

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **PEDRO HERNANDEZ,**

5 *Applicant,*

6 **vs.**

7 **HENKEL LOCTITE CORPORATION;**  
8 **ZURICH AMERICAN INS. CO.,**  
9 **administrated by ZURICH NORTH**  
10 **AMERICA/LOS ANGELES,**

11 *Defendants.*

**Case No. ADJ6726149**  
**(Pomona District Office)**

**OPINION AND ORDER**  
**DENYING PETITION FOR**  
**RECONSIDERATION**  
**(EN BANC)**

12 The Chairwoman of the Appeals Board, pursuant to a majority vote of its members and in order  
13 to secure uniformity of decision in the future, assigns this case to the Appeals Board as a whole for an en  
14 banc decision (Lab. Code, § 115)<sup>1</sup>.

15 On December 29, 2017, a workers' compensation administrative law judge (WCJ) issued a  
16 Findings of Fact wherein she found that lien claimant Monrovia Memorial Hospital (lien claimant) is not  
17 barred from proceeding on its lien in the above captioned matter due to a "dismissal" notation in the  
18 Electronic Adjudication Management System (EAMS) pursuant to *Jose Guillermina Rodriguez v.*  
19 *Garden Planting Co., et al.* (2017) 82 Cal.Comp.Cases 1390 (Appeals Bd. en banc). The WCJ then found  
20 that lien claimant had until the close of business at 5:00 p.m. on Monday, July 3, 2017 to file a lien claim  
21 declaration pursuant to Labor Code<sup>2</sup> section 4903.05.

22 Defendant contends that lien claimant's lien is dismissed by operation of law because its section  
23 4903.05(c) declaration was not timely filed before the close of business, i.e., 5:00 p.m., on Friday,

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25 <sup>1</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit.  
26 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [70  
Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236].) This en  
banc decision is also adopted as a precedent decision pursuant to Government Code section 11425.60(b).

27 <sup>2</sup> All further references are to the Labor Code unless otherwise noted.

1 June 30, 2017 pursuant to section 4903.05, subsection (c)(2); and because it was unsigned in violation of  
2 subsection (c)(3).

3 Based on our review of the relevant statutes and case law, we hold that:

- 4 1. Labor Code section 4903.05(c)(2) states that lien claimants “shall have  
5 until July 1, 2017” to file the declaration identified in section  
6 4903.05(c)(1), thereby establishing the last date for performance of an act  
7 required by statute as July 1, 2017, a Saturday.
- 8 2. Pursuant to the plain language in section 4903.05(c)(2) and WCAB Rule  
9 10770.7, declarations filed pursuant to section 4903.05(c) at or before 5:00  
10 p.m. on the next business day, Monday, July 3, 2017, are timely filed.

11 We have considered the allegations of defendant’s Petition, the Answer<sup>3</sup>, the supplemental  
12 pleading<sup>4</sup>, and the contents of the Report and Recommendation filed by the WCJ. For the reasons stated  
13 below, we deny defendant’s Petition for Reconsideration.

14 **THE DECEMBER 29, 2017 FINDINGS OF FACT CONSTITUTES A FINAL ORDER**

15 A petition for reconsideration may properly be taken only from a “final” order, decision, or  
16 award. (Lab. Code, §§ 5900(a), 5902, 5903.) “An order, decision, or award of the WCAB or workers’  
17 compensation judge is final for purposes of a petition for reconsideration where it determines any  
18 substantive right or liability of those involved in the case.” (*Rymer v. Hagler* (1989) 211 Cal.App.3d  
19 1171, 1180 [260 Cal.Rptr. 76] quoting *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd.*  
20 (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]; see also, *Safeway Stores, Inc. v.*  
21 *Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410,  
22 413].) In other words, an order is “final” when it determines a “threshold” issue fundamental to the claim

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23 <sup>3</sup> We received lien claimant’s “Response to Defendant’s Petition for Reconsideration and/or Removal; Lien Claimant’s Offer  
24 of Proof Pursuant to WCAB Rule 10856” (Response). However, we do not consider lien claimant’s “Offer of Proof” of new  
25 evidence pursuant to WCAB Rule 10856 because the Response, if considered as a petition for reconsideration based on new  
26 evidence would be untimely pursuant to section 5903, and therefore subject to dismissal. (*Maranian v. Workers’ Comp.*  
27 *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171,  
1182; *Scott v Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe &*  
*Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

<sup>4</sup> We consider defendant’s request to file a supplemental pleading pursuant to WCAB Rule 10848 (Cal. Code Regs., tit. 8,  
§ 10848), grant the request, and accept the supplemental pleading for filing.

1 for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65  
2 Cal.Comp.Cases 650, 650-651, 655-656].)

3 Principally, because workers' compensation proceedings are to be  
4 expeditious, inexpensive, and “without incumbrance of any character,”  
5 certain threshold issues, if finally determined, qualify as final orders.  
6 (*Safeway, supra*, 104 Cal.App.3d at p. 533.) Examples of threshold issues  
7 are whether the injury arises out of and in the course of employment, the  
8 territorial jurisdiction of the appeals board, the existence of an  
9 employment relationship or statute of limitations issues. (*Safeway, supra*,  
10 at pp. 533, 537, fn. 4.) Such issues, if finally determined, “may avoid the  
11 necessity of further litigation” (*id.* at p. 534) and hence render workers'  
12 compensation litigation more expeditious and inexpensive. (*Capital  
13 Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5  
14 Cal.App.5th 658, 662 [210 Cal.Rptr.3d 101].)

15 Interlocutory procedural or evidentiary decisions, entered in the midst of the workers'  
16 compensation proceedings, are not considered “final” orders. (*Maranian, supra*, 81 Cal.App.4th at  
17 p. 1075 [65 Cal.Comp.Cases at p. 655] (“interim orders, which do not decide a threshold issue, such as  
18 intermediate procedural or evidentiary decisions, are not ‘final’”); *Rymer, supra*, 211 Cal.App.3d at  
19 p. 1180 (“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”);  
20 *Kaiser Foundation Hospitals (Kramer), supra*, 82 Cal.App.3d at p. 45 [43 Cal.Comp.Cases at p. 665]  
21 (“[t]he term [‘final’] does not include intermediate procedural orders”).<sup>5</sup> Such interlocutory decisions  
22 include pre-trial orders regarding evidence, discovery, trial setting, venue, and similar issues.

23 Here, defendant filed its petition in the alternative for removal or reconsideration. The Findings of  
24 Fact determined a threshold issue, i.e., whether or not lien claimant’s lien was dismissed by operation of  
25 law, and is thus a final order. Therefore, defendant properly seeks reconsideration, and we will treat the  
26 Petition as one for reconsideration.

### 27 **BACKGROUND**

28 On May 29, 2013, lien claimant filed a Notice and Request for Allowance of Lien for its lien  
29 totaling \$111,837.38. (Def. Exh. G, Notice and Request for Allowance of Lien, signed May 24, 2013.)

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30 <sup>5</sup> As further explained in *Maranian*: “Likewise, the term final order includes orders dismissing a party, rejecting an affirmative  
31 defense, granting commutation, terminating liability, and determining whether the employer has provided compensation  
32 coverage.” (*Maranian, supra*, 81 Cal.App.4th at 1075.)

1 The Legislature amended section 4903.05 in 2016 to add subsection (c), i.e., the declaration  
2 requirement, which became effective January 1, 2017. (Lab. Code, § 4903.05, History.) Section  
3 4903.05(c) states:

4 (c)(1) For liens filed on or after January 1, 2017, any lien claim for  
5 expenses under subdivision (b) of Section 4903 that is subject to a filing  
6 fee under this section shall be accompanied at the time of filing by a  
7 declaration stating, under penalty of perjury, that the dispute is not subject  
8 to an independent bill review and independent medical review under  
9 Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies  
10 one of the following:

11 (A) Is the employee's treating physician providing care through a  
12 medical provider network.

13 (B) Is the agreed medical evaluator or qualified medical evaluator.

14 (C) Has provided treatment authorized by the employer or claims  
15 administrator under Section 4610.

16 (D) Has made a diligent search and determined that the employer  
17 does not have a medical provider network in place.

18 (E) Has documentation that medical treatment has been neglected  
19 or unreasonably refused to the employee as provided by Section  
20 4600.

21 (F) Can show that the expense was incurred for an emergency  
22 medical condition, as defined by subdivision (b) of Section 1317.1  
23 of the Health and Safety Code.

24 (G) Is a certified interpreter rendering services during a medical-  
25 legal examination, a copy service providing medical-legal services,  
26 or has an expense allowed as a lien under rules adopted by the  
27 administrative director.

(2) **Lien claimants shall have until July 1, 2017, to file a declaration  
pursuant to paragraph (1) for any lien claim filed before January 1,  
2017, for expenses pursuant to subdivision (b) of Section 4903 that is  
subject to a filing fee under this section.**

(3) **The failure to file a signed declaration under this subdivision shall  
result in the dismissal of the lien with prejudice by operation of law.**  
Filing of a false declaration shall be grounds for dismissal with prejudice  
after notice. (*Id.*, bold added.)

24 We take judicial notice pursuant to Evidence Code section 451, subsection (f), that July 1, 2017  
25 fell on a Saturday, and that all offices of the WCAB were closed on Saturday, July 1, 2017. (Evid. Code,  
26 § 451(f).)

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1 On February 24, 2017, pursuant to our rulemaking authority, the Appeals Board adopted WCAB  
2 Rule 10770.7 providing that:

3 Any section 4903(b) lien that is subject to a filing fee pursuant to section  
4 4903.05 and that is filed before January 1, 2017 shall be dismissed unless,  
5 **on or before July 1, 2017**, the lien claimant electronically files, in  
6 accordance with Article 4 of the Workers' Compensation Appeals Board  
7 Rules of Practice and Procedure, a Supplemental Lien Form and  
8 4903.05(c) Declaration on the form approved by the Appeals Board. (Cal.  
9 Code Regs., tit. 8, § 10770.7 [operative March 26, 2017].)

7 On February 28, 2017, the Department of Workers' Compensation (DWC) issued a Newsline<sup>6</sup>  
8 informing lien claimants that:

9 Any lien claimant who filed a lien before January 1, 2017 that was subject  
10 to a filing fee under Labor Code section 4903.05 is required to file a  
11 "Supplemental Lien Form and 4903.05(c) Declaration" on the form  
12 approved by the Appeals Board before July 1, 2017.

13 The Appeals Board has already approved the Supplemental Lien Form and  
14 4903.05(c) Declaration for use as an e-form and lien claimants can use  
15 that form now. Lien claimants may wish to file this form in advance of the  
16 adoption of the rule requiring it and will not have to re-file the form once  
17 the rule goes into effect. (Newsline 2017-15, February 28, 2017.)

15 On June 26, 2017, the DWC issued Newsline 2017-49 "reminding lien claimants that they are  
16 required to file a declaration for any lien filed between January 1, 2013 and December 31, 2016 for  
17 which a filing fee was paid." (DWC Newsline 2017-49, June 26, 2017.)

18 On June 28, 2017, DWC issued Newsline 2017-53 "reminding lien claimants that under Labor  
19 Code section 4903.05(c), they are required to file a declaration for any lien filed between January 1, 2013  
20 and December 31, 2016 for which a filing fee was paid." (DWC Newsline 2017-53, June 28, 2017.)

21 On Monday, July 3, 2017, at 8:00 a.m., lien claimant filed its Supplemental Lien Form and  
22 Section 4903.05(c) Declaration on July 3, 2017. (Def. Exh. F, Supplemental Lien Form and Section  
23 4903.05(c) Declaration, July 3, 2017 (Declaration); Answer, p. 2:10-12.)

24 On August 14, 2017, DWC announced that it was dismissing 292,000 liens pursuant to section  
25 4903.05(c), and specifically stated that it would not be sending notices to individual lien claimants that

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27 <sup>6</sup> The DWC periodically issues Newslines to provide informal guidance for the workers' compensation community. However,  
the authority to adopt rules and regulations rests with the Appeals Board. (Lab. Code, § 5307; see Lab. Code, § 111.)

1 their liens had been dismissed. (DWC Newsline 2017-75, August 14, 2017). The DWC explained that  
2 “Senate Bill 1160, which became effective January 1, required all lien claimants who filed a lien between  
3 January 1, 2013 and December 31, 2016, and paid a filing fee, to file the forms by July 1. Lien claimants  
4 who failed to file the forms as required will have their liens dismissed.” (*Ibid.*) On August 29, 2017, the  
5 DWC posted a “searchable database of liens dismissed by operation of law.” (DWC Newsline 2017-81,  
6 August 29, 2017.)

7 On September 14, 2017, numerous lien claimants filed petitions for reconsideration challenging  
8 the action of the DWC in dismissing their liens based on an allegation that the declarations were not  
9 timely filed. (*Jose Guillermina Rodriguez, et al.* (2017) 82 Cal.Comp.Cases 1390, 1392 [2017  
10 Cal.Wrk.Comp. LEXIS 124] (*Rodriguez*) (Appeals Bd. en banc).) In sum, petitioners contended that their  
11 section 4903.05(c) declarations were timely filed between 5:00 p.m. on Friday, June 30, 2017 and 5:00  
12 p.m., Monday, July 3, 2017. (*Id.*, at p. 1392.) “Specifically, they contend that since July 1, 2017 fell on a  
13 Saturday, the required declarations were timely filed because the declarations were filed no later than the  
14 close of business on Monday, July 3, 2017 so that the notation placed in EAMS by DWC was improper.”  
15 (*Id.*, at p. 1394.)

16 On October 3, 2017, the DWC reversed the dismissal of all section 4903.05(c) declarations filed  
17 between July 1 and July 3, 2017. (DWC Newsline, 2017-88.)

18 A total of 2,794 liens with declarations filed on July 2 and 3 were  
19 administratively designated as dismissed for failure to comply with the  
20 July 1 filing deadline. Because July 1 fell on a weekend, workers’  
21 compensation administrative law judges will adjudicate the timeliness of  
22 lien declarations filed on July 2 and July 3 on a case-by case basis. DWC’s  
23 reversal of the dismissal notation is not a decision or order on the  
24 timeliness of the declarations, and shall not be construed as such.

25 Liens with declarations filed after July 3 and liens where no declaration  
26 was filed will remain dismissed by operation of law under Labor Code  
27 section 4903.05(c)(3). (*Ibid.*)

28 The lien trial in this case proceeded on October 17, 2017. (Minutes of Hearing, Reporter’s  
29 Transcript, October 17, 2017 (MOH).) The only issue submitted at trial was “whether Monrovia  
30 Memorial Hospital was in compliance with Labor Code Section 4903.05.” (MOH, at p. 2:19-25.) No  
31 witnesses were produced. (*Id.*) The WCJ admitted seven exhibits into evidence: lien claimant’s Notice

1 and Request for Allowance of Lien signed May 24, 2013 [filed May 29, 2013] (Def. Exh. G); lien  
2 claimant's Supplemental Lien Form and Section 4903.05(c) Declaration signed June 30, 2017 [filed  
3 July 3, 2017] (Def. Exh. F); an August 30, 2017 EAMS search results for liens dismissed pursuant to  
4 section 4903.05(c) (Def. Exh. E); documents and lien search results from EAMS (Def. Exhs. C, D); the  
5 June 26, 2017 DWC Newsline (Def. Exh. A); and excerpts from DWC FAQs about the filing of  
6 documents in EAMS requiring a signature (Def. Exh. B). Post-trial briefs were due on or before  
7 November 1, 2017 at which time the matter would stand submitted. (MOH, at p. 3:10-12.)

8 On October 26, 2017, the Appeals Board issued an en banc decision addressing the September 14,  
9 2017 petitions for reconsideration, which applied "to any case in which a Labor Code section 4903.05(c)  
10 Declaration was filed by a lien claimant after the close of business at 5:00 p.m. on Friday, June 30, 2017  
11 through the close of business at 5:00 p.m. on Monday, July 3, 2017, whether or not the case number is  
12 identified in this decision." (*Rodriguez supra*, 82 Cal.Comp.Cases at pp. 1392-1393.) The Appeals Board  
13 held that the issue presented by that class of liens, i.e., the DWC dismissals in EAMS of liens filed  
14 between the close of business at 5:00 p.m. on Friday, June 30, 2017 through the close of business at  
15 5:00 p.m. on Monday, July 3, 2017, was moot given the subsequent reversal of those dismissals by the  
16 DWC. (*Id.*, at p. 1392.) In conclusion, the Appeals Board stated that,

17 We acknowledge that the issue of whether a lien claimant timely filed its  
18 declarations may be raised by a party and proceed to a hearing, but we  
19 emphasize that in the absence of an adjudication that a declaration was  
20 untimely, a lien claimant is not barred from proceeding on its lien.  
21 Additionally, as is noted above, whether declarations filed after the close  
of business at 5:00 p.m. on Friday, June 30, 2017 through the close of  
business at 5:00 p.m. on Monday July 3, 2017 were timely filed is not  
presently at issue, and we make no determination as to the timeliness of  
filing of such declarations. (Lab. Code, §§ 5900, 5903.) (*Id.*, at p. 1396.)

22 The WCJ issued her Findings of Fact and Opinion on Decision on December 29, 2017, and found,  
23 in pertinent part:

24 2. The sole issue submitted for decision at lien trial on October 17, 2017  
25 was whether the lien claim of Monrovia Memorial Hospital was in  
26 compliance with Labor Code Section 4903.05 (Minutes of Hearing  
October 17, 2017, page 2).

27 3. No witness testimony was submitted on that limited issue. Both  
defendant and lien claimant filed post-trial briefs.

1 4. In consideration of the findings of the Appeals Board October 26, 2017  
2 in case number ADJ 8588344(MF) *Jose Guillermina Rodriguez v. Garden*  
3 *Planting Co.* (and consolidated cases) lien claimant Monrovia Memorial  
Hospital is not barred from proceeding with the litigation of its lien claim  
filed in this matter.

4 5. It is concluded the lien claimant Monrovia Memorial Hospital had up to  
5 and including the close of business at 5:00 p.m. on Monday, July 3, 2017  
to file its lien claim declaration.

6 6. It is concluded the lien claimant Monrovia Memorial Hospital is not  
7 barred from proceeding on its lien due to a notation in EAMS as to  
8 dismissal pursuant to Labor Code Section 4903.05(c). (Findings of Fact,  
Findings of Fact 2-6.)

9 The WCJ explained her findings in the Opinion on Decision:

10 It was posted in EAMS that the lien claim of Monrovia Memorial Hospital  
was dismissed August 15, 2017 pursuant to Labor Code 4903.05(c).

11 Consistent with the en banc decision issued October 26, 2017, in *Jose*  
12 *Guillermina Rodriguez v. Garden Planting Co., Intercare Holdings*  
13 *Insurance Services* (ADJ8588344 MF) and Consolidated Cases, it is found  
14 that en banc decision is applicable to the issue for trial herein. Therefore,  
15 lien claimant Monrovia Memorial Hospital is not barred from proceeding  
on the merits of the claimed lien filed herein. It is concluded the filing of  
the lien declaration was consistent with the cited en banc decision and the  
lien claim was not subject to be dismissed as the filing was completed by  
the close of business at 5:00 p.m. on Monday, July 3, 2017.

16 All other issues remain deferred. (Findings of Fact, Opinion on Decision,  
17 p. 1.)

18 Defendant filed the pending Petition for Reconsideration contending that the WCJ erroneously  
19 relied on the decision in *Rodriguez* to find that lien claimant is not barred from proceeding on its lien, and  
20 that her findings are otherwise “entirely unsupported by law, not justified, and made without and in  
21 excess of the WCAB’s powers.” (Petition for Reconsideration, p. 2:7-26.) Defendant also contends that  
22 the WCJ “failed to address the ‘lack of signature’ issue.” (*Ibid.*)

### 23 DISCUSSION

24 ***I. Lien claimants who filed declarations pursuant to section 4903.05(c) and***  
25 ***WCAB Rule 10770.7 on July 1, 2 and 3, 2017 may proceed to litigate liens***  
26 ***pending an evidentiary finding that the declaration was not timely filed.***

27 As an initial matter, we note that *Rodriguez* did not address whether or not section 4903.05(c)  
declarations filed after the close of business at 5:00 p.m. on Friday, June 30, 2017, through the close of



1 business at 5:00 p.m. on Monday July 3, 2017, were timely filed. However, the Appeals Board did rely  
2 on the DWC reversal of the EAMS notation that those liens were dismissed by operation of law, and  
3 acknowledged that affected lien claimants had a due process right to a fair hearing on the issue of  
4 whether their respective declarations were timely filed.

5 Here, there is no dispute that lien claimant's Supplemental Lien Form and Section 4903.05(c)  
6 Declaration was filed on July 3, 2017. Therefore, lien claimant's lien falls within the holding of  
7 *Rodriguez*, and it may proceed on its lien until there is a finding that it was not timely filed.

8 In fact, the parties proceeded to trial on October 17, 2017 on the sole issue of whether lien  
9 claimant's declaration complied with section 4903.05(c). Defendant contends that "compliance" in this  
10 case encompasses two issues: whether lien claimant's declaration was timely filed on July 3, 2017  
11 pursuant to section 4903.05(c)(2); and whether an electronic signature complies with section  
12 4903.05(c)(3). Defendant also contends that the Appeals Board issued the filing requirement in WCAB  
13 Rule 10770.7 ("on or before July 1, 2017") in contravention of an alleged legislative intent that such  
14 declarations be filed by 5:00 p.m., June 30, 2017.

15 ***II. Declarations filed pursuant to section 4903.05(c) at or before 5:00 p.m. on***  
16 ***Monday, July 3, 2017 are timely filed.***

17 We first address the issue of whether lien claimant's Supplemental Lien Form and Section  
18 4903.05(c) Declaration was timely filed. Section 4903.05(c)(2) states that relevant lien claimants "shall  
19 have until July 1, 2017" to file the declaration identified in section 4903.05(c)(1), thereby establishing the  
20 last date for performance of an act required by statute as Saturday, July 1, 2017<sup>7</sup>. WCAB Rule 10770.7  
21 requires that any section 4903.05(c) declaration be electronically filed "on or before July 1, 2017..." (Cal.  
22 Code Regs., tit. 8, § 10770.7 [operative March 26, 2017].)

23 Contrary to defendant's argument, the traditional rule for the computation of time *includes* the last  
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25 <sup>7</sup> Compare *Matthew Walker v. Tampa Bay Lightning, et al.*, 2015 Cal. Wrk. Comp. P.D. LEXIS 674 (*Walker*) interpreting  
26 Section 3600.5(h), which states: "The amendments made to this section by the act adding this subdivision apply to all claims  
27 for benefits pursuant to this division filed on or after September 15, 2013..." (Lab. Code, § 3600.5(h).) The *Walker* panel  
found that the date in section 3600.5(h) did not reference "the last day for the performance" of an act pursuant to Code of  
Civil Procedure 12a. "As plainly expressed in the statute, the September 15, 2013 date specified in section 3600.5(h) is the  
date on which the amendments to section 3600.5 begin to apply to claims that are filed on or after that date." (*Id.* at p. \*8-9.)

1 day. “The time in which any act provided by law is to be done is computed by excluding the first day,  
2 *and including the last, unless the last day is a holiday, and then it is also excluded.*” (Code Civ. Proc.,  
3 § 12, italics added.) If the last day falls on a holiday, the period of time is extended to include “the next  
4 day that is not a holiday.” (Code Civ. Proc., § 12a(a)<sup>8</sup>.) “Holiday” is defined as “*all day on Saturdays,*  
5 *all holidays specified in Section 135 and, to the extent provided in Section 12b, all days that by terms of*  
6 *Section 12b are required to be considered as holidays.*” (*Id.*, italics added)

7 Code of Civil Procedure section 12b requires that for any day the WCAB is closed, “*that day*  
8 *shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.*” (Code  
9 Civ. Proc., § 12b, italics added.) Moreover, in accord with Code of Civil Procedure section 12b,  
10 Government Code section 6707 states:

11 When the last day for filing any instrument or other document with a state  
12 agency falls upon a Saturday or holiday, such act may be performed upon  
13 the next business day with the same effect as if it had been performed  
upon the day appointed. (Gov. Code, § 6707.)

14 Section 5708 states that the WCAB is not bound by “the common law or statutory rules of  
15 evidence and procedure,” but rather by the Labor Code and “the rules of practice and procedure adopted  
16 by the appeals board.” (Lab. Code, § 5708.) Even so, WCAB Rule 10770.7 is consistent with Code of  
17 Civil Procedure section 12 in that it includes the last day of performance required by section  
18 4903.05(c)(2), i.e., “*on or before July 1, 2017.*” (See Code Civ. Proc., § 12, italics added.) We also note  
19 that when the last date for performance of an act required by *any* workers’ compensation statute falls on a  
20 weekend or holiday, “the act or response may be performed or exercised upon the next business day.”  
21 (Cal. Code Regs., tit. 8, § 10508.) WCAB Rule 10508 is also consistent with the Code of Civil Procedure  
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26 <sup>8</sup> “(b) This section applies to Sections 659, 659a, and 921, and to all other provisions of law providing or requiring an act to be  
27 performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute,  
ordinance, rule, or regulation.” (Code Civ. Proc., § 12a(b).)

1 and the Government Code<sup>9</sup>.

2 Code of Civil Procedure section 12 has been used to compute the last date for performance of an  
3 act required by statute since at least 1899. (See *Dingley v. McDonald* (1899) 124 Cal. 90 [1899 Cal.  
4 LEXIS 946]; *Pacific Sash & Door Co. v. Bumiller* (1912) 162 Cal. 664 [1912 Cal. LEXIS 581]; *Wixted*  
5 *v. Fletcher* (1961) 192 Cal.App.2d 706 [1961 Cal.App. LEXIS 1992] (*Wixted*).

6 ‘The gravest considerations of public order and security require that the  
7 method of computing time be definite and certain. *Before a given case will*  
8 *be deemed to come under an exception to the general rule the intention*  
*must be clearly expressed that a different method of computation was*  
*provided for.’”*

9 The observations of the court in the *Ley* case, just quoted, are particularly  
10 pertinent here; not only do “considerations of public order and security  
11 require that the method of computing time be definite and certain,” but  
12 some measure of uniformity in the law is achieved by adherence to the  
13 principles declared in the cited case. Thus, for years the rule of the first  
14 day’s exclusion has been applied in a variety of procedural situations: It is  
15 applicable in computing the time for filing notice of appeal (*O’Donnell v.*  
16 *City & County of San Francisco*, 147 Cal.App.2d 63 [304 P.2d 852]),  
17 the period for service of notice to dismiss an action (*Welden v. Davis Auto*  
18 *Exchange*, 153 Cal.App.2d 515 [315 P.2d 33]), the time within which a  
19 writ of attachment is issued (*Scoville v. Anderson*, 131 Cal. 590 [63 P.  
1013]), whether a year has elapsed between interlocutory and final divorce  
decrees (*Overby v. Overby*, 154 Cal.App.2d 813 [317 P.2d 91]) and  
whether an action to foreclose a mechanic’s lien was filed within the  
prescribed period. (*Pacific Sash & Door Co. v. Bumiller*, 162 Cal. 664  
[124 P. 230, 41 L.R.A. N.S. 296].) There are already enough legal  
subtleties without adding the further refinement that one rule of time  
computation must be applied to certain statutes of limitation and still  
another to procedural situations. (*Wixted, supra*, at p. 708-709 quoting  
*Union Oil Co. v. Domengeaux* (1939) 30 Cal.App.2d 266, 272-273, italics  
added.)

20 There is no language in section 4903.05 to suggest that the Legislature intended that a different  
21 period of computation apply to the filing of declarations pursuant to subsection (c). Instead, defendant  
22 relies on three cases in support of its argument that “until July 1, 2017” should be considered an  
23 exception to the general rule of computation. However, defendant’s cases do not actually address the

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25 <sup>9</sup> In fact, the authority cited in support of WCAB Rule 10508 includes Government Code section 6707 and Code of Civil  
26 Procedure sections 12, 12a, and 12b. (Cal. Code Regs., tit. 8, § 10508, Statutory Authority.) In addition, whether documents  
27 are filed at a WCAB district office or via EAMS, they are deemed filed on the date received by the Appeals Board if they are  
received prior to 5:00 p.m. on a court day. (Cal. Code Regs., tit. 8, § 10392.) Any filing (whether a paper filing or an EAMS  
filing) “received after 5 p.m. of a court day shall be deemed filed *as of the next court day*.” (Cal. Code Regs., tit. 8, §  
10392(a), (c), italics added.)

1 calculation of the last date for performance of an act required by statute. (See *English v. Long Beach*  
2 (1952) 114 Cal.App.2d 311 [1952 Cal.App. LEXIS 1176] [civil servant cannot be discharged until given  
3 reason for discharge and opportunity to be heard]; *Halsey v. Superior Court of San Francisco* (1907) 152  
4 Cal. 71 [grand jury is not automatically dissolved when “other persons are selected and returned,” but  
5 must first be discharged by the court in which it is acting]; and *Tolle v. Superior Court of Los Angeles*  
6 *County* (1937) 10 Cal.2d 95 (*Tolle*.) In fact, contrary to defendant’s argument, the Court in *Tolle* found  
7 that an order requiring support payments “until” a minor child reached 18 years *included* the minor’s 18<sup>th</sup>  
8 birthday. (*Tolle, supra*, 10 Cal.2d at p. 97.) “The effect of this order was to fix a period as definitely as  
9 though payment had been ordered from the date of the decree to and *including* the 4th day of February,  
10 1921.” (*Ibid*, italics added.)

11           Consequently, we cannot agree with defendant that the Legislature’s use of the word “until” in  
12 section 4903.05(c) constitutes an exception to the long-standing general rule for the computation of time  
13 that provides for the exclusion of the first day and inclusion of the last.

14           Section 4903.05(c)(2) states that lien claimants “shall have until July 1, 2017” to file the  
15 declaration identified in section 4903.05(c)(1), thereby establishing the last date for performance of an  
16 act required by statute as Saturday, July 1, 2017. Given that July 1, 2017 fell on a Saturday, lien claimant  
17 had until 5:00 p.m. on Monday, July 3, 2017 to file the declaration. (See Code Civ. Proc., §§ 12, 12a,  
18 12b; Gov. Code, § 6707; and Cal. Code Regs., tit. 8, §§ 10508, 10392.) It is undisputed that lien claimant  
19 succeeded in filing the declaration before 5:00 p.m. on Monday, July 3, 2017. Therefore, lien claimant’s  
20 Supplemental Lien Form and Section 4903.05(c) Declaration was timely filed.

21           ***III. We do not address the merits of defendant’s contention that an electronic***  
22 ***signature is insufficient to comply with section 4903.05(c)(3).***

23           Next, defendant contends that lien claimant’s Supplemental Lien Form and Section 4903.05(c)  
24 Declaration was not “signed” in compliance with section 4903.05(c)(3). The issue appears to have been  
25 submitted by defendant for consideration by the WCJ. (Trial Brief of Defendant Re: Non-Compliance  
26 with Labor Code § 4903.05 by Lien Claimant Monrovia Memorial Hospital, pp. 14-16; see also excerpts  
27 from DWC FAQs about the filing of documents in EAMS requiring a signature (Def. Exh. B).) However,

1 the WCJ did not issue any finding regarding whether or not lien claimant’s declaration was “signed” in  
2 compliance with section 4903.05(c)(3), and explains that she deferred all issues but for the “foundational  
3 issue” of whether or not the declaration was timely filed. (Report, p. 2.)

4 The WCJ is required to “make and file findings upon all facts involved in the controversy...”  
5 (Lab. Code, § 5313.) As explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66  
6 Cal.Comp.Cases 473 (Appeals Board en banc), “the WCJ is charged with the responsibility of referring  
7 to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of  
8 the decision.” (*Id.*, at p. 475.) Here, the WCJ specifically did not consider whether or not lien claimant’s  
9 declaration was “signed” in compliance with section 4903.05(c)(3). We can therefore neither reach the  
10 merits of the issue, nor interpose our own findings without violating the parties’ rights to due process.  
11 (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]  
12 citing *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158.)

13 We note that our rules require all liens, including the supportive required documentation, to be  
14 electronically filed on an e-form approved by the Appeals Board and submitted by the Administrative  
15 Director’s electronic filing or JET-filing procedures. (Cal. Code Regs., tit. 8, § 10770(b)(1)(A), (B), and  
16 (C)(i).) The Administrative Director’s approved electronic filing technical requirements<sup>10</sup> allow the use  
17 of an “S Signature,” which shall be “rebuttably presumed to be that of the individual whose name is on  
18 the document signature line.” (BR-16 S Signatures; Guide, p. 42.) Defendant compares section  
19 4903.05(c) declarations to settlement documents; however, settlement documents require a “wet”  
20 signature. (See BR-18 Wet/Actual Signatures [“The following documents will require actual wet/actual  
21 signatures(s) be used: Scanned in signed settlement documents.”]; and Guide, p. 42.) The electronic  
22 signature rules and procedures adopted by the Administrative Director are consistent with California’s  
23 statutory rules of procedure. (See Civ. Code, §§ 1633.2, 1633.7.)

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27 <sup>10</sup> See [http://www.dir.ca.gov/dwc/EAMS/JetFiling/BusinessRulesAndJET\\_File\\_Technical\\_Specifications-4.1.pdf](http://www.dir.ca.gov/dwc/EAMS/JetFiling/BusinessRulesAndJET_File_Technical_Specifications-4.1.pdf) (BR), and  
[https://www.dir.ca.gov/dwc/eams/EAMS\\_ElectronicFilingEFormFilersGuide.pdf](https://www.dir.ca.gov/dwc/eams/EAMS_ElectronicFilingEFormFilersGuide.pdf) (Filers Guide).

1           Accordingly, given that lien claimant's Supplemental Lien Form and Section 4903.05(c)  
2 Declaration was timely filed prior to 5:00 p.m. on July 3, 2017, we deny defendant's Petition for  
3 Reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings of Fact issued on  
3 December 29, 2017 by a workers' compensation administrative law judge is **DENIED**.

4  
5 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

6  
7 */s/ Katherine A. Zalewski*  
8 **KATHERINE A. ZALEWSKI, Chairwoman**

9  
10 */s/ Deidra E. Lowe*  
11 **DEIDRA E. LOWE, Commissioner**

12  
13 */s/ Marguerite Sweeney*  
14 **MARGUERITE SWEENEY, Commissioner**

15  
16 */s/ José H. Razo*  
17 **JOSÉ H. RAZO, Commissioner**

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

19 **03/22/2018**

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

22 **PEDRO HERNANDEZ**  
23 **LOUIE & STETTLER (2)**  
24 **INNOVATIVE MEDICAL MANAGEMENT**  
25 **MONROVIA MEMORIAL HOSPITAL**

26 **AJF:abs**