

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

VICTOR GONZALEZ, *Applicant*

vs.

**UNITED AUTO CRAFT;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ3214135 (MON 0362621), ADJ7345325
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
DECISION AFTER
RECONSIDERATION**

Lien claimant Missirian Orthopedic seeks reconsideration of the Findings of Fact and Order (F&O) of January 2, 2024, wherein the workers compensation judge (WCJ) found that lien claimant had not met its burden of proof to show it timely filed a declaration pursuant to Labor Code¹ 4903.8(d) and therefore the lien was dismissed. Lien claimant contends that the WCJ incorrectly dismissed its lien, filed in December 2012, as the declaration requirements of section 4903.8(d) are not applicable to liens filed before January 1, 2013.

We have received an Answer from defendant State Compensation Insurance Fund (SCIF). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), asking for guidance from the Commissioners on this issue.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings.

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

FACTS

Applicant's two claims of industrial injury were both settled by a compromise and release (C&R) agreement, with a Joint Order Approving the C&R (OACR) in 2017, for \$25,000. (Ex. A, C&R, pp. 1-6.) Missirian Orthopedic filed a lien claim in ADJ3214135 on December 5, 2012, and its lien claim on December 6, 2012, in ADJ7345325.

Pinnacle Lien Services filed its Notice of Representation of Missirian Orthopedic on both August 30, 2019, and November 9, 2020, and included a declaration with each one. (Ex. Z1, Notice of Representation, pp. 1-4.) The case proceeded to trial on the lien claim on June 1 and October 30, 2023. The WCJ entered exhibits into evidence but there was no testimony. At the conclusion of the trial, the WCJ found Missirian Orthopedic had not met its burden of proof to show it filed a timely executed declaration, pursuant to section 4903.8(d) for its lien. (F&O, pp. 3, 5.) The WCJ then ordered that there was no jurisdiction to proceed to decide issues related to the lien of Missirian Orthopedic, since the lien was dismissed by operation of law for failure to timely execute a declaration pursuant to section 4903.8(d). (F&O, pp. 3, 6.)

DISCUSSION

Labor Code section 4903.8(d) states

(d) At the time of filing of a lien on or after January 1, 2013, or in the case of a lien filed before January 1, 2013, at the earliest of the filing of a declaration of readiness, a lien hearing, or January 1, 2014, supporting documentation shall be filed including one or more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

- (1) The services or products described in the bill for services or products were actually provided to the injured employee.
- (2) The billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.

(Lab. Code § 4903.8(d).)

The Appeals Board recently clarified that for liens filed before January 1, 2013, section 4903.8(d) provides that declarations must be filed on or before the earliest of either the filing of a declaration of readiness, a lien hearing, or January 1, 2014. (*Athens Administrators v. Workers'*

Comp. Appeals Bd. (Perales) (2019) 84 Cal.Comp.Cases 212, 213.)² However, there is no provision that allows a pre-January 1, 2013 lien “to be deemed invalid or disallowed based on failure to file the declaration within the specified timeframes.” (*Id.*) Section 4903.8(d) does not provide a consequence for failure to timely file a declaration where the lien in question was filed prior to January 1, 2013. (*Id.*)

The *Perales* analysis is applicable here as the lien was filed prior to January 1, 2013, in December 2012. Under *Perales*, as there is no statutory consequence for failure to timely file a declaration when the lien in question was filed prior to January 1, 2013, the lien cannot be dismissed for lack of a timely declaration. (*Perales, supra*, 84 Cal.Comp.Cases at p. 213.) We conclude that the reasoning in *Perales* is persuasive and that lien claimant’s December 2012 lien cannot be dismissed for lack of a declaration pursuant to section 4903.8(d). Accordingly, we will grant the Petition, rescind the F&O, and return this case to the WCJ to consider the other issues raised regarding lien claimant’s entitlement to payment.

² Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’ compensation judges. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the Appeals Board may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Bd. en banc).) We find the reasoning in *Perales* persuasive given that the case currently before us involves a similar legal issue.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the January 2, 2024 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the January 2, 2024 Findings of Fact and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 21, 2024

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

**MISSIRIAN ORTHOPEDIC
PINNACLE LIEN SERVICES
STATE COMPENSATION INSURANCE FUND**

JMR/ara

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