

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

LUIS ARDON, *Applicant*

vs.

**ABC BEST PAINTING CO.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11295772
Van Nuys District Office**

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

Prime Physical Therapy (PPT or lien claimant), by and through its lien representative, Innovative Medical Management, seeks reconsideration of the Findings and Orders and Opinion on Decision (F&O) issued in this case by a workers' compensation administrative law judge (WCJ), wherein the WCJ found that PPT was not entitled to collect payment on a lien for physical therapy services rendered to applicant. The WCJ found that: 1) PPT had listed itself as both the billing service and the medical provider on the lien, 2) PPT was not licensed to provide the medical services rendered, and 3) there was insufficient evidence to support PPT's assertion that it was simply the billing service seeking payment on behalf of, and as contractually authorized by, the actual medical provider, Alternative Healthcare Center (AHC). The WCJ thus ordered that PPT take nothing on its lien claim.

In its Petition for Reconsideration (Petition), PPT contends that it made an "in-house error" in identifying itself, rather than AHC, as the medical provider on the lien, and requests that the Appeals Board rescind the F&O and return the matter to the trial level for further review and consideration regarding its authority to pursue payment.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied. We have not received an answer from applicant.

We have reviewed the record in this case and have considered the allegations in the Petition and the contents of the WCJ's Report. For the reasons discussed below, we will grant reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings and a new decision. This is not a final decision on the merits of any issues raised in the Petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

BACKGROUND

The WCJ's Opinion on Decision provides the following background:

Applicant, Luis Ardon...while employed on November 1, 2017, as a Painter, at a jobsite in California, by ABC Best Painting Co., sustained injury arising out of and in the course of employment to his back, legs, left ankle, and hips. (Minutes of Hearing (Reporter) dated January 3, 2023, hereinafter MOH, at 2:3.) At the time of injury, the employer's workers' compensation carrier was State Compensation Insurance Fund. (MOH at 2:6.) The employer has furnished some medical treatment. The Primary treating Physician is Kevin Pelton, M.D.. (MOH at 2:8.)....The parties stipulated the services in dispute were provided by Alternative Healthcare Center. The parties further stipulated the Request for Authorization by Dr. Pelton for Physical Therapy was authorized.

(F&O, February 27, 2023, pp. 1-2.)

On April 23, 2020, PPT filed a Notice and Request for Allowance of Lien (lien) for \$2,716.17 for medical services rendered to applicant. In the lien, PPT listed itself as the both the billing and collections service and the medical provider. (Lien, April 23, 2020, p. 10.) Defendant, State Compensation Insurance Fund, objected to PPT's right to collect on the lien.

On January 3, 2023, the parties appeared for a lien trial, and the matter was submitted for decision without testimony, on a documentary record, with written arguments. (Minutes of Hearing (MOH), January 3, 2023.) On February 27, 2023, the WCJ issued the disputed F&O, finding that PPT lacked a valid lien claim and issued a take-nothing order.

DISCUSSION

The issue in this case is whether PPT may seek payment on a Labor Code section 4903(b)¹ lien for medical services provided to applicant as a result of his industrial injury.

Section 4903.8 identifies those entitled to an order or award of payment on a lien for services provided pursuant to section 4903, subdivision (b):²

(a)

(1) Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 at the time the expenses were incurred, who is the lien owner, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.

(2) All liens filed pursuant to subdivision (b) of Section 4903 shall be filed in the name of the lien owner only, and no payment shall be made to any lien claimant without evidence that he or she is the owner of that lien.

(3) Paragraph (1) does not apply to an assignment that was completed prior to January 1, 2013, or that was required by a contract that became enforceable and irrevocable prior to January 1, 2013. This paragraph is declarative of existing law.

(4) For liens filed after January 1, 2017, the lien shall not be assigned unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee. The assignment of a lien, in violation of this paragraph is invalid by operation of law.

* * *

(e) A lien submitted for filing on or after January 1, 2013, for expenses provided in subdivision (b) of Section 4903, that does not comply with the requirements of this section shall be deemed to be invalid, whether or not accepted for filing by the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

² “The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i)...The liens that may be allowed hereunder are as follows: ... (b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), and to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2, except those disputes subject to independent medical review or independent bill review.” (Lab. Code, § 4903(b).)

(Lab. Code, § 4903.8, emphasis added.)

Here, there is no dispute that PPT filed a timely section 4903(b) lien for medical services provided to applicant. (Lien, April 23, 2020.) Although PPT listed itself as both the billing and collections service and the medical provider on the lien, during trial, the attorneys for SCIF and PPT stipulated that the disputed medical services were provided by Alternative Healthcare Center (AHC). (MOH, January 3, 2023, p. 2.) We do not see, nor do the parties argue, any reason to reject this stipulation. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114 [65 Cal.Comp.Cases 1] [good cause is required to set aside factual stipulations].) Thus, we turn to the issue at hand, namely, whether PPT may properly pursue payment on the section 4903(b) lien; in doing so, we must analyze PPT's position, the WCJ's decision, and the evidence, using the framework set forth in section 4903.8(a)(1)-(2).

As noted above, PPT claims that it was simply the billing and collections service for AHC, and that it made an in-house error in stating otherwise. PPT claims that AHC, as the actual medical provider, authorized PPT to collect on the lien on its behalf, and that the parties had a contract stating as much. (Lien Claimant Response Brief, January 31, 2023, p. 2.)

First, there is nothing in section 4903.8(a)(1)-(2) that permits a medical provider to authorize a billing and collections service to pursue payment of a section 4903(b) lien "on its behalf." However, we have previously ruled on the issue of whether a billing service may be entitled to collect payment on a section 4903(b) lien pursuant to a *contract* with the medical provider. Specifically, in *Rebolledo v. New Cure (Rebolledo II)* (March 25, 2022, ADJ9641796) [2022 Cal. Wrk. Comp. P.D. LEXIS 73], we found that a billing service *may* be the "lien owner" entitled to collect payment under section 4903.8(a)(1)-(2) pursuant to a valid contract and/or joint venture with the medical provider. (*Rebolledo II, supra*, 2022 Cal. Wrk. Comp. P.D. LEXIS 73, *5, 8, fn. 10, citing Lab. Code, §§ 4903(b), 4903(a)(1)-(2).) However, we were very firm that, in accordance with section 4903.8(a)(2), there must be sufficient *evidence* of the contractual agreement establishing that the billing service "owns" the lien before payment is permitted under the statute. (*Id.* at **9-11, citing Lab. Code, § 4903.8(a)(2), *Kuykendall v. Workers' Comp. Appeals Bd. (Kuykendall)* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264]; see also *Garza v. Workmen's Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312, 318 [35 Cal.Comp.Cases 500] ["any award, order or decision of the Board must be supported by substantial evidence in the light of the entire record"]; Lab. Code, § 5952.) In that case, we found insufficient evidence of the

terms of the contract between the parties, and thus could not render a finding on whether the billing service was the “owner of the lien” entitled to payment under section 4903.8(a)(1)-(2) without violating the parties’ due process rights to present evidence and exhibits and call witnesses. (*Rebolledo II, supra*, at *10.) As a result, we remanded the matter to the WCJ to take further evidence on the existence, if any, of a contract and/or joint venture providing the billing service “ownership” of the lien under section 4903.8(a)(1)-(2).

Similar circumstances exist in the case at hand. Here, PPT argues that it was the billing and collections service for AHC, and that AHC contractually authorized PPT to pursue payment on the section 4903(b) lien. However, as in *Rebolledo II*, there is currently no evidence of any such agreement, or contract, between AHC and PPT. Without such evidence, we cannot determine whether PPT is entitled to payment under section 4903.8(a)(1)-(2) as the “lien owner.” Again, as clearly explained in section 4903.8(a)(2) and *Rebolledo II*, “no payment shall be made to any lien claimant without *evidence* that he or she is the owner of that lien.” (*Rebolledo II, supra*, 2022 Cal. Wrk. Comp. P.D. LEXIS 73, *9, quoting Lab. Code, § 4903.8(a)(2), emphasis sic.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.* at p. 475.) Moreover, a WCJ’s decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*, 3 Cal.3d at p. 318; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

As explained above, the current record does not contain substantial evidence to support the WCJ’s decision that PPT is not entitled to payment on the lien. We also note that the WCJ decided the matter without obtaining testimony. (MOH, January 3, 2023.) All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd. (Rucker)* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “... one of ‘the rudiments of fair play’ assured to every litigant ...” (*Id.* at p. 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’*

Comp. Appeals Bd. (McKernan) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd. (Gangwish)* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish, supra*, at p. 1295; *Rucker, supra*, at pp. 157-158.)

Based on the foregoing, we will grant reconsideration, rescind the F&O, and return this matter to the trial level for further development of the record on the issue of whether PPT is entitled to collect on the lien pursuant to the terms of section 4903.8(a)(1)-(2). (*Kuykendall, supra*, 79 Cal.App.4th at p. 404 [“it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence.”]; *McKernan, supra*, 74 Cal.App.4th at pp. 937-938; Lab. Code, §§ 5701, 5906.) As the lien claimant, PPT bears the burden of producing evidence on this issue. (*Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (2006) 138 Cal.App.4th 373, 376 [71 Cal.Comp.Cases 374], quoting Lab. Code, § 5705 [“[i]n workers' compensation matters, the burden of proof rests on the party or lien claimant ‘holding the affirmative of the issue.’”].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the F&O issued on February 27, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&O issued on February 27, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 30, 2023

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

**PRIME PHYSICAL THERAPY
INNOVATIVE MEDICAL MANAGEMENT
STATE COMPENSATION INSURANCE FUND**

AH/cs

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