

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

**ERNESTO SERRANO, *Applicant***

**vs.**

**D'ANDREA GRAPHICS COMMUNICATIONS; CYPRESS INSURANCE COMPANY,  
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ10931911  
Van Nuys District Office**

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

Cost petitioner, Matrix Document Imaging, Inc., seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on December 27, 2023. By the F&O, the WCJ found that cost petitioner's request for payment for subpoena and copy services was barred by Labor Code section 5307.9.<sup>1</sup>

Cost petitioner contends that the F&O failed to address the sole issue set for trial, namely, whether defendant was liable for costs, monetary sanctions, and attorney fees as a result of its failure to timely pay or object to cost petitioner's invoices in accordance with sections 4622 and 4603.3 (Lab. Code, §§ 4622, 4603.3) and Administrative Director (AD) Rule 9794 (Cal. Code Regs., tit. 8, § 9794). We have received an Answer from defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We have reviewed the allegations of the Petition for Reconsideration (Petition), the Answer, and the contents of the WCJ's Report with respect thereto. Based upon 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 trial level for further proceedings and decision by the WCJ.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

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**

The parties stipulated that, while employed by defendant on August 31, 2016, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar spine and claims to have sustained injury AOE/COE his cervical spine, right knee, and right shoulder. (Minutes of Hearing (MOH), October 9, 2023, p. 2.)

On July 13, 2017, applicant's attorney served defendant with a Notice of Representation, which included a Demand Letter requesting "a wage statement and service of all medical records and reports currently in your possession." (Exh. 2, Demand Letter, July 13, 2017, p. 1.) The Demand Letter further requested:

. . . copies of records in the employer's, claim administrator's, or worker compensation insurer's possession that are relevant to the employee's claims. In addition, production of these records shall be accompanied by a certification or declaration that all records demanded have been produced and a log detailing those items not produced.

(Exh. 2, Demand Letter, July 13, 2017, pp. 1, 3.)

On July 14, 2017, defendant produced various documents to applicant's attorney. (Exh. D.) Between September 2017 and March 2018, cost petitioner issued three subpoena duces tecum to Glendale Adventist Medical Center, West Los Angeles Urgent Care, and defendant for medical and/or employment records. (Exhs. 3, 4, 8.) Thereafter, cost petitioner served defendant with five invoices for its services. (Exhs. 5-7, 9.) Defendant did not pay cost petitioner's invoices, nor did it object to or issue an explanation of review (EOR) in response to the invoices; as a result, on January 18, 2019, cost petitioner served defendant with a demand for payment for the outstanding invoices. (Exh. 10.)

On February 22, 2019, having received no response to its January 2019 demand for payment, cost petitioner filed a "Petition for Determination of Non-IBR Medical-Legal Dispute filed by a Medical Legal Service Provider; and Request for Penalties, Interest, Costs, Monetary Sanctions, and Attorney's Fees" (Petition for Reimbursement). Therein, cost petitioner argued that defendant failed to fully pay cost petitioner's invoices or make partial payment with a responsive EOR within 60 days of service, as required by sections 4622, 4603.3, and AD Rule

9794. (Petition for Reimbursement, February 22, 2019, pp. 3, 7.) Cost petitioner asserted that defendant had therefore waived all objections to cost petitioner's invoices; that defendant was liable for the full sum of the invoices, plus penalties and interest; that defendant had engaged in bad-faith actions by failing to comply with the applicable statutes and rules and was thus subject to monetary sanctions under WCAB Rule 10451.1(g)(1) (Cal. Code Regs., tit. 8, former § 10451.1, now § 10786(i)(1) (eff. Jan. 1, 2020)); and that defendant should pay the attorney fees associated with cost petitioner's Petition for Reimbursement.

On March 4, 2019 and July 31, 2023, defendant issued payments resolving all of cost petitioner's outstanding invoices, as well as its claim for penalties and interest. (Exh. 11; MOH, October 9, 2023, p. 2.)

On October 9, 2023, the parties went to trial on the sole issue of: "Whether defendants are liable for costs, monetary sanctions, and attorney fees for their failure to object to Cost Petitioner's invoices." (MOH, October 9, 2023, p. 3.)

On December 27, 2023, the WCJ issued the disputed F&O, finding that cost petitioner's request for payment for its services was barred by section 5307.9. Specifically, the WCJ found that cost petitioner had obtained wage records that were already in the parties' possession, and that the remaining records obtained by cost petitioner, namely, applicant's employment records, had not been requested by applicant's attorney and were therefore non-compensable.

## **DISCUSSION**

Cost petitioner contends that, in the F&O, the WCJ failed to address the sole issue before the court, namely, whether defendant was liable for costs, monetary sanctions, and attorney fees as a result of its failure to object to cost petitioner's invoices.

As noted above, the WCJ found that cost petitioner's request for payment was barred by section 5307.9 because it had obtained and/or copied records that were either: 1) already in the parties' possession, or 2) not requested by applicant's attorney. (F&O, p. 2; Opinion on Decision, pp. 3-4.)

Section 5307.9 establishes the general rules for compensability of copy and related services. Section 5307.9 prohibits "payment for services provided within 30 days of a request" by, among others, an injured worker's authorized representative for copies of records in "the

employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim." (Lab. Code, § 5307.9.)

With that said, cost petitioner accurately states that the issue of whether payment for its services was barred by section 5307.9 was not the issue presented for trial. Rather, the issue submitted was whether defendant was liable for costs, monetary sanctions, and attorney fees as a result of its failure to object to cost petitioner's invoices pursuant to its statutory and regulatory obligations to do so.

In brief, a defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1); Cal. Code Regs., tit. 8, § 9794(b)-(c).) Failure to pay the invoice in full within the 60-day window may subject the defendant to penalty and interest. (Lab. Code, § 4622(a)(1).) Should a defendant decide to pay less than the full amount within the 60-day window, it can still avoid the imposition of a penalty and interest by including an EOR with its payment as set forth in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1); 4603.3.) Should a defendant decide to pay nothing within the 60-day window, it must provide an explanation in an EOR. (*Colamónico v. Secure Transportation* (August 12, 2020, ADJ9542328) [2020 Cal. Wrk. Comp. P.D. LEXIS 226, \*10, fn. 7] (*Colamónico*)).) If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider's billing. (Cal. Code Regs., tit. 8, § 10786; see *Colamónico, supra*.) A defendant is then liable for the reasonable value of the medical-legal services, as well as a 10 percent penalty and 7 percent per annum interest. (Lab. Code, § 4622(a)(1); see also Lab. Code, § 5813 [permitting sanctions for bad-faith actions or tactics].) A lien claimant has the burden of proof of the reasonable value of its services at the time that they were incurred. (Lab. Code, § 4621(a).)

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, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Board 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 (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

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.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475; Lab. Code, § 5313.) A WCJ’s decision must be based on admitted evidence (*id.* at p. 476), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Garza v. Workmen’s Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Here, the WCJ’s decision failed to address the sole issue presented for trial, which, again, was: “Whether defendants are liable for costs, monetary sanctions, and attorney fees for their failure to object to Cost Petitioner’s invoices.” (MOH, October 9, 2023, p. 3.) In accordance with section 5313, *Hamilton*, and *Garza, supra*, we therefore grant reconsideration, rescind the WCJ’s decision, and return this matter to the WCJ to issue a new decision addressing the issue submitted for trial. In the new decision, the WCJ must make findings upon all facts involved in the controversy, cite to admitted evidence in support of each finding, and identify the authority upon which the opinion is based.

For the foregoing reasons,

**IT IS ORDERED** that cost petitioner's Petition for Reconsideration of the December 27, 2023 F&O is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 27, 2023 F&O is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MARCH 19, 2024**

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

**MATRIX DOCUMENT IMAGING  
LITIGATION AND CONSULTING ASSOCIATES  
WAI, CONNOR & HAMIDZADEH**

**AH/cs**

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