

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

**MAHALIA WILSON, *Applicant***

**vs.**

**ADVANCED MEDICAL PERSONNEL; STATE COMPENSATION INSURANCE  
FUND, *Defendants***

**Adjudication Number: ADJ10418270  
Lodi District Office**

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

We previously granted reconsideration to further study the legal and factual issues raised in the Petition for Reconsideration filed by lien claimant, applicant's prior attorneys. This is our Opinion and Decision After Reconsideration.

Lien claimant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on May 22, 2023, whereby the WCJ found in pertinent part that the lien claim for attorney's fees was time-barred as a result of lien claimant's failure to object to a proposed Compromise & Release agreement (C&R) submitted by defendant SCIF or to timely seek reconsideration of the WCJ's Order Approving Compromise and Release (OACR).

In the Petition, lien claimant asserts that it filed a valid lien claim for attorney's fees on January 11, 2018, and that, because its lien has not yet been resolved, it is entitled to collect on the lien in an amount determined reasonable by the WCJ.

The WCJ submitted a Report and Recommendation on Reconsideration (Report), recommending that reconsideration be denied. After the WCJ issued the Report, applicant's current counsel filed an "Objection" to the Petition for Reconsideration, which we accept as an Answer. (Cal. Code Regs., tit. 8, §§ 10964, 10517 ["Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof."].)

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the Findings of Fact; substitute new Findings of Fact that defer the issue of lien claimant's lien; and return the matter to the WCJ for further proceedings consistent with this decision and to issue a new decision from which any aggrieved person may timely seek reconsideration.

## **BACKGROUND**

On May 17, 2016, lien claimant filed an application for adjudication on applicant's behalf. (Application for Adjudication, May 17, 2016.) On December 15, 2017, applicant dismissed lien claimant Shatford Law as her counsel of record and appointed Central Valley as her current counsel.

On January 11, 2018, lien claimant filed a lien for attorney's fees, which was served upon applicant's current attorneys and defendant SCIF that same day.

On November 20, 2020, SCIF filed a C&R signed by applicant, her current attorneys, and SCIF; and a proposed order approving. Pursuant to the C&R, applicant and defendant agreed to settle the case-in-chief for a total amount of \$110,000.00. Paragraph 7 of the C&R agreement provided that various deductions were to be taken from the total settlement amount, including, as relevant, \$16,500.00 "requested as applicant's attorney's fee." (C&R, p. 6.) Paragraph 8 of the C&R agreement stated: "Defendant will pay, adjust, or litigate all valid, unresolved medical or medical-legal liens of record as of the date of the order approving C&R...." The C&R was signed by applicant, applicant's current attorneys, and defendant's attorney. Lien claimant was not a party to the C&R.

As stipulated by the parties at trial, on November 24, 2020, Shatford Law received the proposed C&R and the proposed OACR.

On November 25, 2020, the WCJ issued the OACR, which was served on all parties, and on lien claimant on December 14, 2020. By the OACR, the WCJ awarded the entirety of the \$16,500.00 in requested attorney's fees to applicant's current attorneys. The OACR did not reference the lien claim for attorney's fees and did not order that the fees be in held trust pending an agreement between applicant's prior and current attorneys.

On October 18, 2022, lien claimant filed a Declaration of Readiness to Proceed on its lien claim, which resulted in a lien trial on March 30, 2023. During the lien trial, the parties stipulated to the following issues for adjudication:

1. Whether Shatford Law, as the prior attorney, is entitled to an attorney's fee.
2. If prior counsel, Shatford Law, is entitled to an attorney's fee, is the attorney's fee barred due to failure to appeal the Order Approving Compromise and Release, dated November 25, 2020, after being served with the Order Approving Compromise and Release.
3. If Shatford Law is entitled to an attorney's fee and it is not barred by failure to act after receipt of the Order Approving compromise and Release, is State Compensation Insurance Fund responsible for payment of the attorney fees or is central Valley Injured Worker Legal clinic responsible for payment of the attorney fees.
4. Whether the phrase in the Compromise and Release "Defendant will pay, adjust or litigate all valid unresolved medical or medical/legal liens of record," acts as a savings clause for the prior attorney's fee.
5. If, as prior counsel, Shatford Law is entitled to a reasonable attorney's fee and the attorney's fee is not barred, what is the amount of a reasonable attorney fee payable to Shatford Law.

(Minutes of Hearing (MOH), March 30, 2023, pp. 2-3.)

On May 22, 2023, the WCJ issued the Findings of Fact, finding that lien claimant was not entitled to payment on its lien. The WCJ found that the lien claim was time-barred because lien claimant failed to object to the proposed C&R or timely seek reconsideration of the OACR, despite having notice that neither addressed its lien claim. The WCJ also concluded that, because lien claimant was not entitled to payment on its lien for attorney's fees, the identity of the party responsible for paying those fees was "moot." (Opinion on Decision, May 22, 2023, p. 3; MOH, March 30, 2023, p. 3, Issue No. 3.)

On June 15, 2023, lien claimant filed a Petition for Reconsideration of the WCJ's Findings of Fact.

## **DISCUSSION**

As noted above, the WCJ found that lien claimant was not entitled to payment on its lien for attorney's fees because it failed to object to the terms of the proposed C&R or timely seek

reconsideration of the OACR despite having notice that neither document addressed its lien claim. In the Report, the WCJ also stated that lien claimant had “waived” its objection to nonpayment because it failed to place defendant and applicant’s current attorney on notice of its lien. The WCJ stated:

[Shatford Law] fails to appreciate that failing to act when it is clear their interest was not considered ultimately waives objection to not receiving a fee....[P] The Petitioner is of the impression that just because an attorney fee was recited in the C&R and Ordered in the OACR there was no obligation to put all parties on notice that Petitioner has an interest in the awarded fee. By not taking any action, neither the applicant’s counsel nor the defendant was on notice that there was a deficiency in the settlement.

(Report, June 26, 2023, p. 3.)

We reject the WCJ’s conclusions. To the contrary, lien claimant was not required to “object” to the proposed C&R or seek reconsideration of the OACR in order to preserve its right to recovery on its lien for attorney’s fees. The WCJ is also incorrect that lien claimant’s failure to object to the C&R and/or the OACR deprived defendant and applicant’s current attorneys of notice of its lien and resulted in a “waiver” of any objection to nonpayment.

First, it is well-settled that an applicant’s attorney’s appearance in a matter is tantamount to the filing of a lien claim because it puts the defendant (and, naturally, the WCJ) on notice that a fee will be claimed. (See, e.g., *Rocha v. Puccia Construction Co.* (1982) 47 Cal.Comp.Cases 377, 380 (Appeals Board en banc); *State Comp. Ins. Fund v. Workmen’s Comp. Appeals Bd. (Chester)* (1971) 36 Cal.Comp.Cases 678 (writ den.); *Sierra Pacific Industries v. Workers’ Comp. Appeals Bd. (Lewis)* (1979) 44 Cal.Comp.Cases 573 (writ denied).) In *Lewis*, the Appeals Board held that when an applicant’s attorney appears, that attorney has a lien that attaches to any amount that is thereafter payable as compensation, and defendant(s) must retain sufficient funds from the compensation award to cover the attorney’s lien. A defendant’s failure to do so may subject it to double liability in order to pay the noticed, unresolved fee lien.

Here, lien claimant provided defendant notice of its potential lien when it filed applicant’s application for adjudication on May 17, 2016 – *well* before defendant submitted the proposed C&R and the WCJ approved it in November 2020. Yet, defendant did not resolve the lien, and the WCJ’s OACR did not award lien claimant any attorney’s fees or order that the awarded fees be held in trust. Thus, the lien claim remains unresolved.

When a C&R does not resolve a known lien claim, the WCJ has only two options: 1) the WCJ may set the lien for hearing and determination prior to the approval of the C&R,<sup>1</sup> or 2) the WCJ may defer the lien and defendant accepts liability for the determined fee amount.<sup>2</sup>

In this case, the WCJ followed neither of these procedures. As a result, her finding that lien claimant is not entitled to payment for attorney's fees was erroneous.

We also note that the WCJ had a duty to locate any lien claims contained in the court file that might attach to applicant's settlement, that is, be payable from applicant's proceeds, prior to approving the C&R. Pursuant to WCAB Rule 10759,

In accordance with Labor Code section 5502, the workers' compensation judge shall have authority to inquire into the adequacy and completeness, *including provision for lien claims*, of Compromise and Release agreements...and to issue orders approving Compromise and Release agreements....

(Cal. Code Regs., tit. 8, § 10759(a), italics added.)

Here, lien claimant filed its lien claim on January 11, 2018. It would appear that the WCJ simply failed to review the court file for the lien for attorney's fees prior to approving the C&R. In doing so, the WCJ did not fully consider adequacy of the C&R, and instead erroneously placed the burden on lien claimant to take even *further* action to provide notice of its lien by objecting to the proposed C&R and/or the OACR.<sup>3</sup>

Moreover, because the OACR did not resolve lien claimant's properly noticed lien, lien claimant was not aggrieved by the order, and a petition for reconsideration would therefore not have been ripe. (See *The Permanente Medical Group v. Workers' Comp. Appeals Bd. (Williams)* (1977) 73 Cal.App.3d [42 Cal.Comp.Cases 745]; *Oliver and Winston Inc. v. Workers' Comp. Appeals Bd. (Gregg)* (1983) 48 Cal.Comp.Cases 814 (writ denied).) As a result, we reject the WCJ's decision that lien claimant was required to seek reconsideration of the OACR in order to recover on its lien.

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<sup>1</sup> See Lab. Code, §§ 4906(a)-(b), 5001, 5002; Cal. Code Regs., tit. 8, §§ 10700(b), 10702, 10759(a).

<sup>2</sup> Lab. Code, §§ 4903(a), 4906(b), 5502; Cal. Code Regs., tit. 8, § 10330, 10787(a).

<sup>3</sup> Even if a lien is not presented to the WCJ or otherwise contained in the court file, "the appeals board may, without [a lien claim] having been made, order the payment of the claim to be made directly to the person entitled...." (Lab. Code, § 4905.) The Appeals Board may also "determine, and allow as liens...a reasonable attorney's fee for legal services pertaining to any claim for compensation...and [order] the reasonable disbursements in connection therewith." (Lab. Code, § 4903(a).)

We note that the WCJ's decision to hold lien claimant to the terms of the C&R and the OACR also violates the general principle that a contract is not binding upon nonparties. A compromise and release is a type of contract, and the legal principles governing compromise and release agreements are the same as those governing other contracts. (*Shriver v. Kuchel* (1952) 113 Cal.App.2d 421 ["A compromise and release agreement is determinative of the rights of the parties in a dispute."].) As we explained in *Burbank Studios v. Workers' Comp. Appeals Bd. (Burbank)* (1982) 134 Cal.App.3d 929 [47 Cal.Comp.Cases 832]: "For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties, and an acceptance by the other. A court has no authority to fashion a compromise and release agreement to which the parties have not themselves agreed." (*Id.* at p. 935; see Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 133; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App. 133, 137.)

Here, because lien claimant was not a party to the C&R, it clearly did not accept an offer to settle its lien claim via the agreement. Thus, as a matter of contract law, lien claimant was not contractually bound by the C&R, or, for that matter, the OACR, which approved the C&R's terms as drawn by the parties. (*Crowley v. Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1069 ["It goes without saying that a contract cannot bind a nonparty."].) The WCJ would have lien claimant *insert* itself as a party to the C&R, which would prohibit it from adjudicating, rather than settling, its lien claim. Such a requirement would violate lien claimant's due process rights, and we reject the WCJ's position to the contrary. (Cal. Code Regs., tit. 8, § 10702 ["No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard."].)

Based on the foregoing, we conclude that lien claimant has a valid attorney's fee lien that must be set for a hearing before the WCJ, who must determine a reasonable attorney's fee, identify those responsible for paying the fee, and order payment accordingly.

We note that, in calculating attorney's fees, the Appeals Board's basic statutory command is that the fee awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a) & (d).) Pursuant to Labor Code section 4906, "[t]he appeals board may determine what constitutes a reasonable amount" of attorney's fees, and the Appeals Board "shall be the final arbiter of reasonableness in all cases." (*Vierra v. Workers' Comp. Appeals Bd. (Vierra)* (2007) 154 Cal.App.4th 1142, 1148

[72 Cal.Comp.Cases 1128].) An attorney may not receive a fee unless it has been approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10840; *Bentley v. Industrial Acc. Com.* (1946) 75 Cal.App.2d 547.)

Labor Code section 4906(d) provides that, in establishing a reasonable attorney's fee, "consideration shall be given to the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained." (Lab. Code, § 4906(d); see also Lab. Code, § 4903; Cal. Code Regs., tit. 8, § 10844.) Once services are rendered, the WCJ may approve, increase, or reduce the fees requested, taking into consideration the factors listed in Labor Code section 4906(d), as well as the corresponding Rules of Practice and Procedure and guidelines established by the Appeals Board. (*Vierra, supra*, 154 Cal.App.4th at p. 1150.)

Here, after calculating the reasonable attorney's fee, the WCJ must identify those responsible for payment of the fees. In this regard, we note that while defendant is responsible for paying known attorney's fee liens (see *Lewis, supra*, 44 Cal.Comp.Cases at p. 574), it is not lost on us that applicant's current attorneys were also on notice of the lien for attorney's fees, yet decided to receive and retain the entire attorney's fee award. We remind applicant's current attorneys that it is improper and illegal for an attorney to retain an "unearned and unreasonable portion" of attorney's fees approved by the Appeals Board, as it results in unjust enrichment and may subject the attorney to liability based upon the general principles of equity in addition to any other grounds for liability determined applicable by the WCJ. (*American Psychometric Consultants, Inc. v. Workers' Comp. Appeals Bd. (Hurtado)* (1995) 36 Cal.App.4th 1626, 1645-1646 [60 Cal.Comp.Cases 559].)

Based on the foregoing, as our Decision After Reconsideration, we rescind the WCJ's Findings of Fact and substitute new Findings of Fact, which defer the issue of lien claimant's lien for attorney's fees. This matter is returned to the WCJ for further proceedings consistent with this decision, and a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact issued on May 22, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

## **FINDINGS OF FACT**

1. Mahalia Wilson, born [] while employed on May 2016, as a registered nurse at Bay Point, California, by Advanced Medical Personnel, sustained injury arising out of and in the course of employment to her left wrist, left ankle, back, neck and various other body parts.
2. At the time of injury, the employer's workers' compensation carrier was State Compensation Insurance Fund.
3. On January 11, 2018, Shatford Law filed a lien claim for attorney's fees.
4. The issue of Shatford Law's lien claim for attorney's fees is deferred.

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

## **WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 9, 2025**

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

**MAHALIA WILSON  
CENTRAL VALLEY LAW  
SHATFORD LAW  
STATE COMPENSTATION INSURANCE FUND**

**AC/md**

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