

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

ELISEO FRANCO, *Applicant*

vs.

**SANTIAGO RENTERIA FARM LABOR; STAR INSURANCE COMPANY,
administered by MEADOWBROOK INSURANCE, *Defendants***

**Adjudication Number: ADJ9743225
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration.

Ordinarily, a party has twenty-five days within which to file a petition for reconsideration from a final decision that has been served by mail on an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507), now § 10605 (eff. Jan. 1, 2020).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Where, however, the service of a decision is defective, the statutory time period for filing a petition for reconsideration does not begin to run until the decision is actually received. (See *Hartford Acc. & Indem. Co. v. Worker's Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1, 3 [43 Cal.Comp.Cases 1193], *Baker v. Worker's Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 1315, 1318 (writ den.). In this case, it appears that the service of the WCJ's decision was defective.

According to defendant's verified Petition for Reconsideration, the WCJ's May 11, 2021 decision was received by defendant on June 22, 2021. We accept defendant's assertions in this regard. According to the authority cited above, defendant had until Monday, July 19, 2021, to seek reconsideration in a timely manner. Therefore, we find the Petition for Reconsideration filed on July 12, 2021 timely. Nevertheless, as noted above, we deny reconsideration on the merits for the reasons stated in the WCJ's Report and Opinion on Decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 10, 2021

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

**LAW OFFICES OF BRADFORD & BARTHEL
CITYWIDE SCANNING
TOWER COPY**

PAG/oo

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant, Eliseo Franco, born []while employed on 05/24/2014 as a farm laborer at McFarland, California by Santiago Renteria Farm Labor sustained injury arising out of and occurring in the course of employment to his hand and middle finger. Petitioner defendant seeks reconsideration of the 05/11/2021 Findings and Award of reimbursement to lien claimants CityWide Scanning and Tower Copy.

II. CONTENTIONS

Petitioner defendant contends that lien claimants failed to prove the existence of a contested claim at the time services were rendered, that the services were rendered to prove or disprove a contested claim and that the expenses were reasonable and necessary.

III. FACTS

Applicant filed a claim by application for adjudication as of 12/02/2014 (EAMS Doc. ID No. 13514793) alleging injury to his fingers and hand as well as his nervous system of other body systems.

The injury to the fingers and hand was admitted and benefits were provided prior to the application.

Applicant's attorney secured records by way of subpoena from medical providers, the employer and the carrier and/or administrator.

Some records were ordered prior to the filing of the application and the charges were disallowed. Some records sought were duplicative of records already obtained, and the charges for those were similarly disallowed.

Other charges of both lien claimants CityWide Scanning and Tower Copy were allowed in the amounts billed together with penalty and interest pursuant to Labor Code Section 4622. Petitioner defendant has filed the instant petition for reconsideration.

IV. DISCUSSION

Timeliness

Accepting the representation of counsel as an officer of the court, the instant petition will be treated as timely and the contentions set forth are herein addressed.

Contested Claim at the Time Services Were Rendered

Petitioner contends that because injury to the fingers and hand were admitted, and that ultimately during lien proceedings were stipulated to be the only parts of body injured, there was no contested claim when the services were rendered by lien claimant.

This ignores the fact that the application for adjudication alleged injury to the nervous system and other body systems. This hardly means that defendant admitted the alleged nervous system and other body systems claims at the time the Tower Copy services were rendered (after the application). At the time of the compromise and release settlement of the case (05/09/2017, EAMS Doc. ID No. 63857142) the additional claims were set forth as resolved, further demonstrating that they were alleged and contested.

Neither is it required that applicant object to medical reporting in order for a claim to be contested. The reporting in existence related to admittedly injured parts of body. The claims of injury to additional parts of body are not predicated on objecting to reports on admitted parts.

Purpose of Proving or Disproving the Contested Claim(s)

In essence, petitioner contends that the records secured by lien claimant were not relevant to the issues presented in the claim.

The connection between the subpoenaed entities and the claims made need not fully developed at the time of the subpoena. The broad discretion allowed attorneys in conducting discovery includes comparison of medical histories, testing, handwritten notes from examinations, authorizations, denials and a plethora of other information that may not be available from any other source. Further, discovery frequently involves information that is not present in records, such as records never reviewed, complaints.

Reasonableness and Necessity of Charges

Petitioner contends that the charges were not reasonable and necessary.

The billing of the provider is the initial indicator of the value of the services, and unless patently incorrect or unfair, the billing is evidence of the value of the services. Other evidence may also be admitted such as objections, explanations of review and market studies. Here lien claimants

introduced its fee breakdown (Exhibits 5 and 14), and a market study (Exhibits 6 and 15) in addition to its invoices (Exhibits 4 and 13). This hardly demonstrates that lien claimants offered no evidence of the reasonableness of the charges.

By contrast, petitioner introduced only Exhibit A, an explanation of review for Tower as to the value of the services of lien claimants. The value of services was not addressed at all, since all charges were denied for reasons other than valuation.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 07/15/2021

WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

Lien Claimants' Burden of Proof

The failure of defendant to comply with 8 Cal. Code of Reg. Section 10451.1 does not relieve lien claimants from the burden of proof that there was a contested claim at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim and that the expenses were reasonable and necessary at the time they were incurred. *Colamonico v. Secure Transportation* (2019) 84 CCC 1059.

Contested Claim

No party disputed that the claim was contested at lien trial. However on reconsideration defendant asserts that since the injury was admitted and no parts of body beyond those admitted were claimed at lien trial there was no contested claim. The question is not what was contested at the time of lien trial. The application for adjudication (EAMS Doc. ID No. 13514793) demonstrates that applicant also claimed injury to his nervous system and other body systems. Thus as of 12/02/2014 there was a contested claim.

Citywide Scanning secured records on 11/26/2014 (Tony Kim, invoice number 3734-2), before there was a contested claim, and charges for that date of service are disallowed. There was a contested claim thereafter, and charges from 12/17/2014 through 12/22/2016 pass the contested claim test.

The charges of Tower Copy all post-date 12/02/2014 and thus pass the contested claim test.

Necessity of Services to Prove or Disprove a Contested Claim

Attorneys are permitted broad discretion in discovery. Discovery is not limited to admissible or even relevant evidence, but rather conducted to gather any information that could lead to relevant and admissible evidence.

Citywide and Tower secured records which for the most part (for exceptions, see below) were medical locations and the employer's records and the carrier's claims records. These have a reasonable connection to the issues in the case and pass the necessity to prove or disprove a contested claim test.

Reasonableness and Necessity at Time Charges Were Incurred

Citywide Scanning

Invoices numbered 3743-4 (Secretary of State records), 3743-5 (EDEX) and 3743-6 (WCIRB records) were all public and readily available without any need to issue a subpoena.

In addition records were obtained twice from Quest Diagnostics, first on 02/25/2015 (3743-10) and then again on 04/07/2015 (37843-11). There was no necessity demonstrated that the records were needed from the same location twice.

Also unnecessary as duplicative was securing the records of Dr. Bharatwal on 01/17/2017 (3743-12) since these records had been obtained as of 04/05/2016 by Tower Copy at the request of applicant's attorney.

Thus the Citywide charges for invoices 3743-2, 4, 5, 6, 11 and 12 do not represent charges that were reasonably necessary at the time they were incurred and defendant has no liability for them.

The invoices for all other dates of service are allowed in the amounts billed in the absence of evidence that any other amounts represent the reasonable value of the services. Penalty and interest applicable to any balances unpaid, interest running from defendant's receipt of the allowed billings through the date of payment. Labor Code Section 4622.

Tower Copy

Tower secured the records of Star Insurance on 03/14/2016 (invoice number 35761-1), long after they were secured by Citywide. This was duplicative. If later claims file contents were sought, a demand upon the party to the litigation to provide the records was required (8 Cal. Code of Reg. Section 9982).

Tower's securing the records of Central Valley Occupational (Tower invoice 35761-2, 03/21/2016) was duplicative of Citywide's services on 01/13/2015 obtaining those records (invoice number 3743-7).

Tower's securing the records of Regency Surgery Center (35761-3, 04/16/2016) was duplicative of Citywide's services on 01/08/2015 (3743-8).

Tower's securing the records of Delano Regional Medical (35761-3, 05/05/2016) was duplicative of Citywide's services on 03/08/2015 (3743-7).

Thus it is found that the charges of Tower Copy for obtaining the records of Dr. Bharatwal (04/05/2016, 35761-5) and Vital Imaging (04/28/2016, 35761-6) are reimbursable pursuant to 8 Cal. Code of Reg. Section 9983. Penalty and interest pursuant to Labor Code Section 4622 is applicable to unpaid balances herein found payable, interest running from the date of receipt of the allowed billings through the date of payment.

Cost and Sanctions

Nothing in the evidentiary record demonstrates that the actions of defendant in issuing sub-standard objections or EORs were willful. There is no good cause to impose sanctions or allow costs against defendant.

DATED AT OXNARD, CALIFORNIA

DATE: 05/11/2021

WILLIAM M CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE