

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

ROBERTO GUZMAN, *Applicant*

vs.

**R.W. ZANT COMPANY; TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA, *Defendants***

**Adjudication Numbers: ADJ2725677 (LAO 0855644); ADJ4070226 (LAO 0855646);
ADJ709976 (LAO 0855645)
Los Angeles 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 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, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

A lien claimant must establish that the treatment it provided was medically reasonable and necessary to cure or relieve the applicant from the effects of the industrial injury. (*Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1121 (Appeals Board en banc).) For the reasons stated by the WCJ in the Report, we agree that lien claimant did not meet its burden of proof. Moreover, to the extent lien claimant raises new issues in the current Petition for Reconsideration that were not raised at trial, these issues are waived. An issue that is not raised at the first opportunity at which it may properly be raised is waived. (Lab. Code, § 5502(e)(3), see also *Gould v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1059 [57 Cal.Comp.Cases 157], *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260 [54 Cal.Comp.Cases 145].)

Finally, we also admonish defense hearing representative Rachel Wygand with Woolford & Associates, for attaching approximately 22 pages that are already part of the record in violation of WCAB Rule 10842(c) (Cal. Code Regs., tit. 8, § 10842(c)) and for failing to comply with the

page-limit requirement of Administrative Director Rule 10205.12(10). Failure to comply with the WCAB's rules in the future may result in the imposition of sanctions.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 6, 2022

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

**ROBERTO GUZMAN
WOOLFORD & ASSOCIATES
COLLECTIVE RESOURCES**

PAG/pc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Roberto Guzman, Applicant, while employed during the period September 19, 2003, through May 20, 2004, as a freezer man, in the state of California, by R.W. Zant Company, sustained injury arising out of and in the course of employment to his back, lower extremities, and psyche.

Petitioner lien claimant The Prescription Center seeks reconsideration of the 06/13/2022 Findings and Order disallowing its lien for self-procured medications.

II. CONTENTIONS

Petitioner The Prescription Center avers that its “main contention” was prejudice caused by defendant’s failure to timely comply with a 05/30/2019 order allowing service of medicals; and that the reports of Darrell Burstein support the necessity of the medications dispensed by petitioner.

III. FACTS

Petitioner does not set forth when its “main contention” was raised at or before lien trial of 05/26/2022. The trial brief of 05/25/2022 (EAMS Doc. ID No. 41634353) is devoid of any mention of the assertion that defendant failed to timely serve medical reports of John Larsen, M.D. There is no request for an adverse inference in the briefing. Neither non-service of medicals nor adverse inference is raised on the record at lien trial on 05/26/2022.

Defendant offered Exhibits F through PP, reports of John Larsen, M.D., and no objection to admission of the reports was raised at trial based on lack of service or any other reason.

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Dr. Larsen’s reports contain no mention of any referral to a secondary treating physician.

IV. DISCUSSION

Petitioner first asserts non-service or later service of medical reporting on request for reconsideration. While admitting some reports were served, no evidence was offered as to which reports were not served or when any served

reports were received. No such evidence is set forth even at this late juncture. There is no basis to consider a claim of adverse inference. The reporting of Dr. Burstein cannot be relied upon to support the need for the medications supplied by petitioner, since nothing in the record establishes that he was a secondary treating physician as alleged.

The lien of The Prescription Center was properly disallowed based on the evidentiary record in this case.

V. RECOMMENDATION

Based on the foregoing, the undersigned WCALJ recommends that the petition for reconsideration be denied.

DATE: 07/11/2022
WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE