

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

RAUL GARCIA, *Applicant*

vs.

**RELIABLE RESOURCES;
ZURICH AMERICAN INSURANCE, *Defendants***

**Adjudication Number: ADJ9506148
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision after Reconsideration.

Citywide Scanning Services, Inc. (lien claimant) seeks reconsideration of the Supplemental Findings of Fact & Order (Supplemental F&O) issued by the workers' compensation administrative law judge (WCJ) on November 3, 2020. As relevant herein, the WCJ found that lien claimant knew or should have known that it could not meet its burden of proof based on the evidence proffered at the January 9, 2019 lien trial; and that lien claimant's insistence on trial was frivolous, in bad faith, and a waste of the court's resources. The WCJ ordered lien claimant to pay Black & Rose, LLP's reasonable attorney's fees in the amount of \$3,474.00.

Lien claimant contends, as relevant herein, that the WCJ's Opinion on Decision is not consistent with *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473 [2001 Cal. Wrk. Comp. LEXIS 4947]; and that the evidence does not support the WCJ's Supplemental F&O. Lien claimant also argues that the WCJ failed to address its February 4, 2020 Petition for Costs and Sanctions against Black and Rose, LLP.¹

¹ We note that lien claimant filed a Petition for Labor Code section 5813 Sanctions and Costs (Petition for Sanctions) on February 4, 2020. The October 27, 2020 minutes of hearing and summary of evidence do not indicate that lien claimant raised its Petition for Sanctions at trial, or that the parties agreed to defer lien claimant's Petition for Sanctions. We will leave it to the parties and the WCJ to address the Petition for Sanctions, if necessary, in the first instance.

Defendant did not file an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the Supplemental F&O and return the matter to the WCJ for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On November 5, 2019, we issued our Opinion and Order Granting Petitions for Reconsideration and Decision After Reconsideration (Decision After Reconsideration). As relevant herein, we deferred the issue of whether defendant's attorneys are entitled to attorney's fees.²

On October 27, 2020, the WCJ held a hearing. The minutes of hearing reflect the "issues" as follows:

LET THE MINUTES OF HEARING REFLECT that the case was remanded back to the trial level by the workers' compensation Appeals Board, pursuant to its Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, dated November 5, 2019. Additional evidence needed to be obtained regarding applicability of 8 CCR section 10773.

Sophia Duncan, the only witness at the hearing, testified to her position with Black and Rose as a non-attorney hearing representative. (Transcript of Proceedings, October 27, 2020, pp. 4:16-12:13.) Neither party offered any exhibits as evidence nor listed any stipulations or issues at the hearing. (Transcript of Proceedings, October 27, 2020; Minutes of Hearing, October 27, 2020.)

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, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).) As required by section 5313 and explained in

² We provided a detailed factual background of this case in our DAR. (See DAR, November 5, 2019, pp. 2:13-4:19.)

Hamilton v. Lockheed Corporation (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc), “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.” 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.” (Citation omitted.) (*Id.* at p. 476.)

The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Part of the WCJ’s responsibility is to “frame the issues and stipulations for trial.” (*Id.* at p. 475.)

The issue that we face on reconsideration is that there is an insufficient record to evaluate lien claimant’s Petition for Reconsideration or the WCJ’s Supplemental F&O. Here, the WCJ did not adequately frame the issues. The minutes of hearing indicate that the issue of “8 CCR Section 10773” was to be addressed. (Minutes of Hearing, *supra*, at p. 2:1-4; Transcript of Proceedings, *supra*, at p. 3:18-24.) Simply referring to the issue stated in the Decision After Reconsideration, without any context, does not provide sufficient guidance to an appellate body as to the issues that were adjudicated. What is missing is a recitation of the underlying issue or issues that required a hearing on 8 CCR Section 10773.

Additionally, the WCJ did not make a notation of the documentary evidence in the October 27, 2020 minutes of hearing/summary of evidence. Thus, it is unclear what evidence the WCJ considered in forming the Supplemental F&O. For example, the WCJ mentioned defendant’s March 20, 2019 Petition for Sanctions and Costs in support of his finding of \$3,474.00 as the reasonable cost of defendant’s attorney’s fees. The Petition for Sanctions and Costs, itself, is not evidence. What is needed are citations or references to specific evidence that supports the WCJ’s determination. Moreover, it appears that Ms. Duncan testified that she filed a Notice of Representation pursuant to former WCAB Rule 10773 on December 29, 2019.³ (Transcript of Proceedings, *supra*, at p. 5:3-11.) The Notice of Representation, however, is not a part of the record, which hinders our ability to determine if her testimony is substantial evidence.

³ Effective January 1, 2020, former WCAB Rule 10773 (Cal. Code Regs., tit. 8, former § 10773), as relevant herein, is now 10401. (Cal. Code Regs., tit. 8, § 10401.)

Lastly, the Supplemental Findings of Fact are not sufficient to support the Order. While the WCJ discussed former WCAB Rule 10773 in the Opinion on Decision, there are no actual findings on the applicability of former WCAB Rule 10773. Thus, the Order granting defendant's attorney's fees is not supported by the Findings of Fact.

Accordingly, we rescind the Supplemental F&O and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 3, 2020 Supplemental Findings of Fact and Order 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 1, 2021

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

**RAUL GARCIA
BLACK ROSE
GALLAGHER BASSETT
CITYWIDE SCANNING SERVICES, INC.**

SS/abs

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