONSIDERATION**

INTRODUCTION

The Lien Claimant, Joyce Altman Interpreters, filed a timely verified Petition for Reconsideration.

STATEMENT OF FACTS

Applicant filed a claim alleging injury on January 19, 2017. The claim was initially delayed on June 1, 2017. The claim was subsequently denied on June 29, 2017. (See Exhibits I and J.) The Applicant saw Dr. Sofia as a Panel QME on January 11, 2018. Dr. Sofia found the Applicant had sustained bilateral carpal tunnel injury.

After the Applicant's claim had been denied, his attorney sent him to Blue Oak Medical Group for treatment. Blue Oak Medical Group is Labor Code § 4615 suspended. Joyce Altman Interpreters, hereafter Lien Claimant, has billed multiple dates of services for Spanish language interpreting on behalf of the Applicant while he allegedly received various forms of treatment and also while attending appointments at Blue Oak Medical Group. The [applicant's case-in-chief] was resolved by Compromise and Release in the amount of \$15,000.00 on November 17, 2018. The [lien at issue here] went forward to lien trial on the lien of Joyce Altman Interpreting. A Findings and Order issued on February 4, 2020. It is from the Findings and Order that the Lien Claimant now seeks reconsideration.

CONTENTION

**THE COURT ERRED BY REQUIRING LIEN CLAIMANT TO AUTHENTICATE
DOCUMENTS THEY WISHED TO SUBMIT INTO EVIDENCE**

It is Lien Claimant's contention that documents they wish to introduce into evidence, specifically Exhibit 1, [were] required to be authenticated by the Defendant. In this case, the documents in Exhibit 1 were purportedly signed by the Applicant as well as an interpreter, on behalf of Lien Claimant. The court has previously stated, when addressing charges for interpreting services, that the Lien Claimant has the burden of proving their services were actually provided. (See *Guitron v. Santa Fe Extruders* (2011) 76 C.C.C. 228, 230) The forms which constituted Lien Claimant's Exhibit 1 were clearly boiler plate forms. After a review of Exhibit B, the January 11, 2018 report of Panel QME Dr. Sofia, the undersigned...questioned whether the Applicant attended any acupuncture appointments, and whether interpreting services were actually provided.

In Dr. Sofia's January 11, 2018 report, on pages 2 and 3, under the heading "History of Present Injury Related By the Examinee" Dr. Sophia noted:

"The examinee when he was terminated went to an attorney and was sent to Blue Oak Clinic, saw Dr. Goubroun Galal who eventually died and then saw Dr. Price, but he said he received no treatment [.] They would examine him and otherwise they would give him a

renewed visit for a month, but he never got medication, he never got physical therapy, he never got acupuncture, he never got chiropractic [.] He got no treatment [.] I am not sure why [.] This has been going on for months [.] He still goes there and nothing happens [.] I asked him why he tolerated that, why he did not ask the doctor or the attorney about it and he says he was supposed to go there from Workers' Compensation [.] He said he did want to get better and go back to work [...] He needed the money, but he does not seem to be very aggressive about questioning his attorney or his doctor about treatment or the reasons for the lack of treatment [.] That brings us up to the present time [.]”

The court reviewed all exhibits submitted by the Lien Claimant. Lien Claimant's Exhibit 1 showed they provided services for medical appointments, as well as acupuncture appointments from June 22, 2017 through August 16, 2018. In Exhibit 2, it is noted a Spanish interpreter assisted with the evaluation on June 22, 2017. However, the interpreter was not identified by name or certification number in Exhibit 2. Lien Claimant's Exhibits 3, 4, 8, 9 are PR-2 Reports which do not mention assistance of, name, or certification number of an interpreter. Lien Claimant's Exhibit 5, 6, 7 appear to be chart notes for acupuncture from Sidhu Chiropractic/Acupuncture. Exhibits 5-7 do not indicate an interpreter was present during alleged services. Lien Claimant failed to provide any testimony they had an interpreter present for acupuncture treatments at Sidhu Chiropractic.

Clearly, the evidence in Lien Claimant's Exhibit 1 is contradicted by the history the Applicant provided to Dr. Sophia. Lien Claimant has billed for numerous acupuncture appointments. Dr. Sophia noted the Applicant told him he had not received any type of treatment. Dr. Sophia did not appear to have any motivation, financial or otherwise, to misstate or misrepresent Applicant's statements made during his evaluation of the Applicant. It is the Lien Claimant's burden of proof to establish the Applicant actually attended and received treatment for which they interpreted. (*Guitron, supra* 76 C.C.C. 228, 230.) [...] The Lien Claimant failed to produce [any] witnesses to verify the accuracy and validity of their services claimed in Exhibit 1. [...].

RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be denied.

Date: 03/12/2020

TRACY L. HUGHES
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE