

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

PHILLIP SPEZIO, *Applicant*

vs.

**WILDERNESS UNLIMITED;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8453702
Redding District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

Pursuant to WCAB Rule 10617, the WCJ may treat the Stipulations with Request for Award as a pleading that demonstrates the parties' desire to re-initiate this claim regardless of the prior order dismissing case. (Cal. Code Regs., tit. 8, § 10617.) It appears that medical benefits have continued to be paid and that the WCJ has jurisdiction to approve the parties' settlement.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the July 21, 2022 Order Responding to Request for Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 21, 2022 Order Responding to Request for Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 10, 2022

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

**PHILLIP SPEZIO
MURPHY AUSTIN
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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 RECONSIDERATION

I. INTRODUCTION

- | | | |
|-----------------------------------|---|---|
| 1. Applicant's Occupation | : | Unknown |
| Applicant's Age | : | 69 (at date of injury) |
| Date of Injury | : | 5/13/2010 |
| Parts of the Body Claimed Injured | : | Back and unknown body part |
| 2. Identity of Petitioner | : | Defendant Carrie
State Compensation Insurance Fund |
| Timeliness | : | The Petition is not timely |
| Verification | : | The Petition is verified |

II. BACKGROUND

Lien Claimant Reach Air Medical Services LLC filed an Application for Adjudication of Claim of Injury for injured worker Phillip Spezio on or about 6/27/2012. The lien was subsequently resolved. Applicant did not appear on the file at the board level. After resolution of the Reach Air lien, Reach Air, who had filed the Application for Adjudication of Claim as Lien Claimant, requested the Application for Adjudication be dismissed under a Petition for Dismissal of Application for Adjudication of Claim. The Petition for Dismissal contained a page 2 which was entitled Order, noted "It is so ordered" following the request for dismissal on page 1 and a line for a Judge signature following "It is so ordered".

Note that the "Notice and Request For Allowance of Lien" indicated Wilderness Unlimited as the employer and SCIF¹ Insured Redding as the insurance carrier or Claims Administrator.

The Proof of Service for the Application for Adjudication of Claim and 4906(g) both indicate service to SCIF Insured Redding at P. O. Box 3171, Suisun City CA 94585. The Proof of Service for the Notice and Request for Allowance of Lien, Medical Bill and Verification indicates service to SCIF Insured Redding at the same address.

It is assumed that the lien was resolved with State Compensation Insurance Fund as the responsible Defendant; however, that is an assumption only.

In any event, subsequently Reach Air Medical Services, LLC submitted a "Petition For Dismissal Of Application For Adjudication Of Claim And [Proposed] Order Of Dismissal" which was dated 1/17/2013. The Petition, date and signature of Kathryn Doi as Attorney for Lien Claimant Reach Air Medical Services, LLC were on numbered page 1.

¹ Note that it is acknowledged that SCIF is not the proper legal name style for State Compensation Insurance Fund, but that the Application for Adjudication of Claim indicated SCIF and not State Compensation Insurance Fund.

Numbered page 2 was an “Order” under which was typed “It is so ordered” with a line for signature by a Workers Compensation Judge.

Page 3 was, on the top half, a Proof of Service executed on 1/17/2013 and signed by Robyn Collett. Page 3 on the bottom half, included a party List of the Applicant, Phillip Spezio (Applicant), Wilderness Unlimited (Employer) and SCIF Insured Redding (Carrier), presumably as the served parties.

Following receipt of the Petition For Dismissal Of Application, Judge Brigham Jones signed page 2 under ORDER AND It is so ordered. The date of 1/24/2013 is under Judge Jones signature.

That document is in the EAMS Case Document Search listed as “Order Dismissing Case” with a document date of 1/24/2013 and a document entry date of 1/25/2013. Also in the EAMS Case Document Search, listed separately, is the Request for Withdrawal of Lien.

At the time of Judge Jones signature on the Order Dismissing the Case, no objection had been received from any party, objecting to the Petition for Dismissal.

Judge Jones² issued the Order Dismissing the Case and no further action occurred at the board level (including no petition objecting to the Order by any party), other than a request for and completion of a DEU rating, until 7/20/2022, when a Stipulations With Request for Award-Signed was submitted. That Stipulations generated a task to the undersigned.

Following review of the documents in the EAMS Case Document (FileNet) system, the undersigned drafted and issued an Order Responding to the Request For Award under the date of 7/21/2022. The Order Responding indicated the history of ordering the Application for Adjudication being dismissed based on a Petition so requesting. The undersigned further ordered that the current Request for Award “must be and is herein denied” due to the lack of jurisdiction due to the case being previously dismissed.

The instant “Objection and/or Petition for Reconsideration” followed.

III. ARGUMENT

Until the time of filing of the Stipulations With Request for Award, the “evidence” in the Workers’ Compensation Appeals Board Document Management System (hereinafter “EAMS”), appeared to suggest that Applicant Reach Air Medical Services had initiated the workers’ compensation claim to obtain payment of its transportation bill and had obtained said payment. There was no evidence that the injured worker had any interest in a workers’ compensation claim, nor that carrier State Compensation Insurance Fund had any interest in such a claim. While it is now understood that the injured worker needed medical treatment and was so afforded medical treatment under the claim, ADJ8453702 did not so indicate or even suggest such activity. Thus, the lien was filed, the lien paid, and the case dismissed based on petition by the lien claimant.

² Who has since retired.

Several “missteps” along the way combined to create this unusual situation. Typically, along the course of a claim, the parties will disagree and seek relief from this body. Apparently in this case, the injured worker was in need of treatment and apparently all necessary treatment was provided by the carrier without any hitches, very commendable but unusual from this perspective. It appears neither the injured worker nor the carrier felt any need, from the 2013 case opening until the attempted 2022 settlement, to request the assistance of the Workers’ Compensation Appeals Board, again very commendable.

This initially resulted in the 2013 Order of Dismissal. What was evident to the reviewing Judge, was a lien had been filed by Reach Air, had been apparently paid, followed by a Petition for Dismissal of the Application for Adjudication, by the party who had filed the original Application. There was NO objection to the Petition for Dismissal by either injured worker Philip Spezio (who was admittedly not familiar with workers’ compensation rules or requirements), but also no objection by State Compensation Insurance Fund who is very familiar with workers compensation rules and requirements.

Thereafter, and while it is curious that no party viewed the Order of Dismissal, or even the Petition for Dismissal as needing a response, Defendant, State Compensation Insurance Fund is correct that the necessary Notice of Intention required by Labor Code Section 10850 (previously Section 10780), was not served. To be clear, in 2013, Labor Code Section 10780 required dismissal of Applications for Adjudication of Claim to only be dismissed following service of a Notice of Intention to Dismiss.

No notice giving the parties notice that the case was going to be dismissed, issued until, at the very least the Order Responding to Request for Award issued on 7/21/2022.

IV. RECOMMENDATIONS

While the undersigned does not dispute any of the above, nor the appropriateness of the settlement reached by the parties, the undersigned also does not believe there is jurisdiction to act on the submitted settlement, given the dismissal in 2013.

The undersigned therefore, joins with injured worker Phillip Spezio and defendant State Compensation Insurance Fund and requests and recommends that the Honorable Commissioners accept the Petition for Reconsideration and set aside the Order Dismissing the Case. If the Order Dismissing the Case is set aside, the undersigned should have jurisdiction to review and act upon the proposed settlement.

DATE: 8/19/2022

Mary Sulprizio
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE