**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**JOEL VELAZQUEZ, *Applicant***

**vs.**

**PANORAMA CAFE; ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ10732379 (MF), ADJ10732365**
**Los Angeles District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Cost petitioner Citywide Scanning Service, Inc. (Citywide) seeks reconsideration of the Joint Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on November 14, 2023. In that decision, the WCJ found that cost petitioner failed to sustain its burden of proving entitlement to compensation for their copy services and expenses, and ordered Citywide take nothing for such services.

Petitioner contends that the WCJ's findings are not based upon substantial evidence, and that the WCJ failed to explain the basis for the conclusion that the petitioner failed to meet its burden of proof that a contested claim existed prior to lien claimant's services or that petitioner failed to object to the defendant's Explanations of Review (EORs) based upon the entire record.

Citywide asserts in their petition that while a lien claimant is required to establish that a contested claim existed at the time the expenses were incurred, the existing evidence establishes that there was a contested claim at the time of such services.

Citywide further asserts that they objected to the EORs of the defendant as to their services when they requested a timely second bill review using form SBR-1 for their objection pursuant to Labor Code[1] section 4622(c).

Citywide asserts, in pertinent part:

> ….pursuant to statutory definition in LC § 4620(b)(3) and 8 CCR § 9793(b)(3), a contested claim exists when the employer has knowledge of

[1] All further references are to the Labor Code, unless specifically stated.

> the claim of injury and request for benefits, and fails to respond regarding those benefits within a time period fixed by statute, including for temporary disability pursuant to 8 CCR § 9812(a), which allows Defendant fourteen (14) days to issue a Notice of Temporary Disability Indemnity acceptance, denial or delay.
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> Pursuant to 8 CCR § 10605(a)(1) "the period of time for exercising or performing any right or duty to act or respond shall be extended by five calendar days from the date of service." Thus, adding nineteen (19) calendar days to the date of service of the Application for Adjudication (01/26/2017) gives the Defendant until 02/14/2017 to issue its Notice of Temporary Disability acceptance, denial or delay. If Defendant fails to do so by the end of the working day on 02/14/2017 the claim becomes contested by statutory definition on 02/15/2017 (Petition, at pg. 7:4-16).

With respect to the issue of what is the proper form for an objection to the EORs by the defendant, petitioner states, in pertinent part:

> Citywide argues that it can use the SBR-1 form pursuant to LC § 4622(b)(1) if it contests the amount paid. The Honorable WCALJ takes note of this argument, but disregards it as Defendant has made zero payments on the invoices in question (CSS Exh. 15 & 16). However, zero is also an amount, and the amount that Defendant paid on those invoices was zero, and Provider contests the zero amount paid on those invoices pursuant to LC § 4622(b)(1). The Honorable WCALJ does not explain in her opinion on decision how or why zero somehow does not qualify as an "amount paid". If the Honorable WCALJ were to ask the parties "What was the amount paid on those invoices" the parties would both answer "zero", and thus the amount paid on those invoice would be zero and that would be the amount Provider contests with the SBR-1 form under LC § 4622(b)(1).
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> To Provider's SBR-1 Form *Objection*, Defendant can either issue a second bill review (out of an abundance of caution as well), file a Non-IBR Petition with Declaration of Readiness to Proceed pursuant to LC § 4622(c), or do both if it really seeks to protect itself. It is not, however, reasonable for Defendant to take zero affirmative action in its own defense... (Petition, pg. 10:11-24).

Petitioner requests the WCJ find that the claim was contested at the time of Citywide's services pursuant to Labor Code section 4620(b)(3), 8 Cal. Code Regs. § 9793(b)(3) and 8 Cal. Code Regs. § 9812(a) in light of the entire record, that their objections to the defendant's EORs were timely, and that defendant is liable to petitioner for the full fee schedule sum with 10% penalty and 7% interest per Labor Code section 4622(a)(1).

Defendant filed an answer to the petition and requests denial of same, stating, in pertinent part:

> Pursuant to Labor Code § 4620(a), medical-legal expense refers to any costs or expenses incurred for the purposes of proving or disproving a contested claim. Copy service fees incurred to obtain records are considered medical-legal expenses under Labor Code § 4620(a) and may be recoverable [*Cornejo v. Younique Café, Inc.* 81 Cal. Comp. Cases 48 (2015*); Ozuna v. Kern County*, [2016] Cal. Wrk. Comp. P.D. LEXIS 98]. However, to recover, the incurred expenses must relate to proving or disproving a contested claim, and those expenses also must be shown to be reasonable and necessary at the time they were incurred [ Labor Code §§ 4620, 4621].
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> In *Ashley Colamonico v. Secure Transportation* (2019) 84 Cal. Comp. Cases 1059, 1061 [2019 Cal. Wrk. Comp. P.D. LEXIS 388 (Appeals Board en banc), the WCAB held that (1) A Medical-legal Provider has the initial burden of proof that: 1) A contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to section 4620; and 2) Its Medical-legal services were reasonably, actually, and necessarily incurred pursuant to section 4621(a) (Answer, pg. 5:12-27).
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> …..In the present matter, Citywide has the initial burden of proving that a contested claim existed at the time its expenses were incurred and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to Labor Code § 4620. Citywide issued Invoice 13326-1, Invoice 13326-2, Invoice 13326-3, and Invoice 13326-4 prior to Defendant's Denial of Claim Letter of 4/17/2017 (Defendant's Exhibit I-EAMS DOC ID #44392493). As a result, the expenses incurred by Citywide were not reasonable, actual, and necessary pursuant to Labor Code § 4621(a).
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> Defendants agree that attorneys have broad discretion in determining how best to obtain the production of documents to fulfill his or her duty of representation. However, the documents that the attorney sought to obtain must be anticipated to be reasonable and necessary to prove or disprove a contested claim or issue. In the case at bar, Citywide provided its services prior to defendants issuing a benefit notice to applicant denying its cumulative trauma injury claim. Consequently, the services provided by Citywide were not reasonable or necessary; thus, defendants have no liability for such services (Answer, pp. 6-7:15-28, 1-2).

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report.

Based upon our preliminary review of the record, we will grant cost petitioner's Petition for Reconsideration, and we will order that this matter be referred to a workers compensation administrative law judge or designated hearing officer of the Appeals Board for a status conference. Our order granting applicant's Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

We highlight the following legal principles that may be relevant to our review of this matter:

> "A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists: (1) The employer rejects liability for a claimed benefit. (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim. (3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity." (Lab. Code, § 4620(b).)

Additionally, the following evidence noted as contained in the record may also be of import in our decision. They include, but are not limited to; delay letters to applicant dated 3-10-2017 (Exhs. J and K), the Order referral for copy services dated 2-2-2017 with the accompanying letter by applicant's counsel to defendant dated 1-23-2017 (Exh. 1), the Subpoena duces tecum for Panorama Café, St. John's Well Child and Family Center (Exhs. 4 and 5), various second Bill review requests with accompanying proofs of service (Exhs. 19-24), and both the initial Panel QME report from Dr. Kambiz Hannani dated 10-11-2017 (Exh. 27) as well as the subsequent report dated 11-14-17 along with the attached correspondence from defendant dated July 13, 2017 (Exh. 26).

We also take note of the application for adjudication and the accompanying proof of service of same dated 1-26-2017 in both ADJ10732379 and ADJ10732365 and the Joint Compromise and Release dated 12-21-2017, as part of the record of proceedings maintained in the adjudication files per Cal. Code Regs. § 10803 (formerly Cal. Code Regs. § 10750).

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

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 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.*

(2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Labor Code section 5310 states in relevant part that: "The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. . . ." (See also Lab. Code, §§ 123.7, 5309.)

Here, it is unclear from our preliminary review whether the legal issues have been properly identified and addressed; whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary. Thus, we will order the matter to a status conference before a workers' compensation administrative law judge or designated hearing officer of the Appeals Board.

II.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57

Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

III.

Accordingly, we grant cost petitioner's Petition for Reconsideration, order that this matter be set for a status conference, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

**IT IS ORDERED** that cost petitioner's Petition for Reconsideration of the Joint Findings of Fact and Order issued on November 14, 2023 by a workers' compensation administrative law judge is **GRANTED**.

**IT IS FURTHER ORDERED** that this matter will be set for a Status Conference with a workers' compensation administrative law judge or designated hearing officer of the Appeals Board. Notice of date, time, and format of the conference will be served separately, to be heard in the Lifesize electronic platform, in lieu of an in person appearance at the San Francisco office of the Appeals Board.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**


**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**February 9, 2024**

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

**CITYWIDE SCANNING SERVICE, INC.**
**CHERNOW, PINE & WILLIAMS**

**AS/*ara***

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