

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

YENY GARCIA, *Applicant*

vs.

SECURITAS SECURITY SERVICES USA, INC.;
Administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

**Adjudication Number: ADJ9761024
Marina del Rey 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.

Delmar Medical Imaging (lien claimant) seeks reconsideration of the Findings of Fact and Order Regarding Lien of Delmar Medical Imaging (F&O) issued by the workers' compensation administrative law judge (WCJ) on April 20, 2018. As relevant herein, the WCJ found that lien claimant's lien was invalid when filed on October 21, 2016; that the "amended" lien filed on August 21, 2017, was untimely; that lien claimant was required to file its lien no later than 18 months after the last day of service; that lien claimant's lien was barred by the statute of limitations; and that the provisions of Code of Civil Procedure section 473 were not met. Based on these findings, the WCJ ordered lien claimant's lien dismissed, and that it take nothing on its lien.

Lien claimant contends it should be entitled to relief based on Code of Civil Procedure section 473.

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 for Reconsideration 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 affirm the F&O.

FACTUAL BACKGROUND

Applicant, while employed during the period November 11, 2009, through February 8, 2013, as a field supervisor by Securitas Security Services USA, claims to have sustained injury arising out of and in the course of employment to her arms, elbows, wrists, back, head, knees, neck, neuro, sleep, feet, toes, and fingers. (Minutes of Hearing (MOH), December 20, 2017, p. 2:4-7.)

Applicant's workers' compensation claim resolved by way of compromise and release, as approved by a WCJ, on September 10, 2015. (MOH, September 10, 2015.)

On October 21, 2016, lien claimant filed its Notice and Request for Allowance of Lien (Notice of Lien). The Notice of Lien included a declaration by Marjan Ghorbanian entitled "Declaration Pursuant to Labor Code Section 4903.8(d)." ¹ (Lien Claimant Exhibit 2, Declaration, October 21, 2016.) Ms. Ghorbanian's declaration did not include the language found in section 4903.8(d)(1) or (d)(2). ² (Lab. Code, § 4903.8(d)(1) & (2).)

On August 21, 2017, Ms. Ghorbanian submitted an "Amended Declaration Pursuant to Labor Code Section 4903.8(d)," which included the language found in section 4903.8(d)(1) and (d)(2). (Lien Claimant Exhibit 3, Amended Declaration, August 21, 2017.)

The lien trial was held over three days on December 20, 2017, January 31, 2018, and February 21, 2018.

On January 31, 2018, the parties proceeded on the threshold issue regarding lien claimant's compliance with section 4903.8(d): whether 1) the statute of limitations is tolled with a noncompliant declaration; and 2) the lien was barred by the statute of limitations. (MOH, January 31, 2018, p. 2:11-14.) Lien claimant submitted four exhibits, and the WCJ admitted all of the exhibits except Lien Claimant Exhibit 4.

At the hearing on February 21, 2018, Ms. Ghorbanian testified that she has worked for lien claimant since 2004, and she works in billing as the collections supervisor. Her duties as the collections supervisor included "all things" related to workers' compensation cases, such as preparing the calendars for the hearing representatives and filing liens and DORs. Ms. Ghorbanian testified that she used QuickEAMS software to fill out her October 2016 4903.8(d) declaration,

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

² Ms. Ghorbanian's declaration states, as relevant herein, "Pursuant to Labor Code Section 4903.8(d), I declare under penalty of perjury that we are entitled to payment for the expenses as provided in subdivision (d) of Section 4903 at the time the expenses were incurred..[sic]" (Lien Claimant Exhibit 2, Declaration, October 21, 2016.)

and that she believed her declaration was complete and accurate. She assumed this because QuickeAMS is a JET File approved service, and she pays \$200 a month for this service. Ms. Ghorbanian also recognized her amended 4903.8(d) declaration. She testified that she personally prepared the amended declaration and added the two extra paragraphs. She also contacted JET File in June 2017 to inform them about this issue with the missing paragraphs in her 4903.8(d) declaration.

On cross-examination, Ms. Ghorbanian testified that she has been using QuickeAMS since May 2013 to file liens; and that she is familiar with section 4903.8(d), which went into effect in 2013, and the language that is required. Ms. Ghorbanian testified that she assumed the form she was using was correct because it was from QuickeAMS. When she uses QuickeAMS, Ms. Ghorbanian stated that she only needs to input the ADJ number, and the software generates all the necessary data to create the lien. Ms. Ghorbanian stated that she checks the liens for accuracy prior to submission. Lastly, Ms. Ghorbanian testified that she was unaware that the declarations were incorrect from 2013 to 2017 because she did not receive any objections. She later became aware of the issue with the forms in 2017 when she started to receive objections. (MOH, February 21, 2018, p. 2:17-4:6.)

DISCUSSION

“A lien claimant may seek relief . . . by utilizing a procedure substantially similar to Code of Civil Procedure section 473” (*Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206.) Code of Civil Procedure section 473(b) states, in pertinent part:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

...

Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties.

(Code Civ. Proc., § 473(b).)

The burden of proof rests on the party with the affirmative of the issue. (Lab. Code, § 5705.) “All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence.” (Lab. Code, § 3202.5.) Lien claimant thus holds the burden of proof to establish all elements necessary to establish its claim. (See *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1117 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).)

Here, lien claimant seeks relief pursuant to Code of Civil Procedure section 473(b). Thus, lien claimant has the burden of proof of its alleged mistake, inadvertence, surprise, or excusable neglect with a sworn affidavit. (See Code Civ. Proc., § 473(b).) Lien claimant failed to submit a sworn affidavit. Thus, it appears that lien claimant failed to meet its burden of proof pursuant to Code Civil Procedure section 473(b).

However, Ms. Ghorbanian testified at trial regarding the reasons why her section 4903.8(d) declaration was incomplete. The WCJ did not find Ms. Ghorbanian’s testimony credible:

This WCJ assessed Ms. Ghorbanian’s overall testimony, demeanor and determined that it was self-serving and did not demonstrate inadvertence, surprise, mistake or excusable neglect required by Code of Civil Procedure section 473. She made contradictory statements about her knowledge of requirements for the Declaration. She placed reliance on a filing and document system authorized by an approved vendor. There was no testimony about any independent investigation, research, training, or other attempts to verify that the lien was properly filed with complete, accurate and required documents at the time of filing. She further justified the lack of her own verification of a proper filing because there was no contemporaneous objection made by Defendant when the lien was filed and served.

(Report, *supra*, p. 7.)

We have given the WCJ’s credibility determination great weight because the WCJ had the opportunity to observe the demeanor of Ms. Ghorbanian. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determination(s). (*Id.*) Thus, we agree with the WCJ’s conclusion that Ms. Ghorbanian’s testimony did not demonstrate inadvertence, surprise, mistake, or excusable neglect.

Accordingly, we affirm the F&O.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's April 20, 2018 Findings of Fact and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2021

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

**YENY GARCIA
DELMAR MEDICAL IMAGING
BLACK AND ROSE**

SS/abs

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