

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

VERONICA VASQUEZ, *Applicant*

vs.

**EAST COAST FOODS, dba ROSCOE'S HOUSE OF
CHICKEN AND WAFFLES;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9248422; ADJ9247183
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision after Reconsideration.

Accurate Interpreting and Maciej Majzel, D.C. (collectively lien claimants) seek reconsideration of the Joint Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 12, 2020. The WCJ found that lien claimants' liens were dismissed pursuant to Labor Code section 4903.8(d) & (e), and that lien claimants were barred from recovering their liens.¹ (Lab. Code, § 4903.8(d) & (e).) The WCJ ordered that lien claimants take nothing on their liens.

Lien claimants contend that the WCJ should not have admitted Ms. Kulikova's deposition testimony because defendant failed to comply with Code of Civil Procedure section 2025.620;² that lien claimants made a prima facie showing that Ms. Kulikova's declarations complied with section 4903.8(d), which shifted the burden to defendant to demonstrate the Ms. Kulikova was not competent to make her declarations; and that lien claimant cured the defects in Ms. Kulikova's

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

² As we ruled in our September 19, 2019 Decision After Reconsideration, "there is no record of lien claimants objecting to the deposition of Ilona Kulikova during the trial. Therefore, the WCJ properly admitted the transcript into evidence." (Decision After Reconsideration, September 12, 2019, p. 3:18-19.) Lien claimants raised the same arguments in its Petition, and we find no reason to change our ruling on this issue.

declarations with their amended section 4903.8(d) declarations dated June 12, 2019, and their liens should be heard on the merits.

Defendant did not file an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On September 12, 2019, we issued our Opinion and Decision After Reconsideration (Decision After Reconsideration). We rescinded the June 19, 2019 Joint Findings and Order and substituted it with our Findings of Fact and Orders. We found that: “1. The declarations signed by Ilona Kulikova are not declarations by a person competent to testify to the facts stated. [¶] 2. Lien claimant John Donahue filed a single declaration by Ilona Kulikova. [¶] 3. The issue of the liens of Maciej Majzel, D.C. and Accurate Interpreting is deferred with jurisdiction reserved at the trial level.” We ordered that the lien of John Donahue, M.D. be dismissed and that the matter returned to the trial level for further proceedings. The specific issue that we deferred pertained to lien claimants’ amended section 4903.8(d) declarations dated June 11, 2019. These amended declarations “were not considered by the WCJ in reaching his decision because they were not filed together with the lien. The WCJ did not set forth reasoning to support his conclusion that an invalid declaration renders the lien invalid and he need not consider additional declarations.”

On January 29, 2020, the WCJ held another lien trial. As reflected in the handwritten comments in the minutes of hearing, defendant argued that the new declarations were not valid while lien claimants argued that they could cure any defect in their declarations. The minutes of hearing also indicate that no new evidence was offered by either party. (Minutes of Hearing, January 29, 2020.)

In the Report, the WCJ explained why lien claimants’ liens were barred by section 4903.8(d) and (e):

Labor Code section 4903.8(d) requires the declaration to be filed with the lien filed after 1/1/2013. Labor Code section 4903.8(e) holds a lien filed after 1/1/2013 without said declaration is invalid. There is no provision to cure this requirement. The undersigned found replacement declarations filed late are not allowed based

upon the statute. The undersigned found the replacement declarations in this case were an untimely and invalid attempt to cure this requirement. The undersigned finds lien claimants failed to meet this requirement of filing. The failure to meet the requirements of filing has the result that the jurisdiction of the Board is not invoked. If jurisdiction of the Board is not invoked the lien claimant cannot prevail, and it is appropriate to dismiss the liens as defective filings.

(Report, *supra*, pp. 2.)

DISCUSSION

I.

At issue in this matter is the declaration requirement set forth in section 4903.8(d), which became effective on January 1, 2013, as part of Senate Bill 863. It provides, in relevant part:

At the time of the filing of a lien . . . 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).)

Section 4903.8(d) requires that the declarant (or declarants) be competent to testify to the matters asserted in the declaration. Section 4903.8 does not define what is meant by the phrase “competent to testify.” However, Evidence Code sections 700 and 701 address the competency of witnesses to testify. Evidence Code section 700 states, “[e]xcept as otherwise provided by statute, every person, irrespective of age, is qualified to be a witness and no person is disqualified to testify to any matter.” (Evid. Code, § 700.) Evidence Code section 701 states that a person is disqualified to be a witness if the person is:

- (1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him; or
- (2) Incapable of understanding the duty of a witness to tell the truth.”

(Evid. Code, §§ 700, 701.)

Thus, the section 4903.8(d) declarant must be: 1) a natural person; 2) able to express him or herself concerning the matter so as to be understood; and 3) capable of understanding the duty

of a witness to tell the truth. Here, there are no serious arguments that Ms. Kulikova is not competent to testify as defined in Evidence Code sections 700 or 701.

We agree with lien claimants' argument in its Petition that Ms. Kulikova's declarations are prima facie evidence as to their validity; they comply with section 4903.8(d) in that they declared under penalty of perjury the facts found in subsections (d)(1) and (d)(2). Therefore, the burden shifted to defendant to prove that Ms. Kulikova's declarations were invalid.

The WCJ concluded that Ms. Kulikova's declarations were signed by someone other than the signatory, and that Ms. Kulikova's section 4903.8(d) declarations were invalid. In the Report, the WCJ cited to Ms. Kulikova's testimony that someone else affixed her signature to her section 4903.8(d) declarations with her permission. However, Ms. Kulikova had no recollection of authorizing her signature for the section 4903.8(d) declarations at issue in this case:

MR. RONDEAU: Do you independently remember this particular document being generated? That's his question -- as opposed to any other declaration like this?

THE WITNESS [Ms. Kulikova]: If I remember --

MR. RONDEAU: This particular document as opposed to however many thousands of declarations, do you remember this particular document today? That's his question.

THE WITNESS: No.

(Report, *supra*, p. 3.)

Lien claimants argue that Ms. Kulikova's declarations are valid because she "is not only aware that her S signature is affixed to said declarations, but more importantly that it was authorized and under the supervision of herself." (Petition, *supra*, at p. 4:21-23.)

We agree with the WCJ's rationale for invalidating Ms. Kulikova's section 4903.8(d) declarations; there is no direct link between Ms. Kulikova and her section 4903.8(d) declarations at issue. Based on Ms. Kulikova's testimony, it appears that her subordinates prepare her section 4903.8(d) declarations, and that the subordinates affix her electronic signature to the declarations. However, Ms. Kulikova did not have a recollection of authorizing her signature on the two section 4903.8(d) declarations at issue. Thus, Ms. Kulikova's declarations are not declarations by a person competent to testify to the facts stated.

II.

Thus, lien claimants' liens rest upon the amended declarations filed on June 11, 2019. In the Report, the WCJ made the following determination regarding the amended declarations:

Second, said liens were filed on 6/30/2017. The amended declarations in this case were filed 6/11/2019. Waiting almost two years to file the correct declaration in this case after setting the matter for trial caused "unjustifiable delay" as set forth in *Fernando Calderon v Matharu Assisted Living*; SCIF (2019) Cal. Wrk. Comp. PD Lexis 376. Writ denied. Analogy to this pre 1-1-13 lien filing case provides guidance and support for the principle that a party who does not act timely and prejudices the opposing party may not prevail. Here, SCIF took the deposition of Ilona Kulikova in an effort to address the issue of declarations under Labor Code section 4903.8 in this case only to have new declarations filed after the matter was set for trial.

(Report, *supra*, p. 3.)

We agree with the WCJ that laches requires "proof of a delay which results in prejudice or change of position." (*Brown v. State Pers. Bd.* (1985) 166 Cal.App.3d 1151, 1161 [213 Cal.Rptr 53].) Unfortunately, the Report does not point out the prejudice or change in position. Upon return to the trial level, we recommend that the parties address this issue. We note that defendant has the burden of proof regarding its laches defense.

Accordingly, we rescind the F&O and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's February 12, 2020 Joint Findings of Fact is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 21, 2021

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

**VERONICA VASQUEZ
ACCURATE INTERPRETING
QBC
MACIE J. MAZEL
MARKEL SERVICES
D' ANDRE LAW
STATE COMPENSATION INSURANCE FUND**

SS/abs

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