

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

RODOLFO MARQUEZ, *Applicant*

vs.

**SUNLIGHT SUPPLY INC.;
OAK RIVER INSURANCE COMPANY, c/o BERKSHIRE HATHAWAY HOMESTATE
COMPANIES, *Defendants***

**Adjudication Number: ADJ11171239
Anaheim District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision after Reconsideration.

Berkshire Hathaway Homestate Companies (defendant or BHHC) seeks reconsideration of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on October 16, 2019. As relevant herein, the WCJ found that: 1) applicant's claim was not accepted in its entirety, and there was a dispute as to the nature and extent of injury; 2) the cost petition was valid; and 3) defendant was responsible for adjusting the bills of cost petitioner in accordance with the medical-legal fee schedule. The WCJ ordered defendant to adjust Med-Legal's (cost petitioner) bills pursuant to the medical-legal fee schedule and to issue payment accordingly.

Defendant contends that cost petitioner's copying services were not valid medical-legal expenses. Defendant argues that: 1) there was no contested claim at the time the copy services were actually incurred pursuant to Labor Code section 4620(b) (Lab. Code, § 4620(b)); 2) the copying services violated Administrative Director (AD) Rule 9982(d)(1) (Cal. Code Regs., tit. 8, § 9982(d)(1)); 3) the records were procured within the 90-day delay period pursuant to section 5401 [sic]; 4) the records were not necessary because the records were not "employed in the

production of a med-legal report””; and 5) David Garay, applicant’s hearing representative, conceded that the services rendered were not reasonable and necessary.¹

Cost petitioner filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the Findings and Order and substitute a new Findings and Order denying cost petitioner’s claim for reimbursement of copying services of January 26, 2018, for records from Sunlight Supply, BHHC, and Concentra Medical Center (invoices 18-3049-1, 18-3049-2, and 18-3049-3).

FACTUAL BACKGROUND

The parties stipulated that applicant, while employed on December 21, 2017, as a warehouse associate by Sunlight Supply, Inc., claims a work-related injury. (Minutes of Hearing (MOH) and Summary of Evidence (SOE), July 30, 2019, p. 2:4-6.)

On January 18, 2018, applicant’s attorney notified defendant of his representation of applicant and demanded production of various records, including employment, personnel, and medical records. (Ex. A, Applicant’s Attorney Initial Letter of Representation, January 18, 2018.)

On January 22, 2018, applicant filed an Application for Adjudication of Claim (Application).

On January 24, 2018, applicant’s attorney requested lien claimant’s copy services for records from Sunlight Supply, BHHC, and Concentra Medical Center. (Ex. 1, Med-Legal Order Form, January 24, 2018.)

Also on January 24, 2018, defendant served the following documents on applicant’s attorney: wage statement, all medical reports and correspondence on file to date, and payment ledger. (Ex. B, BHHC’s Service of Documents, January 24, 2018.)

On January 25, 2018, cost petitioner issued a subpoena duces tecum (SDT) for records from Concentra Medical Center. (Ex. 4, SDT, January 25, 2018.) The SDT was personally served on January 26, 2018, and the custodian of records declaration was completed on February 1, 2018.

¹ All further statutory references are to the Labor Code unless otherwise stated.

On January 26, 2018, cost petitioner issued a SDT for records from Sunlight Supply (Ex. 2, SDT, January 26, 2018) as well as BHHC. (Ex. 3, SDT, January 26, 2018.) The SDTs were personally served on January 29, 2018, and February 2, 2018, respectively, and the custodian of records declarations were completed on February 5, 2018, and February 13, 2018, respectively.

On February 27, 2018, cost petitioner served invoice 18-3049-1 for \$180.00 for obtaining Sunlight Supply's records. (Ex. 5, Invoices, February 22, 2018.)

On March 5, 2018, cost petitioner served invoice 18-3049-3 for \$180.00 for obtaining Concentra Medical Center's records. (Ex. 5, Invoices, February 28, 2018.)

On March 22, 2018, cost petitioner served invoice 18-3049-2 for \$180.00 for obtaining BHHC's records. (Ex. 5, Invoices, March 19, 2018.)

On July 30, 2019, at the lien trial, the parties raised, as relevant herein, the following issues: whether cost petitioner's invoices were barred by Administrative Director Rule 9982; and whether there was a contested claim at the time of cost petitioner's services. At the lien trial, David Garay, applicant's hearing representative, testified, as relevant herein, that he was familiar with AD Rule 9982 and that he and his firm did not wait 30 days before subpoenaing records. Mr. Garay testified that he was not sure why the decision was made on January 24, 2018, to subpoena records instead of waiting for another date. Mr. Garay admitted that the subpoenas were not reasonable and necessary at the time the services were incurred. (*Id.* at p. 8:5-6, 12-13, 19-20.)

DISCUSSION

Section 5307.9 states:

On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(Lab. Code, § 5307.9)

AD Rule 9982(d)(1) states: “There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers’ compensation insurer for copies of records in the employer’s, claims administrator’s, or workers’ compensation insurer’s possession that are relevant to the employee’s claim.” (Cal. Code Regs., tit. 8, § 9982(d)(1).)

“Words used in a statute or constitutional provision should be given the meaning they bear in ordinary use. [Citations omitted.] If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters). [Citations omitted.]” (*Lungren v. Deukmejian*, 45 Cal.3d 727, 735 [755 P.2d 299].)

Both the statute and rule state, in a nutshell, that there will be no payment for copy services that are provided within 30 days of a written request by applicant to the employer, *et al.* In other words, once an applicant requests records from the employer, *et al.*, then any copy and related services that are provided within 30 days of this request will not be paid. This interpretation is consistent with the plain language of section 5307.9 and AD Rule 9982(d)(1). (See *Jenei v. Casa Loma Homeowners Assn.* (ADJ11046200, October 29, 2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 504.)²

According to the record, on January 18, 2018, applicant’s attorney requested various records, including employment, personnel, and medical records, from BHHC, and copying services were provided between January 18, 2018, and February 17, 2018. Cost petitioner’s copying services in connection with the three subpoenas at issue were performed during this 30-day window. Moreover, cost petitioner, through its witness Mr. Garay, conceded this point. (MOH, *supra*, at p. 8:5-6.) Thus, pursuant to AD Rule 9982(d)(1), there will be no payment for cost petitioner’s copying services at issue in this case.

Accordingly, we rescind the Findings and Order and substitute a new Findings and Order denying cost petitioner’s claim for reimbursement of copying services of January 25, and 26, 2018,

² Appeals Board panel decisions, unlike en banc decisions, are not binding on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citeable authority and may be considered to the extent their reasoning is persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242 fn. 7 (Appeals Board En Banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

for records from Sunlight Supply, BHHC, and Concentra Medical Center (invoices 18-3049-1, 18-3049-2, and 18-3049-3).

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 16, 2019 Findings and Order is **RESCINDED** and a new Findings and Order is **SUBSTITUTED** as provided below.

FINDINGS OF FACT

1. The Pre-Trial Conference Statement was not improperly modified.
2. On January 18, 2018, applicant's attorney notified defendant of his representation of applicant and demanded production of various records, including employment, personnel, and medical records.
3. Cost petitioner's copying services for records from Sunlight Supply, BHHC, and Concentra Medical Center were provided within 30 days of applicant's attorney's January 18, 2018 demand for records.
4. Penalties, costs, sanctions, and attorney's fees are not warranted.
5. All other issues are moot.

ORDER

IT IS ORDERED that cost petitioner's claim for reimbursement of copying services of January 25, and 26, 2018, for records from Sunlight Supply, BHHC, and Concentra Medical Center (invoices 18-3049-1, 18-3049-2, and 18-3049-3) is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 30, 2021

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

**RODOLFO MARQUEZ
MED-LEGAL COPY
LITIGATION AND CONSULTING ASOCIATES
BERKSHIRE HATHAWAY
SIEGEL MORENO**

SS/abs

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