

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

CHONG TAK, *Applicant*

vs.

**GARDEN GROVE HOSPITAL/CORVEL;
SAFETY NATIONAL INSURANCE, *Defendants***

**Adjudication Number: ADJ9858825
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration¹ in this matter² to further study the factual and legal issues presented. This is our Opinion and Decision After Reconsideration.

Cost petitioner seeks reconsideration from the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 17, 2021. As relevant herein, the WCJ found that there was no evidence presented to support the claim that copy services regarding various subpoenas duces tecum (SDT) were medical-legal expenses, were material to a material medical dispute at the time they were incurred, or were reasonably, actually, and necessarily incurred at the time.

We did not receive an Answer from defendant. We received a Report and Recommendation from the WCJ on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations in the Petitions and the contents of the Report with respect thereto. Based on our review of the record and for the reasons discussed below, as our decision after reconsideration, we will rescind the F&O and return the matter to the trial level for

¹ Following the grant of reconsideration, Commissioner Lowe became unavailable to participate. Another commissioner was assigned in her place.

² We previously issued an Opinion and Order Denying Petition for Removal on August 25, 2020. That Petition was filed by a different cost petitioner than the petitioner here.

further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

FACTUAL BACKGROUND

Applicant claimed injury to various body parts during the cumulative period from November 21, 2013 to November 21, 2014, while employed by the defendant as a nurse.

The defendant and cost petitioner proceeded to a lien trial on June 18, 2020. The stipulations were:

1. Citiwide Scanning Services claims costs for the subpoena services requested by Applicant's Attorney on 3/4/2015, 4/23/2015, 5/01/2015 and 2/14/2017, as stated in the Petition for Non-IBR costs;
2. Defendant, through its claims administrator Corvel, denied the claim on May 27, 2015, and issued a Notice of Denial, as stated in the Defendant's Points and Authorities;
3. Corvel is the Defendant's claims administrator;
4. Defendant Prime Healthcare Services is doing business as Garden Grove Hospital Medical Center.

(Minutes of Hearing (MOH), June 18, 2020, p. 2.)

The WCJ also issued various orders as to the conduct of the proceedings. The parties proceeded to a further lien trial on April 5, 2021. According to the April 5, 2021 MOH, subpoenas were identified as numbers one through twelve, but no documents were identified as exhibits or admitted into evidence on the record, even though it appears from the record in FileNet in EAMS that exhibits were numbered and submitted. Additionally, no issues were identified.

Lien claimant and defendant each offered witness testimony, which is very briefly summarized in the MOH.

In its petition, cost petitioner asks that we find that the claim was contested and that the medical-legal expenses incurred were reasonable and necessary for proving or disproving the claim. Alternatively, cost petitioner asks that we rescind the WCJ's F&O and return this matter to the trial level for further proceedings.

The WCJ issued a Report and Recommendation on the Petition for Reconsideration reiterating her findings from the May 17, 2021 F&O.

DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.³ An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc)⁴ (*Hamilton*)). 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*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10750).

Here, the subpoenas were listed, but all of the exhibits should have been properly identified. Brief testimony was provided, but without a clear listing of the exhibits and issues, it is difficult to determine to what evidentiary weight should be given to their testimony. Most importantly, without a clear identification of the issues, we are unable to conduct a meaningful review. Thus,

³ All statutory references not otherwise identified are to the Labor Code.

⁴ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

we are unable to evaluate the basis for the WCJ's May 17, 2021 Findings and Order. Therefore, we must return this matter to the trial level for further proceedings⁵.

Accordingly, as our decision after reconsideration, we grant cost petitioner's petition, rescind the May 17, 2021 Findings and Order, and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

⁵ We note the triable issue here is not cost petitioner's lien, but rather: (1) a medical-legal provider has the initial burden of proof that: a) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to section 4620; and (b) its medical-legal services were reasonably, actually, and necessarily incurred pursuant to section 4621(a); (2) defendant does not waive an objection based on section 4620 or 4621 by failing to raise those objections in an explanation of review pursuant to section 4622. *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. P.D. LEXIS 388] (Appeals Board en banc).

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 17, 2021 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 27, 2022

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

**CITYWIDE SCANNING SERVICE
LAW OFFICES OF JACK PONCE, A.P.C.**

HAV/ara

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