WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JUAN LOPEZ, *Applicant*

vs.

ALPI INDUSTRIAL SUPPLY;
EMPLOYERS COMPENSATION INSURANCE COMPANY;
TECHNOLOGY INSURANCE COMPANY, administered by AMTRUST, *Defendants*

Adjudication Numbers: ADJ10128923(MF); ADJ10120945

Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] We now issue our Opinion and Decision After Reconsideration.

Defendant Employers' Compensation Insurance Company seeks reconsideration of the Joint Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on May 30, 2018, wherein the WCJ found that applicant while employed by defendant as a driver during the period from September 19, 2014 through September 17, 2015 (ADJ10128923) and while employed by defendant as a driver on September 19, 2014 (ADJ10120945) sustained injury to his bilateral shoulders and cervical and lumbar spines; that defendant Employers' Comp provided workers' compensation insurance coverage for the period from September 17, 2014 through January 24, 2015, and defendant Technology Insurance, administered by AmTrust, provided coverage for the period from January 25, 2015 through January 25, 2016; that defendant failed to raise Labor Code section 5405[2]; and that Dr. Geiger's lien is not barred by section 4903.5 and is not barred on the cumulative injury case.

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[1] Commissioners Sweeney and Lowe, who were on the panel that issued the order granting reconsideration, no longer serve on the Appeals Board. New panelists were appointed in their place.

[2] All further statutory references are to the Labor Code, unless otherwise noted.

Defendant contends that the medical reporting of AmeriChiropractic does not constitute substantial evidence to support the finding of cumulative injury; that Dr. Geiger's lien was only filed in ADJ10120945 (the specific injury case) and "cannot be presumed to be filed" under ADJ10128923 (the cumulative injury case); and that defendant raised section 5405 "as an affirmative defense at trial evidenced by Defendant Employers' Exhibit CC," thus barring ADJ10120945 (the specific injury case) pursuant to the statute of limitations.

We did not receive an answer from lien claimant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny Reconsideration.

We have reviewed the record, and the allegations of the Petition and the Answer and the contents of the Report. Based on our review, as our Decision After Reconsideration, we will affirm the Findings of Fact.

FACTS

Applicant while employed by defendant as a driver during the period from September 19, 2014 through September 17, 2015 (ADJ10128923) and while employed by defendant as a driver on September 19, 2014 (ADJ10120945) sustained injury to his bilateral shoulders and cervical and lumbar spines. Notably, defendant employer and defendant's attorneys are identical in both cases. Defendant Employers' Comp provided workers' compensation insurance coverage for the period from September 17, 2014 through January 24, 2015, and defendant AmTrust provided coverage for the period from January 25, 2015 through January 25, 2016.

Both applicant's specific injury and cumulative injury cases resolved via a single Compromise and Release, and an Order Approving issued on June 14, 2017. According to the C&R, there was no effort to differentiate between the two claimed injuries, and applicant received a single sum in resolution of both cases.

Applicant was referred by his primary treating physician for a neurologic consult. On June 30, 2016, lien claimant Kenneth Geiger, M.D., evaluated applicant and prepared a report. (Lien Claimant Geiger's 6.) The caption identifies "9/19/14 & C.T. 9/19/14 - 9/17/15" as the dates of injury. Dr. Geiger stated that "At present, I would consider this patient to have reached a Level of Maximum Medical Improvement from a neurological perspective with regard to the 9/19/14 and

C.T. 9/19/14 – 9/17/15 injuries." In his opinion, applicant's headaches were caused by the September 19, 2014 injury.

Lien claimant timely filed a lien on October 18, 2017 in ADJ10120945 (the specific injury case) and properly submitted payment of the lien fee of $150.00.

On May 3, 2018, the parties appeared for trial. The WCJ issued an order consolidating the two cases. (See Cal. Code Regs., tit. 8, former § 10589, now § 10396.) As relevant herein, in both cases, the issues were injury arising out of and in the course of (AOE/COE) and the liens. Defendant also raised the issues of statute of limitations pursuant to section 4903.5 and section 4903.8[3] in both cases.

DISCUSSION

We first observe that it is a fundamental precept that medical treatment is not apportionable. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal. 2d 399 [33 Cal. Comp. Cases 647], *Dorman v. Workers' Comp. Appeals Bd.* (1978) 78 Cal. App. 3d 1009, 1020, [43 Cal. Comp. Cases 302, 309].) Where treatment of non-industrial conditions is necessary to provide treatment to industrial conditions, defendant cannot segregate and delay the necessary medical treatment because it also treats a non-industrial condition. As long as the injury contributes to the need for treatment, defendant is liable to the extent such treatment as is reasonable and necessary. (See *South Coast Framing v. Workers' Comp. Appeals. Bd.* (2015) 61 Cal. 4th 291 [80 Cal. Comp. Cases 489] [Employer held liable for death from overdose where evidence that drugs prescribed for industrial injury contributed to the death].) Under these principles, an applicant receives a complete medical treatment visit, not a portion of a visit, and a providing physician receives payment for the cost of the visit, not a portion of a visit. Even if a defendant discovers another liable defendant, an applicant may proceed with treatment, and defendant's remedy is to pursue the other liable defendant through contribution proceedings. It follows then, that when a medical-legal evaluation is performed, and an evaluator issues a single report, liability for payment is for that report, not the opinions rendered within it. That is, even if the evaluation is of multiple claimed injuries, and an evaluator determines that two injuries exist, the evaluator does not receive payment

[3] It is unclear why defendant raised the issue of section 4903.8, since there is no evidence that any of the lien claimants had assigned their liens.

for two evaluations, and defendant does not pay for two evaluations. Defendant's argument that a lien claimant must file two liens, one for each injury, is baseless, since defendant will pay for the cost of a single evaluation, and not two, even if there are two liens.

Even assuming for the purposes of argument that there is a requirement that a lien claimant file liens in all possible adjudication numbers, so that lien claimant's pleadings here are procedurally defective, we observe that the principles of "liberal pleading" have infused California's statutory landscape for more than 150 years. Enacted in 1872, Code of Civil Procedure section 452 requires that, "[i]n the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." Also enacted in 1872, Code of Civil Procedure section 473 provides in pertinent part, "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Cal. Code Civ. Proc., § 473(b).) Enacted more "recently" in 1963 is Code of Civil Procedure section 576, which provides that, "[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." What follows from these statutory pronouncements is more than a century of consistent jurisprudence emphasizing the public policy preference favoring adjudication on the merits, rather than on procedural deficiencies.

In 1890, the California Supreme Court opined:

> The principal purpose of vesting the court with the discretionary power to correct "a mistake in any other respect" is to enable it to mold and direct its proceedings so as to dispose of cases upon their substantial merits, when it can be done without injustice to either party, whether the obstruction to such a disposition of cases be a mistake of fact or a mistake as to the law, although it may be that the court should require a stronger showing to justify relief from the effect of a mistake of law than of a mistake of fact. (*Ward v. Clay* (1890) 82 Cal. 502, 23 P. 50, 1890 Cal. LEXIS 591.)

In *Dunzweiler v. Superior Court of Alameda County* (1968) 267 Cal. App. 2d 569, 577 [73 Cal. Rptr. 331], the Court of Appeal observed:

> If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and **where**

> **the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion**. [Citations.] And as stated in *Jepsen v. Sherry* (1950) 99 Cal. App. 2d 119, 121 [220 P.2d 819], the discretion to be exercised by trial courts is "**one controlled by legal principles and is to be exercised in accordance with the spirit of the law and with a view to subserving, rather than defeating, the ends of substantial justice**." (Bolding added.) (*Dunzweiler v. Superior Court of Alameda County, supra,* 267 Cal. App. 2d at 577.)

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal. 3d 410, 419 [39 Cal. Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal. Comp. Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal. Comp. Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.*, (2002) 103 Cal. App. 4th 485, 490 [67 Cal. Comp. Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200–01 [50 Cal. Comp. Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866].) Moreover, section 5709 states that "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division …" (Lab. Code, § 5709.) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio, supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, former § 10492, now § 10517.)

Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal. App. 4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902], "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

Therefore, in workers' compensation proceedings, it is settled law that:

(1) *pleadings may be informal* (*Zurich Ins. Co., supra,* 9 Cal. 3d at p. 852; *Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal. App. 3d 1452, 1456 [52 Cal. Comp. Cases 141]; *Liberty Mutual Ins. Co v. Workers' Comp. Appeals Bd.* (*Aprahamian*) (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal. App. 3d 590, 594–595 [40 Cal. Comp. Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal. App. 2d 204, 207– 210 [33 Cal. Comp. Cases 345]);

(2) *claims should be adjudicated based on substance rather than form* (*Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [53 Cal. Comp. Cases 502]; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal. App. 2d 592, 598 [24 Cal. Comp. Cases 274]);

(3) *pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim* (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra,* 103 Cal. App. 4th at p., 490; *Rubio, supra,* 165 Cal. App. 3d at pp. 199–201; *Aprahamian, supra,* 109 Cal. App. 3d at pp.152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–209); and

(4) *technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction* (*Bland, supra,* 3 Cal. 3d at pp. 331–332 & see fn. 13; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Aprahamian, supra,* 109 Cal. App. 3d at pp. 152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–210).

Reflecting these principles, current WCAB Rule 10617 (former Rule 10397) provides:

> (a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:
>
> > (1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;

> (2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or
>
> (3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(Cal. Code Regs., tit. 8, former § 10397, now § 10617 (eff. Jan. 1, 2020).)

The rule thus provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain "a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file." (Cal. Code Regs., tit. 8, former § 10397, now §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, former § 10492, now §10517.) These rules represent the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

These principles of liberal pleading are further reflected in section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise, or excusable neglect in accordance with Code of Civil Procedure section 473. And, the Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox, supra,* 4 Cal. App. 4th 1196.)

With these principles in mind, defendant's contention that lien claimant should be denied relief due to the filing of the lien under only one ADJ number is simply not legally supportable. As noted above, both cases involve the same applicant and the same employer, both cases were resolved by way of a single C&R, and both cases were consolidated for the purpose of this trial. We are persuaded that the interests of substantial justice are better served by adjudication on the merits of the lien, rather than dismissal by administrative fiat for technical noncompliance in pleadings. Additionally, defendant offers no persuasive argument for prejudice, and we discern none in the record.

Accordingly, we affirm the Findings of Fact.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact issued by the workers' compensation administrative law judge on May 30, 2018 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 11, 2023

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

JUAN LOPEZ
TELLERIA, TELLERIA & LEVY
AMTRUST
TOBIN LUCKS

AS/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Defendant, ALPI INDUSTRIAL SUPPLY, has filed a timely, verified; Petition for Reconsideration with respect to the Findings of Fact, Award and Order dated, June 18, 2018, wherein it was found that applicant did sustain injury to the cervical and lumbar spine and bilateral shoulder arising out of and in the course of employment on September 19, 2014; and the continuous trauma claim of September 17, 2014 through January 25, 2015. It was also found that Dr. Geiger filed a lien on ADJ1012095 (specific); however, not on the continuous trauma date of injury. It was found these two claims were companion cases, thus there was no need for Dr. Geiger to file a lien on the continuous trauma claim. It is from these findings Defendant is aggrieved.

II

FACTS

Juan Lopez, born 02/17/1956, while employed during the period of 9/19/2014 through 9/17/201 and September 919, 2014 as a driver, at Diamond Bar, California by ALPI Industrial Supply. At the time of injury, the employer's Worker's Compensation carrier was Employer's Compensation Insurance Company Glendale, for the period of 09/17/2014 through 01/24/2015 and thereafter, Technology Insurance, administered by Amtrust, for the period of 01/25/2015 through 01/25/2016. The issues are: injury arising out of and in the course of employment. The liens of Joyce Altman Interpreting, Ameri Chiropractic, and Reliable Medical Supply.

III
DISCUSSION

Defendant contends:

1. Dr. Geiger's lien was only filed on ADJ10120945, the specific injury, and cannot be presumed to be filed under ADJ10128923.

   Pursuant to the lien of Dr. Geiger, the last date of service would appear to be his last report dated 6/30/2016. His lien was filed on 10/18/2017, within the 18 months as provided in Labor Code§ 4903.5. Dr. Geiger filed a lien on ADJ10120945 (specific); raises the issue of the necessity of his filing a lien on the continuous trauma date of injury. Since these two claims were companion cases, there was no need for Dr. Geiger to file-<:1 lien on the continuous trauma claim.

2. Defendant raised Labor Code section 5405 as an affirmative defense at trial evidenced by Defendant Employers' Exhibit CC, thus· barring ADJ10129045 pursuant to the statute of limitations.

Pursuant to Labor Code § 5405, "[t]he period within which proceedings may be commended for the collection of benefits ... is one year from any of the following: (a) [t]he date of injury ... [or] (c) [t]he last date on which any benefits provided for in Article 2 (commencing with[§] 4600) of Chapter 2 of Part 2 were furnished." If an application for workers' c;ompensation benefits is filed more than a year from the date of injury, and the employer has made no payments and furnished no benefits to the employee, the claim will generally be barred by the statute of limitations. *Labor Code 5405 is an affirmative defense and must be pled in the pre-trial conference statement, (EAMS Doc ID 65644273) or at trial. Defendant references Exhibit CC, which is their answer to the application.*

INJURY AOE/COE

Defendant's Exhibit AA, dated 11/8/2015 and Exhibit B, dated 9/22/2016, titled Scott E. Hardy, M.D. Qualified Medical Examiner. Dr. Hardy notes the applicant's history of present illness, which resulted in a motor vehicle accident in which he was rear ended. His vehicle sustained mild to moderate damage in the front and rear. Subsequent insurance

information indicated there was $2,900 in property damage to his vehicle. He was wearing his seatbelt; the airbag did not deploy. There was :µo police report. Applicant contacted his employer following the accident and applicant returned to work in Pomona. Following the accident, applicant took about three days off work before returning. Initially he felt pain in his neck and bilateral shoulders. An MRI indicated some disc abnormality's identified in the lumbar and cervical spines. He underwent chiropractic care and continued to work. He was se n by an orthopedic surgeon Dr. Meany in West Covina in January 2015. Dr. Meany indicated that applicant was a candidate for epidural injections. Injections were discussed but never performed. Applicant received a civil settlement in the amount of $6,700. Applicant continued to work until September 22, 2015 when he was referred to Ameri chiropractic in September 2015. He was placed off work by the chiropractor and referred to Dr. Kohn, a chiropractor at Amiri. Applicant saw Dr. Kohn on six occasions. He received acupuncture and physical therapy treatments 2 to 3 times a week for about eight months.

Permanent and stationary status applicant is at maximum medical improvement. Applicant was likely permanent stationary two months following the examination of chiropractor Arshaid. This examination was on March 5, 2015 indicating permanent stationary status by May *5,* 2015 it is noted at this juncture he had returned to his usual and customary duties and had received a settlement for· his prior neck and back injury.

Causation: Findings and the medical records indicate that Mr. Lopez *sustained strains.to his cervical and lumbar spines as well as both shoulders as described in the motor vehicle accident of September 19, 2014.* There is evidence of medical causation for the described musculoskeletal strains on September 19, 2014. Dr. Hardy's findings on causation in his 9/22/2016 report are identical to those above, although the CT was noted in the caption, Dr. Hardy fails to opine upon the continuous trauma claim in either report regarding causation.

Dr: Hardy’s finds injury in the specific injury and fails to opine on the continuous trauma claim, therefore, the reports of Ameri Chiropractic are unrebutted and appeared to the undersigned WCJ to be substantial in nature.

RECOMMENDATION

The undersigned WCJ respectfully recommends that applicant's Petition for Reconsideration, dated June 18, 2018, be denied except as noted above.

Respectfully submitted,

DATE: June 29, 2018

ROBERT SOMMER
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE