

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

**JAYME HAYES, *Applicant***

**vs.**

**YANG'S BRAISED CHICKENRICE;  
NORGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ13134056  
Anaheim 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. We now issue our Opinion and Decision After Reconsideration.

Lien claimant Medland Medical seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 10, 2022, wherein the WCJ found in pertinent part that defendant and lien claimant entered into a written agreement on February 9, 2022 to resolve their dispute; that the agreement was not submitted to the WCAB for issuance of an order or award; and that defendant did not unreasonably delay payment to lien claimant or act in bad faith. The WCJ ordered that lien claimant take nothing further.

Lien claimant contends that it is entitled to penalties, interest, and costs because defendant did not issue payment within 30 days of the execution of the agreement.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny the Petition for Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the answer and the contents of the Report with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons stated below, we will affirm the F&A.

Pursuant to Labor Code section 5001,<sup>1</sup> “No release of liability or compromise agreement is valid unless it is approved by the appeals board or referee.” (Lab. Code, § 5001; see also Lab. Code, § 5002; Cal. Code Regs., tit. 8, §§ 10700, 10835.)

Here, the lien settlement agreement was not approved by the WCJ in accordance with section 5001. Indeed, the settlement agreement was never submitted to the WCAB until August 23, 2022, when it was submitted as an exhibit at trial, and neither party ever sought to have the settlement agreement approved by a WCJ. The language of section 5001 is unequivocal. Hence, although lien claimant contends that it was “entitled to” payment within 30 days of when the settlement agreement was executed, this is incorrect. A settlement agreement only becomes enforceable upon approval by the WCAB, and here the settlement agreement was never submitted to the WCAB. While the parties are entitled to bring their dispute about the interpretation of the terms of the agreement to the WCAB, defendant’s obligation to pay would not have been triggered until approval by the WCJ. We emphasize that we commend all parties who informally enter into settlement agreements, and we encourage all parties before the WCAB to resolve issues informally whenever possible.

Moreover, WCAB Rule 10872(a) (Cal. Code Regs., tit. 8, § 10872(a)) suggests that a lien is resolved when “payment in accordance with an order or an informal agreement has been made and resolved.” Thus, while we do not consider the application of WCAB Rule 10872(a) as it was not raised by the parties, we note that the lien could have been considered to have been “resolved” at the time of full payment of the agreed upon sum on April 7, 2022.

Thus, we affirm the F&O.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.



**REPORT AND RECOMMENDATION OF  
CALIFORNIA WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION**

**I.**

**INTRODUCTION**

This matter involves a dispute over the terms of and compliance with a lien settlement agreement.

**II.**

**BACKGROUND**

Applicant filed a claim of continuing trauma injury that was denied by the employer. Applicant self-procured medical treatment with a physician from Medland Medical. Subsequently, Applicant settled his claim with Defendant. Medland Medical filed a lien [EAMS Doc ID #37645042] for \$7,822.16 for medical services provided to Applicant, which Defendant initially declined to pay. Eventually, however, a settlement agreement was reached, resulting in the drafting of a document dated 2/9/22 entitled "*Stipulation and Agreement to Pay Lien Claimant*" signed by representatives of each party. It is this agreement that is the crux of the dispute.

Lien Claimant contended Defendant didn't timely comply with payment required by the agreement. Defendant contended that there was no delay because Lien Claimant did not meet a pre-payment condition. Ultimately, payment as stated was made but Lien Claimant wanted an additional amount plus penalties, costs, and sanctions. After trial, the Court ordered "*Lien Claimant, Medland Medical, shall take nothing further from Defendant herein*" and Lien Claimant now seeks reconsideration via a timely filed, verified petition.

### III.

#### **STATEMENT OF FACTS**

Defendant and Lien Claimant entered into a written agreement on 2/9/22 to resolve their dispute over the amount due Lien Claimant for medical services to Applicant. The terms of the written agreement stated that Defendant would pay and Lien Claimant would accept as full satisfaction, the sum of \$2,700. More specifically, that agreement stated:

*Jurisdiction having been reserved on payment of lien claim of MEDLAND MEDICAL in the amount of \$7,822.16 the parties have AGREED to resolve said lien for the sum of \$2,700.00 in full satisfaction to said lien and all claim arising therefrom to date, in addition to any sums previously paid on said lien. The parties waive the provisions Labor Code section 5313.*

*P & I waived if paid within 30 days. Settlement is full satisfaction of all DOS, resolves all ADJ's. Payment to issue within 30 days receipt of valid W9 (2019 or later).*

*[Ex B]*

The “*Stipulation and Agreement to Pay Lien Claimant*” quoted above was drafted by Lien Claimant. It was not submitted to the Court for review or issuance of an order.

A problem arose from the outset in that although the document signed by both parties stated the settlement amount was \$2,700, Lien Claimant asserted that the verbal agreement reached prior to preparation of the written document was actually for \$2,750, and initially Medland wanted the additional \$50. However, that claim seems to have died on the vine in that it wasn’t pursued at the time of trial [See MOH, P2, L22-24; P3, L1-2]<sup>1</sup>.

The next problem was more serious. Lien Claimant expected payment 30 days from the 2/9/22 date of the agreement, which would have been around 3/11/22, whereas Defendant issued its check for \$2,700 on 4/7/22 [Ex C]. Medland asserted that the payment was late and subsequently petitioned for penalties, interest and costs, contending:

Included in these stipulations is an agreement to pay penalties in the amount of 15%, and interest in the amount of 10% per annum, in accordance with Labor Code. 4603.2(b), which indicates an award “increased by 15 percent, together with interest at the same rate as judgments in civil judgements...” [Ex 2, P3]

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<sup>1</sup> The Court nonetheless addressed the \$50 discrepancy in the Opinion, noting both parties signed the agreement drafted by Lien Claimant for \$2,700, not \$2,750.

Medland reiterated this position in a post-trial brief [EAMS Doc ID #43792589, P3, L3-8].

At trial Defendant pointed out that the agreement made payment contingent on receipt from Lien Claimant of a W9 form, which was not received, and in the absence of the condition having been met no “due date” was established, therefore, the payment was not late [EAMS Doc ID #43793671]. The Court agreed with that assertion, finding

*Per the terms of the written agreement, payment by Defendant was conditioned on receipt of a W9 form from Lien Claimant; ... Defendant was to make its payment within 30-days of receiving the W9 form” and “Lien Claimant did not provide the W9 form as required by the agreement.”*

[FINDINGS #4, 5, and 6].

In its petition for reconsideration, Lien Claimant asserts the agreement required payment to be made within 30-days of the settlement document being signed and that that Defendant didn’t need the W9 form to make the payment. Consequently, Lien Claimant renews its request for penalties and interest and costs.

#### **IV.** **DISCUSSION**

*“In cases of uncertainty . . . the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.”* [Civil Code section 1654]. Consequently, in a dispute over terms of a contract, the contract terms are interpreted against the party that drafted the contract. The trial decision was based on interpretation of the agreement as written. Here, Lien Claimant drafted the agreement in question. The plain terms of the agreement require two events, one conditioned on the other, namely, (1) provision of a W9 by Lien Claimant, and (2) payment of \$2700 by Defendant within 30 days of that occurrence.

Lien Claimant argues that Defendant didn’t need the W9 form in order to make the agreed-upon payment because it had paid Lien Claimant in many other cases, and if the W9 was truly needed it could have asked for it. However, the receipt of a W9 was made a key condition for payment according to the terms drafted by Lien Claimant. Keep in mind, the W9 document provides identification data about the payee, and presents a signed certification that the data is

correct<sup>2</sup>. Lien Claimant is not in a position to assert that the examiner who has to issue the payment can do so without such verification, especially when Lien Claimant agreed to provide it before payment was required. The terms say[,] “Payment to issue within 30 days receipt of valid W9” and if there is uncertainty about when payment was to be made, that instruction must be interpreted strictly against Lien Claimant’s assertion that the instruction isn’t really necessary. Lien Claimant made it necessary. Lien Claimant cannot now come back after the fact and essentially say, “Defendant, you should have known I didn’t mean what I wrote.”

With respect to the Lien Claimant’s assertion that the payment was late, presentation of the W9 form establishes the due date. However, no time is indicated in the agreement for when the W9 form must be presented. Furthermore, no proof was offered by Lien Claimant to show that the W9 form was in fact sent to Defendant as required by the agreement Lien Claimant drafted. Moreover, the agreement doesn’t say the payment must be made within 30-days of signing the document as is asserted by Lien Claimant. If that was Lien Claimant’s intent, the agreement should have been written to say so. It wasn’t. Instead, it says the 30-day time limit runs from receipt of the W9, not from the date the agreement was signed. Defendant’s duty to pay the correct identifiable entity hinged on receipt of the W9. According to the terms of the agreement, absent receipt of the W9 form Defendant’s duty to pay did not arise. Consequently, there was no unreasonable delay in payment.

Is there a basis for penalty, interest, or costs? Simply, no. The agreement Lien Claimant drafted does not say what Lien Claimant thinks it says. Nowhere in the agreement does it recite anything about payment of penalties in the amount of 15%, and interest in the amount of 10% per annum, in accordance with Labor Code 4603.2(b). It simply says “P&I” is waived if payment is made in the 30-day time allotted. As explained, there was no unreasonable delay; the funds were not due here earlier than when paid. Moreover, Defendant undertook no bad faith or frivolous action<sup>3</sup>.

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<sup>2</sup> Note Labor Code section 4903.8(a) regarding payments shall be made only to the person who was entitled to receive the payment.

<sup>3</sup> In fact, it would appear that Defendant acted in good faith by making the payment amount stated in the agreement when it did, despite lack of the W9 form that Lien Claimant agreed first to provide.

V.

**CONCLUSION**

Decisions must be based on admitted evidence in the record [*Hamilton v. Lockheed Corporation (Hamilton)* 66 CCC 473 (2001)] and here the admitted evidence included an agreement that stated the intent of the parties relative to resolution and payment of the lien. Lien Claimant[‘]s regret is that the agreement reflects a payment based on a condition. Since Lien Claimant drafted the agreement, it can hardly be said that it didn’t understand the terms or intend them to be as they were stated.

VI.

**RECOMMENDATION**

For the reasons stated, it is respectfully recommended that the petition for reconsideration be DENIED.

DATED: December 2, 2022

**Marco Famiglietti**

WORKERS' COMPENSATION JUDGE