WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EMIDIO ESCALANTE, *Applicant*

vs.

BAH MANAGEMENT CORP.; SECURITY NATIONAL INSURANCE COMPANY as administered by AMTRUST NORTH AMERICA, *Defendants*

Adjudication Numbers: ADJ9935791; ADJ9935792
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant Citywide Scanning Service, Inc., seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on June 17, 2021, wherein the WCJ found in pertinent part the following:

> 1. Subpoenas issued prior to May 27, 2015, are invalid;
> 2. The Official Medical Fee Schedule is prima facie evidence of reasonableness of charges; and
> 3. Due to lack of specific evidence presented, reasonable inferences were required to be drawn, and the general necessity of obtaining medicals, the reasonable value of charges herein are within a range determined to be 50% of the fee schedule.

The WCJ ordered defendant to pay lien claimant 50% of the current fee schedule for services commencing May 28, 2015, less credit for sums paid.

Lien claimant contends that even if lien claimant failed to serve subpoenas on defendant, it had notice of the subpoenas and that it has not shown prejudice; that all subpoenas were served after Applications of Adjudication (Applications) were filed on April 28, 2015 and that a contested

[1] Commissioner Marguerite Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

claim existed; that the services were reasonable and necessary; that applicant never made a demand for the documents so that AD Rule 9982 (Cal. Code Regs., tit. 8, § 9982) did not apply; and that the charges were reasonable.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will rescind the WCJ's F&O and substitute a new Findings of Fact, that finds that a contested claim existed, that the services were reasonable and necessary, and that lien claimant is entitled to payment. We will defer the issue of the amount of payment and return this matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed a specific injury to his leg, back, knee, ankle, and foot while employed by defendant as a dishwasher on August 30, 2014. (ADJ9935791)

Applicant claimed cumulative injury to his upper extremities, lower extremities, and back while employed by defendant as a dishwasher during the period from March 17, 2014, to March 17, 2015. (ADJ9935792)

On October 1, 2014, AmTrust North America issued a letter to applicant, wherein it accepted liability for applicant's specific injury. (ADJ9935791) (Exhibit C, 10/1/2014.)

On February 23, 2015, AmTrust North America issued a letter to applicant in ADJ9935791, informing applicant that it was in receipt of the medical report from Kambriz Hannani, M.D., dated February 5, 2015. The letter objected, pursuant to Labor Code sections 4061 and 4062, to the need for further medical treatment, maximum medical improvement status, nature and extent of disability, temporary disability and permanent disability. (Exhibit 8, 2/23/2015.)

On April 28, 2015, applicant filed Applications in ADJ9935791 and ADJ9935792. Paragraph 9 of the Applications state, "This application was filed because of a disagreement regarding liability for: Temporary disability indemnity, Permanent disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Compensation at proper rate, Other (Specify) ALL BENEFITS."

From April 30, 2015, to August 21, 2015, lien claimant issued Notice(s) to Interested Parties (Notices) to the entities regarding the subpoenas. (Exhibit 3, 4/30/2015-8/21/2015.) At the bottom of each Notice there is a fully executed Proof of Service by mail indicating the date of service and the entity served. (Exhibit 3, 4/30/2015-8/21/2015.) From April 30, 2015, to August 24, 21015, lien claimant issued subpoenas to 18 entities. (Exhibit 2, 4/30/2015-8/24/2015.)

On May 18, 2015, defendant issued a "NOTICE OF DELAY IN DETERMINING LIABILITY FOR WORKERS' COMPENSATION BENEFITS" in ADJ9935792, on the grounds that it needed to determine whether the injury is industrially related and it needed applicant's "deposition and a possible medical legal evaluation." (Exhibit A, 5/18/2015.)

On July 24, 2015, AmTrust North America issued a letter to applicant denying all liability for his claim of cumulative injury in ADJ9935792. (Exhibit B, 7/24/2015.)

On October 10, 2016, the cases were resolved via Stipulations with Request for Award (Stipulations). Paragraph 9 B states that: "SETTLEMENT IS BASED ON THE AME REPORT OF DR. NEWTON WHO FINDS INJURY ONLY TO THE LOW BACK ON 8/30/14 AND NO CT CLAIM. (Capitals in original.)"

On April 26, 2017, lien claimant filed a lien for its medical-legal services.

On May 28, 2019, and June 6, 2019, defendant issued letters objecting to the subpoenas. (Exhibit D, 5/28/2019 and 6/6/2019.)

On March 23, 2021, the parties proceeded to trial on the lien of Citywide Scanning. Citywide Scanning estimated billing for charges totaling $10,585.46, less payments made by defendant in the amount of $2,748.70, leaving a balance claimed of $7,438.52, increased to $11,404.58, inclusive of penalty and interest. Defendant claimed the charges exceeded the fee schedule, cost petitioner failed to submit a formal request for reimbursement, and the subpoenas for the record locations obtained were premature. Defendant also contended that the subpoenas were defective because they were not served on defendant.

On June 17, 2021, the WCJ issued the F&O.

On July 12, 12, 2021, lien claimant filed a Petition for Reconsideration.

DISCUSSION

I.

The threshold issue when considering reimbursement of a medical-legal expense is whether there is a contested claim. A party's ability to subpoena records is governed by the Labor Code

and the WCAB Rules of Practice and Procedure which generally provide "adequate tools to the practitioner for liberal discovery." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) Thus, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Ibid.*)

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See Lab. Code, §§ 3205.5, 5705.5; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 (Appeals Board en banc).) As we explained in our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal. Comp. Cases 1059 (Appeals Board en banc), Labor Code section 4622[2] provides the framework for reimbursement of medical-legal expenses. Subsection (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (Lab. Code, § 4622(f).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico*, *supra*, 84 Cal.Comp.Cases 1059.)

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs "for the purpose of proving or disproving a contested claim." (Lab. Code, § 4620(a).) Copy services fees are considered medical-legal expenses under 4620(a). (*Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 (Appeals Board en banc).) Lien claimant's initial burden in proving entitlement to reimbursement for medical-legal expense is to show that a "contested claim" existed at the time the service was performed.

Section 4620(b) states that:

> 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.

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

> (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).)

The determination of whether a purported medical-legal expense involves a "contested claim" is a fact driven inquiry.

In the Opinion on Decision, the WCJ states,

> Review of the 4/28/15 application filed in ADJ 9935791 reveals an allegation of injury occurring on 8/30/14 for injury to the upper extremities, lower extremities and back. The treating physician has already been designated as Dr. Hubbard. This case was **accepted** on 10/1/14 per Exhibit C.
>
> Review of the 4/28/15 application filed in ADJ 9935792 reveals an allegation of injury occurring from 3/17/04 through 3/17/15 to upper extremities, lower extremities and back. This case was delayed on 5/18/15 (Exhibit A) and denied on 7/24/15 (Exhibit B).
>
> There is no indication of the need to prove or disprove a contested claim in ADJ9935791 as the injury was admitted to the upper extremities, lower extremities and back. Case ADJ 9935792 is the mirror image of the specific claim with the exception that it is plead as a continuous trauma.

(Opinion on Decision, 6/17/2021, p. 4.)

We disagree. The WCJ relies on defendant's acceptance of liability for the specific injury in October 2014 and stresses that the continuous injury claim involved the same body parts claimed in the specific injury claim, and therefore lien claimant failed to prove a contested claim. First, the cumulative injury claim is not for the same body parts; it was denied by defendant on July 24, 2015, and defendant continued to deny it even at the time of the Stipulations. On February 23, 2015, defendant objected to the report of applicant's treating physician, pursuant to sections 4061 and 4062, which is clearly not an acceptance of liability for payment of all species of claimed benefits. Moreover, in the specific injury claim, the only body part that defendant accepted was the back, and this was made clear in the Stipulations. The fact that the WCJ has misconstrued the claims has resulted in the finding that there was not a contested claim, when in fact a contested claim existed as early as October 1, 2014, when defendant accepted applicant's claim for the back only and not the other body parts.

On April 28, 2015, applicant filed Applications in both cases, and in both Applications, Paragraph 9 states that, "This application is filed because of a disagreement regarding liability for:

Temporary disability indemnity, Permanent disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Compensation at proper rate, Other (Specify) ALL BENEFITS." Thus, contested claims existed at the time that the subpoenas were issued from April 30, 2015 to August 24, 2015.

Since lien claimant met its burden of proof pursuant to section 4620(a), it must then show that the purported medical-legal expense was reasonably, actually, and necessarily incurred. (Lab. Code, § 4621(a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Id.*)

Parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases. (*Colamonico*, *supra*, 84 Cal.Comp.Cases 1062; *Allison*, *supra*, 72 Cal.App.4th at p. 663; see *Cornejo v. Younique Cafe, Inc*. (2015) 81 Cal.Comp.Cases 48, 55 [2015 Cal. *Wrk. Comp.* LEXIS 160] (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 [2013 Cal. Wrk. Comp. LEXIS 69] (Appeals Board en banc).)

Defendant contends that lien claimant should not be paid for any of the subpoenas because they were not properly served on defendant. It contends in its Answer that:

> [T]heir initial failure to serve the subpoenaed records on Amtrust or the employer at the time of their services categorically denied the defendant the opportunity to respond to the subpoenas as they would have deemed at the time had they been properly, statutorily and procedurally served.

(Answer, p. 2.)

Yet, defendant provides no further explanation as to why it was denied an opportunity to respond to the subpoenas or why it believes that its due process rights were implicated. As alleged by lien claimant, defendant did have notice by way of the Notices. Moreover, defendant did not attempt to quash any of the subpoenas on the grounds that service was defective. Defendant asserts that service of the subpoenas must be made so that the consumer has an opportunity to object. However, the "consumer" in this case is applicant, so that this argument is inapposite. The subpoenas were directed to third parties, and the privacy right of the consumer / applicant was not implicated since applicant arranged for issuance of the subpoenas. Instead, it is applicant's right to discovery that is implicated, and, other than its evident wish to avoid liability for payment, it does not appear that defendant was prejudiced. In sum, defendant's only real complaint is that it

does not wish to pay for the subpoenas, and here, whether service was initially defective does not determine that issue.

II.

Section 5307.9 states,

> On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(Lab. Code, § 5307.9.)

AD Rule 9982(d)(1)[3] states in pertinent part that:

> . . . . There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. . . .

(Cal. Code Regs., tit. 8, § 9982(d)(1).)

Here, the WCJ apparently believed that it was significant that applicant never made a demand upon defendant to obtain the records. Although the above statute and regulation do not allow for payment of a subpoena duces tecum served within 30 days of a request for records, it does not state that a request for records must be made before they can be subpoenaed. In other words, there is no mandate or requirement that an applicant or their attorney must make a request for records from the employer or the insurer prior to requesting that a subpoena issue for records.

[3] WCJ's Report states Labor Code 9982(d)(1) requires a demand prior to issuing a subpoena. This is not correct.

A failure to make such a request is immaterial, and the WCJ misinterprets this rule and in doing so prevents the lien claimant from full reimbursement for its services.

The next issue is to determine the amount lien claimant is owed for its services. The WCJ found that the subpoenas issued from May 27, 2015, through August 24, 2015, were valid and should be paid at 50% of the official fee schedule. In reaching this conclusion, the WCJ speculated that "it has not been shown that the records have been reviewed, requiring an inference be made, this greatly diminishes the value of the services provided and puts at risk the ability of lien claimant to recover at all." (Opinion on Decision, p. 5.) Notwithstanding the WCJ's belief, there is simply no requirement that the records be reviewed, or even that any records exist. As explained above, the standard is reasonably calculated to lead to the discovery of relevant evidence, and it is not a substantial evidence standard.

Accordingly, we rescind the F&O, substitute a new Findings of Fact that finds that a contested claim existed at the time lien claimant provided its services and that it should be paid for its services, but we defer the amount and return this matter to the trial level 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, the June 17, 2021, Findings and Order is **RESCINDED** and that a new Findings of Fact be **SUBSTITUTED** in its place as follows:

FINDINGS OF FACT

1. Lien claimant Citywide Scanning Services, Inc., met its burden under Labor Code section 4620 to show that a contested claim existed at the time it provided its services beginning on April 30, 2015.

2. Lien claimant Citywide Scanning Services, Inc., met its burden under Labor Code section 4621 to show that its services were reasonable and necessary at the time they were provided beginning on April 30, 2015.

3. Lien claimant Citywide Scanning Services, Inc., is entitled to payment under Labor Code section 4622 for services it provided beginning on April 30, 2015. The issue of the amount owed, including interest and penalties, is deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2025

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

EMIDIO ESCALANTE
CITYWIDE SCANNING SERVICE
HALLETT, EMERICK, WELLS & SAREEN

DLM/oo

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