

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

ANTHONY GILLILAND, *Applicant*

vs.

WALMART INC.;
ACE AMERICAN INSURANCE CO. as administered by SEDGWICK CMS, *Defendants*

**Adjudication Numbers: ADJ12880191; ADJ15709298
Pomona District Office**

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

Lien claimant Medland Medical seeks reconsideration of the Findings of Fact issued by a workers' compensation administrative law judge (WCJ) on November 15, 2023, wherein the WCJ found in pertinent part in Case No. ADJ12880191 that applicant sustained injury to his left eye while employed by defendant on December 23, 2019, and that lien claimant did not meet its burden to show that applicant sustained injury to his right knee while employed by defendant on December 23, 2019. The WCJ ordered that lien claimant take nothing.

Lien claimant contends that Omid Haghghinia, D.C., was applicant's primary treating physician, so that the medical treatment and the cost of the medical legal reporting was reasonable and necessary.

We received an answer from defendant.

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

We have reviewed the record, and the allegations of the Petition and the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for

further proceedings and 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.

FACTS

Defendant stipulated at trial on October 25, 2023 in Case No. ADJ12880191 that applicant sustained injury to his left eye while employed by defendant as a retail department manager on December 23, 2019.

Previously, the parties entered into a Compromise and Release, which provided that applicant claimed injury to the body parts of cervical, thoracic, and lumbar spine; bilateral upper extremities; knees; neuro; and sleep on December 23, 2019. The parties also listed an "unassigned" case number for an injury of December 6, 2019 to the knees. In Paragraph 9, as relevant herein, they stipulated that applicant's "right knee issues" were due to a December 6, 2019 date of injury. The C&R was signed by applicant on January 10, 2022, and by defendant on January 12, 2022. It was filed at the WCAB on January 27, 2022.

On April 7, 2022, the parties filed an Addenda to the C&R, which was only signed by applicant and his attorney, and not by defendant. The parties made no changes to the body of the C&R and did not add the number for Case No. ADJ15709298 to the body of the C&R. The only mention of ADJ15709298 is in the Addenda, which was not signed by defendant. Notably, defendant did not resolve the issue of injury to applicant's left eye by way of the C&R. An Order approving the C&R issued on August 20, 2022. Lien claimant's reporting and treatment occurred prior to the approval of the C&R on August 20, 2022.

On January 25, 2022, applicant filed an Application for Adjudication in Case No. ADJ15709298, claiming injury to his knee while employed by defendant on December 6, 2019.

Lien claimant filed its lien in ADJ12880191 on February 4, 2022. It also filed a lien in ADJ15709298.

DISCUSSION

A WCJ is required to "... make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order, or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010)

75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Decisions of the Appeals Board 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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at p. 475.)

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.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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 v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, *lien claimant filed a timely lien in what appeared to be the correct case number.* Further, *lien claimant was entitled to a hearing and the creation of a record on the issue of whether the error in listing the case number could be cured.*

We also observe that the WCJ could have consolidated the two cases, since they involve the same applicant, the same employer, the same insurer, and the same defense attorney. (Cal. Code Regs., tit. 8, former § 10589, now § 10396.)

We observe that the principles of “liberal pleading” have infused California's statutory landscape for more than 150 years. Enacted in 1872, Code of Civil Procedure section 452 requires that, “[i]n the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.” Also enacted in 1872, Code of Civil Procedure section 473 provides in pertinent part, “[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Cal. Code Civ. Proc. § 473(b).) Enacted more “recently” in 1963 is Code of Civil Procedure section 576, which provides that, “[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order.” What follows from these statutory pronouncements is more than a century of consistent jurisprudence emphasizing the public policy preference favoring adjudication on the merits, rather than on procedural deficiencies.

In 1890, the California Supreme Court opined:

The principal purpose of vesting the court with the discretionary power to correct “a mistake in any other respect” is to enable it to mold and direct its proceedings so as to dispose of cases upon their substantial merits, when it can be done without injustice to either party, whether the obstruction to such a disposition of cases be a mistake of fact or a mistake as to the law, although it may be that the court should require a stronger showing to justify relief from the effect of a mistake of law than of a mistake of fact. (*Ward v. Clay* (1890) 82 Cal. 502, 23 P. 50, 1890 Cal. LEXIS 591.)

In *Dunzweiler v. Superior Court of Alameda County* (1968) 267 Cal. App. 2d 569, 577 [73 Cal. Rptr. 331], the Court of Appeal observed:

If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and **where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.** [Citations.] And as stated in *Jepsen v. Sherry* (1950) 99 Cal. App. 2d 119, 121 [220 P.2d 819], the discretion to be exercised by trial courts is “**one controlled by legal principles and is to be exercised in accordance with the spirit of the law and with a view to subserving, rather than defeating, the ends of substantial justice.**” (Bolding added.) (*Dunzweiler v. Superior Court of Alameda County, supra*, 267 Cal. App. 2d at 577.)

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal. 3d 410, 419 [39 Cal. Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal. Comp. Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal. Comp. Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.*, (2002) 103 Cal. App. 4th 485, 490 [67 Cal. Comp. Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200–01 [50 Cal. Comp. Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866].) Moreover, section 5709 states that "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division ..." (Lab. Code, § 5709.) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio, supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, former § 10492, now § 10517.)

Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal. App. 4th 1196, 1205 [57 Cal. Comp. Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902], "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

Therefore, in workers' compensation proceedings, it is settled law that:

(1) pleadings may be informal (*Zurich Ins. Co., supra*, 9 Cal. 3d at p. 852; *Bland, supra*, 3 Cal. 3d at pp. 328–334; *Martino, supra*, 103 Cal. App. 4th at p. 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal. App. 3d 1452, 1456 [52 Cal. Comp. Cases 141]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd. (Aprahamian)* (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal. App. 3d 590, 594–595 [40 Cal. Comp. Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal. App. 2d 204, 207–210 [33 Cal. Comp. Cases 345]);

(2) claims should be adjudicated based on substance rather than form (*Bland, supra*, 3 Cal. 3d at pp. 328–334; *Martino, supra*, 103 Cal. App. 4th at p. 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [53 Cal. Comp. Cases 502]; *Rivera, supra*, 190 Cal. App. 3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal. App. 2d 592, 598 [24 Cal. Comp. Cases 274]);

(3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra*, 103 Cal. App. 4th at p., 490; *Rubio, supra*, 165 Cal. App. 3d at pp. 199–201; *Aprahamian, supra*, 109 Cal. App. 3d at pp.152–153; *Blanchard, supra*, 53 Cal. App. 3d at pp. 594–595; *Beaida, supra*, 263 Cal. App. 2d at pp. 208–209); and

(4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction (*Bland, supra*, 3 Cal. 3d at pp. 331–332 & see fn. 13; *Rivera, supra*, 190 Cal. App. 3d at p. 1456; *Aprahamian, supra*, 109 Cal. App. 3d at pp. 152–153; *Blanchard, supra*, 53 Cal. App. 3d at pp. 594–595; *Beaida, supra*, 263 Cal. App. 2d at pp. 208–210).

Reflecting these principles, WCAB Rule 10617 provides:

(a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

(1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;

(2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or

(3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(Cal. Code Regs., tit. 8, § 10617.)

The rule thus provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain “a combination of information sufficient to establish the case or cases to

which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.” (Cal. Code Regs., tit. 8, §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, §10517.) These rules represent the application of California’s public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

These principles of liberal pleading are further reflected in section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise, or excusable neglect in accordance with Code of Civil Procedure section 473. The Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox, supra*, 4 Cal. App. 4th 1196.)

With these principles in mind, the conclusion that lien claimant should be denied relief due to filing of the lien under the incorrect ADJ number is simply not legally supportable. We are persuaded that the interests of substantial justice are better served by adjudication on the merits of the lien, rather than dismissal by administrative fiat for technical noncompliance in pleadings. Additionally, defendant offers no persuasive argument for prejudice, and we discern none in the record. As noted above, both cases involve the same applicant, the same employer, the same insurer, and the same defense attorney. Moreover, defendant entered into a C&R that resolved the issue of cervical, thoracic, and lumbar spine; bilateral upper extremities; knees; neuro; and sleep in Case No. ADJ12880191, with no mention of the left eye, and defendant resolved the issue of injury to the knees in an Unassigned Case No., so that defendant’s claim that only the left eye is at issue in ADJ12880191 is meritless, and borders on frivolous.

Thus, upon return, the cases should be consolidated, and the parties should proceed with a mandatory settlement conference, and if necessary, a trial on the issue of the reasonableness and necessity of the medical treatment and medical legal reporting that is the basis for lien claimant’s lien. As defendant has wasted substantial time in its meritless arguments as to “form” rather than proceeding to “substance” of the lien, it may be prudent for defendant to enter into settlement negotiations forthwith.

Accordingly, we rescind the Findings of Fact and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings of Fact issued by the WCJ on November 15, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on November 15, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 5, 2024

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

**MEDLAND MEDICAL
TESTAN LAW**

AS/mc

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