

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

GERARDO PEREZ, *Applicant*

vs.

**PARTY PRONTO INC.; PENNSYLVANIA MANUFACTURERS,
administered by ILLINOIS MIDWEST, *Defendants***

**Adjudication Numbers: ADJ10496049 ADJ6613623
Los Angeles District Office**

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

Defendant and lien claimant California Imaging Solutions (CIS) seek reconsideration of the July 26, 2021 Joint Findings, Award and Order wherein the workers' compensation administrative law judge (WCJ) found that CIS was entitled to reimbursement on its lien and disallowed the liens of Comprehensive Outpatient Surgery Center and Technical Surgery Support. With respect to reimbursement of the lien of CIS, the WCJ ordered the amount of reimbursement be adjusted by the parties. The WCJ indicated that if the parties could not agree to an amount, the WCJ intended to order the parties to engage an agreed bill reviewer, and, if the parties could not agree on an agreed bill reviewer, the WCJ intended to appoint an independent bill reviewer.

Defendant contends that the WCJ should also have disallowed the lien of Dental Trauma Center consistent with the WCJ's finding that applicant did not sustain a dental injury. Defendant also contends that CIS should not recover on its lien because it did not provide medical legal services and it provided services that were not reasonable and necessary.

CIS contends that the copy services it provided were not subject to a fee schedule and, therefore, the WCJ erred in ordering defendant and CIS to proceed to IBR. CIS also contends that the WCJ should have ordered defendant to pay its lien in accordance with the market rate analysis.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to add a finding that Dental Trauma Center is not entitled to recover on its lien.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed by the WCJ in the Report, we will amend that Findings, Award and Order to find that Dental Trauma Center is not entitled to recover on its lien. For the reasons discussed below, we will defer the issue of reasonableness and necessity of the services of CIS with jurisdiction reserved at the trial level.

FACTS

Applicant sustained an industrial injury to his bilateral shoulders and lumbar spine, while employed as a truck driver from March 1, 2005 through February 28, 2010 (ADJ104960490). Applicant also sustained a specific injury to his bilateral shoulders, lumbar spine, and cervical spine on February 3, 2008 (ADJ6613623).

After applicant resolved his workers' compensation cases, a lien trial was held on May 23, 2019. ADJ104960490 and ADJ104960490 were consolidated. With respect to the lien of CIS, the issue was framed as "the necessity of the services and reasonableness of charges for copying subpoenaed records."

On May 7, 2021, the parties agreed to submit the case "for decision on the stipulations and issues and admitted evidence set forth in Minutes of Hearing dated 5/23/2019, and additional issues set forth by lien claimant California Imaging on a pre-trial conference statement submitted 05/07/2021" (May 7, 2021 Joint Order of Submission for Decision.) The WCJ also ordered CIS to file "a post-trial brief properly identifying the additional issues" and permitted defendant to file a responsive brief before submission.

On the May 7, 2021 pre-trial conference statement, CIS listed numerous issues and arguments that it characterized as issues. CIS filed a "Post-trial Brief Regarding Addendum Issues in Support of Medical-Legal Expense Reimbursement." In the brief, lien claimant limited the issues raised in the May 7, 2021 pre-trial conference statement. Additional issues raised by both the brief and the pre-trial conference statement included defendant's failure to send timely or compliant explanations of Review (EORs), penalties and interest. Lien claimant also noted that the Copy Service Fee Schedule was not retroactive. Lien claimant requested sanctions.

The WCJ's decision did not identify what proposed additional issues were submitted and the WCJ did not decide or defer the "issues."

DISCUSSION

All decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc).) A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22.) As required by Labor Code section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, supra, at p. 475.)

In this case, the issues were never clearly defined with respect to CIS' lien. Both lien claimant and defendant attempted to raise additional arguments and issues after the trial. The WCJ did not identify what issues were submitted. Without knowing what issues the WCJ was attempting to determine, the findings of fact are ambiguous.

For example, the WCJ issued a finding that CIS provided services that "were reasonably necessary medical legal services" (Finding of Fact 7) without describing the services or citing to the record to support his conclusion. Without knowing what issues the WCJ was attempting to determine, the phrase "reasonably necessary medical-legal services" is ambiguous. Defendant is required to reimburse expenses "reasonably, actually, and necessarily incurred." (Lab. Code, §4621(a).) Given the deviation from the language in the statute and the lack of clarity regarding the issues in dispute, the finding could address necessity (but not reasonableness) or it could be a broader statement that lien claimant met its burden under Labor Code section 4621. Accordingly, we will defer the issue of the lien of CIS to allow the parties to properly frame issues and to allow the WCJ to issue a decision in accordance with the requirements of the Labor Code.

In *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. P.D. LEXIS 388] (Appeals Board en banc) the Appeals Board discussed a lien claimant's burden of proof pursuant to sections 4620 and 4621. For each date of service, the WCJ should analyze whether lien claimant met its burden of proof.

If the lien claimant meets its burden as described in *Colamónico*, the WCJ must determine a reasonable fee. For copy services performed prior to July 1, 2015, such as the copy services in this case, there is no applicable fee schedule. In evaluating the reasonable value of copy service liens, parties often cite to a list of "factors" enunciated in our decision in *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1590 [2002 Cal. Wrk. Comp. LEXIS 1605] (Appeals Board en banc). However, *Kunz* involved medical treatment bills, not medical-legal bills, and therefore, *Kunz* is factually distinguishable. While we acknowledge this distinction, we note that our holdings evaluating the reasonable value of medical treatment liens in *Kunz* can provide useful guidance in determining the reasonable value of a medical-legal service. We note that in *Kunz*, we specifically stated that a provider's usual fee "means the fee usually accepted, not the fee charged" (*Kunz, supra*, 67 Cal.Comp.Cases at p. 1590, emphasis removed.)

Finally, we note that if lien claimant establishes that its services were reasonable and necessary and the parties cannot agree to the amount due or to an agreed bill reviewer, a WCJ may appropriately appoint a bill review expert. However, as discussed above, the parties need to reframe the issues and the WCJ needs to determine all issues submitted based on evidence in the record consistent with the Labor Code and *Hamilton, supra*. At this point, it would be premature to determine whether or not a bill review expert is necessary.

For the foregoing reasons,

IT IS ORDERED that defendant's and lien claimant's Petitions for Reconsideration of the July 26, 2021 Joint Findings, Award and Order are **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 26, 2021 Joint Findings, Award and Order is **AFFIRMED**, **EXCEPT** the Award is **RESCINDED** and Findings of Fact 7 and 9 and the Order are **AMENDED** as follows:

FINDINGS OF FACT

7. The lien of Dental Trauma Center is Disallowed.
9. The issues of whether the services provided by California Imaging were reasonable and necessary and whether its charges were reasonable are deferred with jurisdiction reserved at the trial level.

**AWARD
[RESCINDED]
ORDER**

IT IS ORDERED THAT the liens of Comprehensive Outpatient Surgery Center, Technical Surgery Support, and Dental Trauma Center are disallowed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2021

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

**ALLEN WONG
CALIFORNIA IMAGING
DENTAL TRAUMA CENTER
SAAM AHMADINIA
STOCKWELL HARRIS
ZA MANAGEMENT**

MWH/oo

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

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant, Gerardo Perez, born xx/xx/xxxx, while employed during the period 03/01/2005 through 02/28/2010, as a truck driver at Arcadia, California sustained injury arising out of and occurring in the course of employment to his bilateral shoulders and lumbar spine (ADJ10496049) and while so employed on 02/03/2008 sustained injury arising out of and occurring in the course of employment to his bilateral shoulders, lumbar spine and cervical spine (ADJ6613623).

II. CONTENTIONS

Petitioner defendant contends that 1) the Findings and Award and Order should reflect the disallowance of the lien of Dental Trauma Center consistent with the Opinion on Decision herein, and 2) that lien of California Imaging Solutions should be disallowed for failure to prove that the services rendered were necessary to prove or disprove a contested claim.

III. FACTS

California Imaging secured records from Illinois Midwest, the administrator for the carrier, and Jon Woods, applicant's former attorney, as well as Buena Vista Medical, California Urgent Care, Julie Goalwin, M.D., KG Pharmacy, Los Angeles Orthopedics, Nachman Brautbar, M.D., Pacific Hospital of Long Beach, Pacific Wellness, Sein Chiropractic, Southern California Medical Diagnostic, United Medical Radiology, and Albert Simpkins, M.D.

The undersigned found that services of California Imaging were reasonable medical legal services and ordered reimbursement in an amount to be adjusted by the parties.

Petitioner seeks reconsideration of that portion of the decision.

Petitioner additionally seeks reconsideration for the purpose of amending the Findings and Award and Order to reflect that the lien of Dental Trauma Center is disallowed

IV. DISCUSSION

The undersigned did opine that the lien of Dental Trauma Center is to be disallowed, and found (as set forth in the F&A&O) that applicant did not suffer a dental injury in either of the industrial claims herein.

Accordingly the undersigned recommends that reconsideration be granted and that an additional Finding of Fact be added as follows:

“10. The lien of Dental Trauma Center is disallowed.”

However turning to the lien of California Imaging, they were medical legal in nature and were not unreasonably requested by applicant’s then attorney.

Petitioner first contends that he order forms for the records requests “appear to come from at least two different sources and there is no confirmation that any other than the first one came from applicant’s attorney.” The order forms are Lien Claimant’s Exhibit 13 (misidentified as “Exhibit 2 and 2a in the petition).

While it is true that there is no signature from the attorney or other certification, it cannot be assumed that an applicant’s attorney ordering records from a copy service must personally sign an order form any more than it can be assumed that a defense attorney personally signs a request for records or other routine discovery services (engaging investigators, arranging court reporters for depositions, etc.).

The fact that the order form was filled out on 04/05/2013 in different handwriting than the form dated 03/26/2013 does not demonstrate that one or the other originated from somewhere other than the California Imaging offices.

Petitioner further asserts that it was unreasonable to seek the records from medical treatment locations because they may have been in the file of former counsel.

Whether there were records from those treatment locations in the former attorney’s possession or not, applicant’s attorney in 2013 had no way of knowing whether the worker’s treatment continued at any of those locations after records had previously been obtained, if they ever were previously obtained.

Petitioner curiously argues that Labor Code Section 5307.9 enacted 01/01/2013 required applicant’s attorney to request the records of applicant’s former attorney from the employer, claims administrator or workers’ compensation carrier before seeking them by way of subpoena.

First Section 5307.9 required the Administrative Director to implement a schedule with a requirement that records first be requested of the carrier before incurring subpoena costs, but the schedule was not in place at that time.

More curious is the suggestion that the carrier would have had applicant's former attorney's file.

In essence an attorney's broad discretion in conducting discovery includes obtaining records that ultimately prove to be of no value to the case. An injured worker is entitled to representation that includes determining if records are relevant admissible evidence or can reasonably be expected to lead to the discover of relevant admissible evidence.

That determination cannot be made without review of the records in question.

As to the arguments regarding the amounts charged, jurisdiction has been reserved in the event the parties cannot come to terms on reimbursement and need not here be addressed.

V. RECOMMENDATION

Based on the foregoing, the undersigned WCALJ recommends that reconsideration be granted for the purpose of amending the Findings and Award and Order, inserting the additional Finding of Fact reading as follows:

“10. The lien of Dental Trauma Center is disallowed.”

In all other respects the undersigned WCALJ recommends that reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 08/18/2021

WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE