

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

ISABEL AGUILAR, *Applicant*

vs.

**MISSION IMPORTS;
SECURITY NATIONAL INSURANCE COMPANY,
administered by AMTRUST, *Defendants***

**Adjudication Number: ADJ13084654
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

A lien trial was held in this matter on December 2, 2021. The issues raised for adjudication included injury arising out of and occurring in the course of employment (AOE/COE), lien claimant's medical-legal lien, entitlement to penalties and interest, whether defendant waived its right to contest the charges, whether lien claimant's services were properly medical-legal expenses, and whether the services were reasonable and necessary.

The proper analysis for these issues was laid out the Appeals Board's en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc). There, we held that a lien claimant holds the initial burden of proof pursuant to Labor Code¹ sections 4620 and 4621: that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its

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

services were reasonably, actually, and necessarily incurred. Additionally, we held in *Colamónico* that a defendant does not waive an objection based on section 4620 or 4621 by failing to raise these objections in accordance with section 4622.

If a lien claimant meets its burden of proof pursuant to sections 4620 and 4621, the analysis shifts to the reasonable value of the invoices pursuant to section 4622. A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1); 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant's burden. If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider's billing. (Cal. Code Regs., tit. 8, § 10451.1(f)(1)(A); see *Colamónico, supra*.) A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest. A lien claimant has the burden of proof of the reasonable value of its services.

While it appears the WCJ addressed the issue of whether a contested claim existed at the time the expenses were incurred, the rest of his analysis is less clear and does not appear to follow the framework laid out in *Colamónico*. Accordingly, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for the WCJ to conduct further proceedings as he determines necessary and to issue a new decision consistent with this opinion and the holdings in *Colamónico*.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the December 31, 2021 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 31, 2021 Findings and Order 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 11, 2022

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

**PREMIER PSYCHOLOGICAL SERVICES
PAPERWORK AND MORE
MEDICAL COST REVIEW**

PAG/abs

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