

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

CELSO JUAREZ, *Applicant*

vs.

**URBAN BROTHERS PAINTING, OLD REPUBLIC GENERAL
INSURANCE CORPORATION, administered by GALLAGHER BASSETT
SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ10877137 (MF), ADJ10877136
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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 in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 13, 2022

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

**CITYWIDE SCANNING SERVICE
KARLIN, HIURA & LASOTA, LLP**

PAG/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

- 2. Identity of Petitioner: Citywide Scanning Service, Inc. (Petitioner)
Timeliness: Yes
Verification: Yes
- 3. Date of Findings and Award: February 17, 2022
- 4. Petitioner’s Contentions: Petitioner is entitled to payment in full plus a 10% penalty and 7% interest per annum for subpoenas it issued on applicant’s behalf despite an order quashing those subpoenas because the order quashing should not have issued.

II.
STATEMENT OF THE CASE AND FACTS

Applicant claimed that he sustained two injuries arising out of and in the scope of his employment as a laborer for defendant. (ADJ10877136) and ADJ10877137). (Compromise and Release, August 27, 2019, pp. 3-4.)

On August 8, 2018, the medical-legal evaluator, Bruce Ellison, M.D., issued a report after evaluating applicant. In his report, Dr. Ellison stated that he reviewed numerous records, including an endoscopy, ultrasounds, CT scans, lab notes, and medical reports. (Exhibit Q, Report of Bruce E. Ellison, M.D., August 8, 2018, pp. 3-4.) Dr. Ellison also provided a detailed description of applicant’s abdominal pain including a gastroenterology consultation, a nephrology consultation, possible cholecystitis, possible ulcers, possible gallstones, kidney cysts, and more. (*Id.* at pp. 7-11.) Dr. Ellison also reviewed and discussed treatment notes related to applicant’s injury. (*Id.* at pp. 4-7.)

On April 2, 2019, at applicant’s request, petitioner issued subpoenas for applicant’s records from: Integrated Pain Management Group, Inc. (Exhibit 5), East Bay Nephrology Medical Group (Exhibit 6), West Contra Costa Healthcare District (Exhibit 7), and East Bay Endoscopy Center (Exhibit 8).

On April 9, 2019, petitioner issued an invoice for records it obtained from the East Bay Nephrology Medical Group. (Exhibit 13.)

On April 11, 2019, defendant filed a Petition to quash the subpoenas seeking applicant’s records from East Bay Nephrology Medical Group, Integrated Pain Management Medical Group, West Contra Costa Healthcare District, and East Pay Endoscopy Center. (Petition to Quash, April 11, 2019.) The Petition was served on petitioner (Proof of Service, April 11, 2019.)

Later in April of 2019, petitioner issued invoices related to the cancelled subpoenas it issued for records from West Contra Costa Healthcare District and Integrated Pain Management Medical Group, and for records from East Bay Endoscopy Center. (Exhibits 12, 14, 15.)

On June 17, 2019, Judge Griffin issued an order quashing the subpoenas for East Bay Nephrology Medical Group, Integrated Pain Management Group, West Contra Costa Healthcare District, and East Bay Endoscopy. (Order Quashing, June 17, 2019.)

On August 20, 2019, defendant wrote a letter to petitioner objecting to its invoices on the basis that the subpoenas had been quashed. (Exhibit I.)

On August 27, 2019, both of applicant's claims were settled via compromise and release. (Order Approving Compromise and Release, August 27, 2019.)

On September 25, 2019, defendant wrote a letter to petitioner stating in relevant part that it objected to petitioner's request for payment related to subpoenas that had been quashed, and that defendant intended to seek sanctions, penalties, and fees if it received another request for payment. (Exhibit H.)

On November 12, 2021, petitioner filed a Petition for Determination of Medical-Legal Expense Dispute per 8 CCR 10786(b).

On December 13, 2021, Defendant filed a Petition for Sanctions, Fees, and Costs claiming that petitioner's subpoenas were not properly served on defendant and that the subpoenas were quashed. (Petition for Sanction, December 13, 2021.)

On December 22, 2021, defendant wrote a letter to petitioner stating that pursuant to title 8 of the California Code of Regulations section 9982, defendants are not liable for payment of previously subpoenaed records unless the subpoena is accompanied by a declaration setting forth good cause for the records to be obtained. (Exhibit G.)

On January 20, 2022, petitioner filed an answer to defendant's request for Sanctions, Costs, and fees.

On February 9, 2022, the matter proceeded to trial on the following issues: petitioner's entitlement to payment with defendant asserting that the subpoenas were quashed; defendant's petition for penalties; Defendant's compliance with Labor Code sections 4620-4621; and whether defendant sent timely or compliant EORs per LC §§ 4603.3, 4622, CCR §§10786 and 9794. (Minutes of Hearing and Summary of Evidence (MOH/SOE, February 9, 2022, p. 2.)

On February 17, 2022, it was found in relevant part: that there was a contested claim when petitioner issued the subpoenas, that the subpoenas had been quashed on June 17, 2019, that petitioner was not entitled to payment for the quashed subpoenas, that since the subpoenas had been quashed defendant was relieved from complying with the procedures set forth in section 4622, and that petitioner was not currently liable to defendant for sanctions and costs.

On March 14, 2022, petitioner filed its Petition for Reconsideration.

III. DISCUSSION

In its Petition for Reconsideration, petitioner argues that the finding that it was not entitled to compensation should be set aside because the subpoenas it issued for applicant's records from East Bay Nephrology Medical Group, Integrated Pain Management Group, West Contra Costa Healthcare District, and East Bay Endoscopy were improperly quashed. In support, it argues that defendant did not have standing to quash the subpoenas, defendant's Petition to Quash was not properly served on all of applicant's attorneys, defendant did not prove the subpoenas were duplicative, and that applicant had a due process right to subpoena these records. I recommend that reconsideration be denied because Petitioner waived these arguments by not explicitly raising them as issues for trial. It is not appropriate to raise them for the first time in a Petition for Reconsideration because it denies defendant the right to due process because defendant cannot produce evidence in response to them. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710.) However, as petitioner did raise these arguments in its response to defendant's Petition for Sanctions, which was denied, I will respond to their arguments.

Petitioner incorrectly asserts that defendant did not have standing to quash the relevant subpoenas, however, as the Appeals Board persuasively stated, "defendant is a party to the case and *does have standing* to file a motion objecting to the subpoena." (*Bell v. Applied Universal Topco, LLC* (2019 Cal.Wrk.Comp. P.D. LEXIS 281 *2¹, emphasis added.)

Next, Petitioner argues that the Petition to Quash was invalid because it was not served on applicant's former attorneys. However, those attorneys were no longer representing applicant and could not provide legal services to applicant. The petition was served on the attorney who was representing applicant at the time, and that was sufficient.

Petitioner also argues that the order quashing denied applicant his due process right to conduct discovery. Preliminarily, Dr. Ellison reviewed and commented upon the other records in his report that predates the subpoena. (Exhibit Q.) Further, defendant's Petition to Quash contained exhibits, which were found to be sufficient grounds for the subpoenas to be quashed. Although he had the right to do so, applicant neither objected to the order quashing nor sought removal of that Order. Rather, applicant cancelled the records from Integrated Pain Management and West Contra Costa Healthcare District. (Exhibits 12 and 14.) This action reflects that applicant did not believe those records were necessary. Moreover, it applicant's duty, not petitioner's to raise arguments regarding whether applicant was being deprived of his right to conduct discovery and whether further discovery was necessary. Similarly, it was applicant's burden to challenge the appropriateness of the order quashing on the basis that the records were not duplicative. Therefore, I continue to find that the Order Quashing these four subpoenas bars petitioner from recovering compensation for the services it performed regarding four subpoenas.

¹ Although WCAB panel decisions are not binding, they may be considered to the extent that their reasoning is persuasive (*Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (Appeals Board En Banc).)

Based upon the above, I recommend that the Petition for Reconsideration be denied.

Date: March 17, 2022

Alison Howell
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE