

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

SIU CHAN, *Applicant*

vs.

**HOLLYPARK CASINO;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ9020239
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR RECONSIDERATION
AND DENYING PETITION FOR REMOVAL**

Lien claimant, Optimal Health Institute, seeks reconsideration/removal of a Minutes of Hearing (MOH) issued by the workers' compensation administrative law judge (WCJ) at a lien trial on April 28, 2022. In the MOH, the WCJ stated that lien claimant and defendant, Insurance Company of the West (ICW), settled a medical treatment/care lien for a sum of \$750 and took the case off calendar. Lien claimant argues that it did not settle the lien and seeks to have the alleged settlement set aside.

We received an answer from ICW. The WCJ prepared a Report and Recommendation on Reconsideration or Removal (Report), recommending that the petition for reconsideration be dismissed, as it is not based on a final order, and that removal be denied because lien claimant has suffered no prejudice or harm as a result of the MOH.

We have considered the allegations of the Petition for Reconsideration/Removal, defendant's answer, and the contents of the Report, and have reviewed the record in this matter. For the reasons discussed below, we will dismiss the petition for reconsideration, deny removal, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant, Siu Chan, claimed to have sustained injury arising out of and occurring during the course of employment to his back, neck, shoulder, trunk, multiple, psyche, and stress as a result of an alleged continuous trauma during the period July 24, 2010 to July 24, 2011. All claims of

alleged injury were settled by means of a Compromise and Release Agreement dated December 28, 2016.

Subsequently, lien claimant filed a medical treatment/care lien for the sum of \$173,711.42. After multiple continuances, a lien trial was set for April 28, 2022. A Notice of Representation was filed by lien claimant's attorney indicating that lien claimant would be represented by an individual named Bernice Rodriguez at the lien trial. According to the WCJ's Report, the following occurred on April 28, 2022:

The parties notified WCJ, after a discussion was held off the record, that the lien was settled and gave the WCJ the amount. At no time was a court reporter ever requested, trial requested, a continuance requested, to submit the matter on the record, nor a continuance due to the applicant's not being present or anything other than that the issues had settled.

(Report, p. 3.)

After trial, the WCJ issued an MOH containing a handwritten note simply stating "Parties settled lien for \$750.00" and ordered the case off calendar. (MOH, April 28, 2022.)

On May 16, 2022, lien claimant filed its petition for reconsideration/removal of the April 28, 2022 MOH. In its petition, lien claimant requests that the alleged settlement be set aside, claiming that there was never a settlement agreement between the parties and that Ms. Rodriguez did not have authority to settle its \$173,711.42 lien at trial for the "nuisance value" of \$750. (Petition, p. 3.) Lien claimant also argues that due process requires that the alleged settlement be set aside so that it may present evidence to address the merits of the case during a fair lien trial.

DISCUSSION

We will first dismiss lien claimant's petition for reconsideration, as reconsideration may only be sought from a final order, decision or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one "which determines any substantive right or liability of those involved in the case." (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661].) Here, although the WCJ's MOH indicates that the "[p]arties settled [the] lien for \$750.00," the MOH does not constitute a final order approving or disapproving the

lien settlement that would be subject to a petition for reconsideration. (Cal. Code Regs., tit. 8, § 10700(b).) Accordingly, we will dismiss lien claimant's petition for reconsideration.

Lien claimant also seeks removal as an alternative remedy. The Appeals Board's power to remove a case to itself under Labor Code section 5310 is discretionary and is generally employed only as an extraordinary remedy. (*Butte County v. Workers' Comp. Appeals Bd.* (1991) 56 Cal.Comp.Cases 312 (writ den.); *Swedlow, Inc. v. Workers' Comp. Appeals Bd.* (1985) 48 Cal.Comp.Cases 476 (writ den.)) To obtain relief under this provision, WCAB Rule 10955 requires that a party must establish either that "[t]he order, decision or action will result in significant prejudice" or "irreparable harm," and that reconsideration will not be an adequate remedy after issuance of a final order, decision or award.

Based on our independent review of the record in this matter, we are not persuaded that this case presents extraordinary circumstances justifying removal. Specifically, because the WCJ's MOH did not actually approve a lien settlement, no effective, i.e., binding, settlement exists that would subject lien claimant to significant prejudice or irreparable harm absent removal. The only effect of the MOH was to take the matter off calendar. Lien claimant need only file a Declaration of Readiness to Proceed to a lien trial so that it may obtain due process and present evidence on its claim(s). (*San Bernardino Community Hospital v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["The essence of due process is simply notice and the opportunity to be heard."].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the April 28, 2022 MOH issued by the WCJ is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal of the April 28, 2022 MOH issued by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2022

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

**INSURANCE COMPANY OF THE WEST
LAW OFFICES OF JIE CI DING
SIU CHAN**

AH/oo

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