

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

JOHNNY RODRIGUEZ, *Applicant*

vs.

MADRID LASER; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ1783830 (ANA 0407572)
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration.

To the extent that lien claimant seeks relief pursuant to Code of Civil Procedure section 473 and the holding in *Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, it failed to meet its burden of proof to establish its claim that its lien activation fee payment was rejected due to "overload" by substantial evidence in the record.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 9, 2021

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

**BEVERLY HILLS PHARMACY
COLLECTIVE RESOURCES
STATE COMPENSATION INSURANCE FUND**

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

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

I.

INTRODUCTION

Lien claimant Beverly Hills Pharmacy Beverly Hills by and through their representative has filed a timely verified Petition for Reconsideration. For the reasons set forth below, this Petition should be denied.

II.

STATEMENT OF FACTS

Applicant sustained injury on July 23, 2007 to his waist, lower extremities, left shoulder, sleep impairment, headaches, and sexual dysfunction. The matter settled by way of Compromise and Release with an Order Approving Compromise and Release issuing on October 25, 2019.

Beverly Hills Pharmacy filed an initial lien on August 22, 2011. Lien claimant on December 23, 2015 attempted to pay the activation fee. Lien claimant's activation fee payment attempt did not go through. DIR thereafter on January 1, 2016 emailed the lien claimant and advised them of this fact.

No evidence was offered by lien claimant that they attempted to rectify and pay the activation fee at any point thereafter. Lien Claimant thereafter files a second lien on June 26, 2020 seeking recovery for the same charges that were the subject of the original lien for medications dispensed during the period March 26, 2008 – December 17, 2009.

The matter proceeded to lien trial before the undersigned Judge on issues of whether the original lien dated August 22, 2011 was dismissed by operation of law and whether the lien filed for the same charges filed on June 26, 2020 is barred by the Statute of Limitations.

The Court found that the lien of Beverly Hills Pharmacy filed on August 22, 2011 was dismissed by operation of law for failure to pay the activation fee. The Court further found that the lien filed on June 26, 2020 for the same charges as set forth in the lien dated August 22, 2011 was

invalid. The Court further found that the lien filed on June 26, 2020 is barred by the Statute of Limitations.

It is from these findings that lien claimant has petitioned for reconsideration.

III.

CONTENTIONS

1. Lien claimant asserts that they complied with the lien activation statute.
2. That the lien should be litigated on its merits.

IV.

DISCUSSION

The letter from DIR dated January 1, 2016 is proof that the lien claimant failed to timely pay the lien activation fee and therefore, their failure to timely pay has resulted in the dismissal of their lien for failure to pay the activation fee. Additionally, it was noted that there was never an attempt to rectify the nonpayment at any time between January 1, 2016 and the filing of the second lien June 26, 2020.

Labor Code section 490.06(a)(5) states that any lien filed prior to January 1, 2013 for which the filing fee or lien activation fee has not been paid by January 1, 2014 is dismissed by operation of law. This time limit was effectively extended from January 1, 2014 to December 31, 2015.

Lien claimant has not cited any authority that stands for the proposition that an attempt to pay the activation fee is a defense to the dismissal of the lien. Lien claimant has failed to demonstrate timely payment of the activation. Lien claimant's Exhibit 5 supports the Court's finding that the activation fee was not timely paid. The lien is dismissed by operation of law and cannot be revived by the filing of a subsequent lien June 26, 2020 for the same dates of service. To allow the refiling would be to circumvent Labor Code section 4903.06 (a)(5).

Lien claimant contends that the lien should be litigated on its merits. This cannot be accomplished as the lien filed August 22, 2011 was dismissed by operation of law and the refiling on June 26, 2020 is invalid and also barred by the Statute of Limitations. This Court has no jurisdiction to decide the lien on the merits.

V.

RECOMMENDATION

Based upon the forgoing, it is respectfully recommended that lien claimant's Petition for Reconsideration be denied.

DATE: September 24, 2021

Pamella A. Stone
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

INTRODUCTION

Johnny Rodriguez, while employed as a crush operation by Madrid Laser sustained an admitted injury to his waist, lower extremities, left shoulder, sleep, headaches, and sexual dysfunction. Said injury occurred on July 23, 2007.

The case settled by way of Compromise and Release with an Order Approving Compromise and Release issuing on October 25, 2019.

Beverly Hills Pharmacy has a lien interest in the amount of \$28,901.97. The lien claimant filed a lien on August 29, 2011 in the amount of \$14,447.76. (Lien Claimant's Exhibit 4) The lien does not include an itemization of services rendered over what period of time.

Lien Claimant Beverly Hills Pharmacy filed a subsequent lien on June 26, 2020 in the amount of \$29,901.97. (Lien Claimant's Exhibit 1) Defense Exhibit A is the supporting billing for the June 26, 2020 lien.

The billing is dated June 20, 2020 and the charges contained therein are for the period March 26, 2008 through December 17, 2009 and for penalties and interest to date of \$15,230.92. When adding the prior lien to the subsequent lien inclusion of penalties and interest, it equals \$29,678.68.

The defendant asserts that the original lien that represents the underlying services was dismissed by operation of law for failure to pay the activation fee as required by Labor Code section 4903.06.

IS THE LIEN OF BEVERLY HILLS PHARMACY FILED ON AUGUST 22, 2011

DISMISSED BY OPERATION OF LAW FOR FAILURE TO PAY ACTIVATION? IF SO

IS THE LIEN DISMISSAL WITH PREJUDICE?

Labor Code section 4903.06 (a)(1) states as follows:

(a) Any lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee unless the lien claimant provides proof of

having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.

(1) The lien claimant shall pay a lien activation fee of one hundred dollars (\$100) to the Division of Workers' Compensation on or before January 1, 2014. The fee shall be collected through an electronic payment system that accepts major credit cards and any additional forms of electronic payment selected by the administrative director. If the administrative director contracts with a service provider for the processing of electronic payments, any processing fee shall be absorbed by the division and not added to the fee charged to the lien filer.

Lien claimant offers Exhibit 5 which is an email from payments DIR regarding lien claimant's failed credit card transaction. The email was sent January 16, 2016 at 12:04 A.M. and states as follows:

A credit card charge originated on your behalf, in the amount of \$100.00, submitted for payment processing on December 31, 2015 22:30:49 for a line associated with case number ADJ1783830 was returned unauthorized by the receiving bank.

PLEASE NOTE: The lien filing process for line 0005030801 was not completed successfully thus your lien is not filed under regulation 10207 (lien filing fee) or activated under regulation 10208 (lien activation fee). You must begin the line filing process or line activation process again to file or activate this lien.

Lien Claimant Exhibit 5 is evidence that lien claimant failed to pay the activation fee as required. Lien claimant failed to offer evidence that the activation was subsequently ever paid.

Insofar as the lien claimant has failed to prove that they timely paid the activation fee as required in Labor Code section 4906.06 (a)(1), the lien of Beverly Hills Pharmacy filed on August 22, 2011 is dismissed by operation of law.

IS THE LIEN OF BEVERLY HILLS PHARMACY FILED AUGUST 22, 2011

DISMISSED WITH PREJUDICE? IF SO, CAN THE LIEN BE REFILED AT A LATER

DATE FOR THE SAME SERVICES:

Labor Code section 4903.06(a)(4) states that if the lien claimant fails to provide proof of payment of the activation fee the lien shall be dismissed with prejudice.

Therefore, the lien of Beverly Hills Pharmacy filed on August 22, 2011 is and was dismissed with prejudice. In a case where the matter is dismissed with prejudice, it cannot be

refiled again. The Court finds the lien of Beverly Hills Pharmacy dated June 26, 2020 for the same dates of service set forth in the lien filed August 22, 2011 is invalid.

STATUTE OF LIMITATIONS AS BAR TO THE JUNE 26, 2020 LIEN

This issue is moot by virtue of the Court's finding of an invalid lien. The lien would have also been barred by the Statute of limitations. The case settled by way of Compromise and Release with the Court issuing an Order Approving Compromise and Release on October 25, 2019.

Labor Code section 4905.3 states that a lien shall not be filed after three years from the date of services were provided no more than 18 months after the of services were provided if the services were provided on or after July 1, 2013.

Lien claimant provided services in 2008 and 2009. The lien claimants filing in June of 2020 is well beyond the statute. The statute of limitations is a bar as well to the lien of Beverly Hills Pharmacy dated June 26, 2020. The prior statute of limitations in effect before 2013 is not applicable to the lien dated June 26, 2020.

The lien of Beverly Hills Pharmacy dated August 22, 2011 is dismissed by operation of law with prejudice. As such, the lien for the same dates of service, which are the basis for the August 22, 2011 lien cannot be refiled as the lien was dismissed with prejudice.

The lien of Beverly Hills Pharmacy for the same dates of service as the lien dated August 22, 2011 is an invalid lien. The lien of Beverly Hills Pharmacy dated June 26, 2020 is also barred by the Statute of Limitations.

DATE: August 20, 2021

Pamella A. Stone
WORKERS' COMPENSATION JUDGE