

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

EMMANUEL MICHAEL BANAAG, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS &
REHABILITATION, legally uninsured, administered by STATE COMPENSATION
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12113226
Salinas District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Lien claimant, Anthem Blue Cross (Anthem) seeks reconsideration of the Order Approving Compromise and Release (OAC&R) issued by the workers' compensation administrative law judge (WCJ) on April 26, 2022.

Anthem contends that it is aggrieved by the OAC&R, that the OAC&R is not supported by substantial evidence, and that it is a violation of Anthem's due process rights.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Objection to the Petition from defendant.

We have considered the allegations in the Petition and the Objection, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will dismiss the Petition.

BACKGROUND

Applicant, Emmanuel Michael Banaag, claimed injury to his lungs and respiratory system in the form of Valley Fever, while employed by defendant as a registered nurse during the period from January 25, 2017, through January 25, 2018. Anthem filed its lien in the amount of \$34,771.73 on June 4, 2019. The injury claim was settled by Compromise and Release. The Compromise and Release (C&R) included the following language:

Defendants to pay, adjust or litigate all liens of record with all dates of service subject to proof, through date of order approving, with WCAB retaining jurisdiction. (C&R, p. 6.)

The following are the liens of record as of this date. Defendants will pay, adjust, or litigate, the following liens, less credit for payments previously made. ¶ Jurisdiction is reserved with the Workers' Compensation Appeals Board as to all issues that may arise regarding disposition of these liens.

Anthem Blue Cross Woodland Hills
PO Box 659940
San Antonio TX 78265-9138 (C&R, p. 10.)

The WCJ issued the OAC&R on April 26, 2022.

DISCUSSION

Pursuant to Labor Code section 5900(a):

Any person aggrieved directly or indirectly by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration.

As noted by the WCJ in the Report, the C&R only addresses and resolves the issues of applicant's entitlement to benefits owed to him by defendant. As a lien claimant, Anthem was not a party involved in the C&R and any issues regarding its right to compensation for medical treatment provided to applicant were reserved. A lien claimant, such as Anthem in this matter, is not an aggrieved party for the purpose of filing a petition for reconsideration of an OAC&R, if the C&R, between the employer/carrier and the employee, does not include a final resolution of the lien claim. (*The Permanente Medical Group v. Workers' Comp. Appeals Bd. (Williams)* (1977) 73 Cal.App.3d [42 Cal.Comp.Cases 745]; *Oliver and Winston v. Workers' Comp. Appeals Bd. (Gregg)* (1983 W/D) 48 Cal.Comp.Cases 814.)

As quoted above, the C&R at issue, clearly states that defendant will "pay, adjust or litigate all liens of record" including Anthem's lien, and that jurisdiction is reserved "as to all issues that may arise regarding disposition of these liens." (C&R, p. 10.) Thus, Anthem is not "aggrieved directly or indirectly" by the OAC&R and therefore, the Petition is dismissed.

Finally, it is important for the parties to understand that we are not ruling on or otherwise addressing the merits of Anthem's lien claim. Absent stipulations regarding the alleged injury and the injured body parts, a lien claimant must prove that the applicant sustained an injury arising out

of and occurring in the course of employment. "A lien claimant ... has the burden of proving by a preponderance of the evidence that the claim is industrial..." (*Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34 Cal.App.4th 1204, 1212-1213 [60 Cal.Comp.Cases 289, 291-292]; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 108 Cal.App.4th 137 [68 Cal.Comp.Cases 548.]

Here, Anthem's due process rights have not been violated in that to the extent the medical record suggests the underlying injury was industrial, Anthem will be able to present that evidence in subsequent lien proceedings.

Accordingly, we dismiss the Petition.

For the foregoing reasons,

IT IS ORDERED that Lien claimant, Anthem Blue Cross' Petition for Reconsideration of the Order Approving Compromise and Release issued by the WCJ on April 26, 2022, is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCUR NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 18, 2022

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

**ANTHEM BLUE CROSS
BOEHM & ASSOCIATES
STATE COMPENSATION INSURANCE FUND**

TLH/pc

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