

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

YOUNG J. LEE, *Applicant*

vs.

**MILITARY DELI AND BAKERY SERVICES, INC. and UNITED STATES FIRE
INSURANCE COMPANY administered by CRUM & FORSTER, *Defendants***

Adjudication Number: ADJ11273405

Riverside District Office

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

Lien Claimant RMS Medical Group (RMS) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 11, 2023, wherein the WCJ found in pertinent part that the issues regarding medical legal reimbursement, penalties and interest, and costs, have previously been addressed by the Appeals Board and therefore are moot; and that defendant has not acted in bad faith so RMS is not entitled to an award for Labor Code section costs and sanctions.

RMS contends that its medical-legal services were reasonable and necessary, and that defendant should be responsible for the costs RMS incurred on behalf of applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from defendant.¹

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, and we will affirm the F&O except that we will amend the F&O to find that RMS is entitled to payment for the April 11, 2018 medical-legal services in the amount of \$625.00 (as previously

¹RMS filed an "Answer" to the WCJ's Report. The Answer was not requested nor was the filing of the Answer approved by the Appeals Board. Clearly, it was filed in violation of Appeals Board Rule 10964, and it will not be considered. (Cal. Code Regs., tit. 8, § 10964.)

awarded), plus the 10 percent increase and 7 percent interest pursuant to Labor Code section 4622(a)(1) (Finding of Fact #3); based thereon, we will award RMS the 10 percent increase and 7 percent interest, and we will return the matter to the WCJ for further proceedings consistent with this opinion.²

BACKGROUND

Applicant claimed injury to her neck, right shoulder, right arm, right wrist, and right hand/fingers, while employed by defendant as a baker during the period from April 24, 2017, through March 26, 2018. Defendant denied the claim as of April 4, 2018. (Def. Exh. H, Denial Notice, April 4, 2018.) Omid Haghghinia, D.C., (affiliated with RMS) was designated to be applicant's primary treating physician, and on April 19, 2018, he issued a Primary Treating Physician's Comprehensive Medical-Legal Report. (L.C. Exh. 2, Omid Haghghinia, D.C., April 11, 2018.)

Defendant and RMS proceeded to a lien trial on April 19, 2022, and the matter was continued to May 31, 2022. (Minutes of Hearing and Summary of Evidence (MOH/SOE), April 19, 2022.) At the May 31, 2022, hearing the matter was submitted for decision. The issues included the lien filed by RMS. (MOH/SOE, April 19, 2022, p. 2.) In his July 14, 2022, Findings and Order the WCJ ordered that RMS take nothing by way of its lien. RMS sought reconsideration of the Findings and Order and in our October 3, 2022, Opinion and Order Granting Petition For Reconsideration and Decision After Reconsideration (Opinion and Order) we affirmed the July 14, 2022 Findings and Order except that we amended it to find that RMS was entitled to payment for its medical-legal services in the amount of \$625.00. Subsequently RMS filed a petition for penalties, interest, and Labor Code section 5813 costs and sanctions. The parties again proceeded to trial on March 15, 2023. The issues raised at the hearing and submitted for decision "included lien claimant's demands for penalty and interest, costs and sanctions..." (Report, p. 2; F&O, p. 3, Opinion on Decision.)

²As noted, we previously issued an Opinion and Order on October 3, 2022. Commissioner Sweeney, who was a member of that panel has since retired and another panel member has been assigned in her place.

DISCUSSION

Pursuant to Labor Code section 4622:

All medical-legal expenses for which the employer is liable shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid to whom the funds and expenses are due, as follows: (a) (1) Except as provided in subdivision (b), within 60 days after receipt by the employer of each separate, written billing and report, and if payment is not made within this period, that portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer....

(Lab. Code, § 4622.)

We first note that we did not specifically address the issues of penalties, interest, costs, and sanctions in our October 3, 2022 Opinion and Order because there was no finding regarding those issues and in turn, they were not raised in the August 3, 2022 Petition for Reconsideration. More importantly, as noted above, Labor Code section 4622 states that medical-legal expenses which are not paid within 60 days after “receipt by the employer” shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum... .” (Lab. Code, § 4622.) Clearly, under the circumstances of this matter, the payment of the section 4622 increase and interest is a statutory requirement. Therefore, the 10 percent increase and 7 percent interest were intended to be automatically included in our Opinion on Decision and a separate finding as to those issues was not necessary.

Regarding the section 5813 sanctions and costs, in his Report the WCJ explained:

As to lien claimant’s more recent claim for costs and sanctions under Labor Code Section 5813, this WCJ determines that defendant did not act in bad faith in addressing the lien of RMS Medical Group. At hearing on April 19, 2022 RMS Medical Group was asserting reimbursement of both self-procured treatment and medical legal totaling \$2,484.36. Subsequently, and at hearing on May 31, 2022 lien claimant reduced its demand to reimbursement of medical legal only. The invoice provided by RMS reflects medical legal charges in excess of what lien claimant ultimately demanded and was awarded on reconsideration. Leading up to the present it appeared that both parties made a reasonable effort to resolve issues and with both parties ultimately choosing to litigate legitimate issues and raising sound arguments. Based on facts and issues addressed above, this WCJ determined that defendant did not act in bad faith, and therefore RMS Medical Group should not be entitled to an award of costs/sanctions.

(Report, p. 3.)

Based on our review of the entire record, we agree with the WCJ that defendant did not act in bad faith. Thus, we also agree with the WCJ that RMS is not entitled to an award of Labor Code section 5813 costs and/or sanctions.

Accordingly, we affirm the F&O except that we amend the F&O to find that RMS Medical Group is entitled to payment for the April 11, 2018 medical-legal services in the amount of \$625.00, plus the 10 percent increase and 7 percent interest pursuant to Labor Code section 4622(a)(1); based thereon, we will award RMS the 10 percent increase and 7 percent interest, and we will return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 11, 2023 Findings and Order, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

3. RMS Medical Group is entitled to payment for the April 11, 2018 medical-legal services in the amount of \$625.00, plus the 10 percent increase and 7 percent interest pursuant to Labor Code section 4622(a)(1); defendant to receive credit for amounts previously paid for the April 11, 2018 medical-legal services; the actual amount owed to RMS Medical Group is to be adjusted by the parties, jurisdiction reserved to the WCJ.

AWARD

Pursuant to Labor Code section 4622(a)(1), RMS Medical Group is **AWARDED** a 10 percent increase and 7 percent interest as to the October 3, 2022 Order that defendant pay RMS Medical Group \$625.00 for its medical-legal services.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 31, 2023

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

**YOUNG LEE
RMS MEDICAL GROUP
HONG LAW
CRUM & FORSTER
MEDLAND MEDICAL**

TLH/mc



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