

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

**MIGUEL VELAZQUEZ,
SERVANDO VELAZQUEZ, *Applicants***

vs.

**ARTEMIO ARCE and SOLOMON MARTINEZ;
Insured by MEADOWBROOK INSURANCE COMPANY,
Claims Administrator for STAR INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ10348591, ADJ10349019
Redding District Office**

**OPINION AND DECISION
AFTER REMITTITUR**

The following Opinion and Decision after Remittitur is issued pursuant to the remittitur filed on April 6, 2019 to the Workers' Compensation Appeals Board (Appeals Board), by the Third District Court of Appeal (Court), in which the Court certified that its decision of November 21, 2019 has become final.

In the November 21, 2019 decision, the Court annulled the Appeals Board's January 7, 2019 Opinion and Decision After Reconsideration wherein the Appeals Board affirmed the April 26, 2018 decision of the workers' compensation administrative law judge (WCJ) that lien claimant could recover on its lien for interpreting services. The Appeals Board denied defendant's Petition for Reconsideration. The Court directed the Appeals Board to find that "DFS's bills are deemed satisfied due to its failure to request both a second review and independent bill review as required by Labor Code section 4603.2, subdivision (e)." (*Meadowbrook Ins. Co. v. Workers' Comp. Appeals Bd.* (2019) 42 Cal.App.5th 432, 442 [84 Cal.Comp.Cases 1033].) The Court remanded the case to the Appeals Board for further proceedings.

As our Decision After Remittitur, we will grant reconsideration of the April 26, 2018 Findings and Order, rescind the April 26, 2018 Findings and Order, and issue a new decision as directed by the Court.

The April 26, 2018 decision addressed whether an interpreter could recover on a lien notwithstanding the interpreter's failure to file a request for second review pursuant to

Administrative Director Rule 9792.5.5. (Cal. Code Regs., tit.8, § 9792.5.5) The WCJ found that the liens of DFS were not barred by their failure to file a request for second review. The Appeals Board affirmed the decision, reasoning that, because the interpreter fee schedule was not subject to Independent Bill Review (IBR), it was not subject to the second review requirement. As discussed in greater detail below, the Court determined that the interpreter fee schedule was, in fact, subject to IBR and the requirement that lien claimant file a request for second review.

Labor Code section 4603.2(b)(2), which was adopted as part of Senate Bill 863 (SB 863), effective January 1, 2013, provides that payment for medical treatment required to cure or relieve an injured worker from the effects of an industrial injury pursuant to section 4600 shall be made in accordance with the official medical fee schedule adopted pursuant to section 5307.1 in effect on the date of service and the payment shall be accompanied by “an explanation of review pursuant to Section 4603.3.” Section 4603.2(e) provides that “[i]f the provider disputes the amount paid, the provider may request a second review within 90 days of service of the explanation of review or an order of the appeals board...” Section 4603.2(e) also provides that “[i]f the only dispute is the amount of payment and the provider does not request a second review within 90 days, the bill shall be deemed satisfied and neither the employer nor the employee shall be liable for any additional payment.”

Section 4603.5 enables the Administrative Director (AD) to “adopt rules pertaining to the format and content of notices required by this article...and adopt any other rules necessary to make effective the requirements of this article.” Pursuant to that authority, the AD adopted Rule 9792.5.5 which applies “[i]f the provider disputes the amount of payment made by the claims administrator on a bill for medical treatment services or goods rendered on or after January 1, 2013, submitted pursuant to Labor Code section 4603.2, or Labor Code section 4603.4...” (Cal. Code Regs., tit. 8, § 9792.5.5(a).) AD rule 9792.5.4 defines “amount of payment” as follows:

(a) “Amount of payment” means the amount of money paid by the claims administrator for either:

(1) Medical treatment services or goods rendered by a provider or goods supplied in accordance with Labor Code section 4600 that were authorized by Labor Code section 4610, *and for which there exists an applicable fee schedule adopted by the Administrative Director* for those categories of goods and services, including but not limited to those found at sections 9789.10 to 9789.111, or for which a contract for reimbursement rates exists under Labor Code section 5307.11.

(2) Medical-legal expenses, as defined by Labor Code section 4620, where the payment is determined in accordance with sections 9793-9795 and 9795.1-9795.4. (Cal. Code Regs., tit. 8, § 9792.5.4(a) [Emphasis added].)

The Court held that the interpreter fee schedule was “an applicable fee schedule as required by sections 4600, subdivision (g) and 4603.2, subdivision (e), and Title 8, section 9792.5.4.” (*Meadowbrook, supra* at 441.) Relying on the dictionary definition of “accordance” as meaning “agreement, conformity,” the Court found that although the fee schedule was adopted prior to the enactment of SB 863 and not designated by the Administrative Director (AD) as part of the OMFS the fee schedule was adopted in “agreement” or “conformity” with the statute’s directive that the AD adopt a fee schedule. (*Id.* at 441-442.)

It follows from the Court’s finding that the interpreter fee schedule was an “applicable fee schedule,” that lien claimant’s payment dispute should have been resolved through the IBR process and lien claimant’s failure to file a request for second review was fatal. Therefore, its bills were deemed satisfied pursuant to Labor Code section 4603.2(e). The Court held that because lien claimant’s fee schedule dispute was subject to IBR, the Appeals Board lacked jurisdiction over the lien. This is consistent with Labor Code section 4603.2(f) which provides that the Appeals Board shall have jurisdiction over disputes arising out of this section “[e]xcept as provided in paragraph (4) of subdivision (e).” (Lab. Code, §4603.2(f).) Paragraph (4) provides that if “the provider contests the amount paid, after receipt of the second review, the provider shall request independent bill review as provided for in Section 4603.6.” (Lab. Code, §4603.2(e)(4).) An IBR determination must be made by the AD adopting the determination of a bill review organization and “[i]n no

event shall the appeals board or any higher court make a determination of ultimate fact contrary to the bill review organization.” (Lab. Code, §4603.6(g).)

Accordingly, as our Decision after Remittitur, we grant reconsideration of the April 26, 2018 Findings and Order and substitute a new decision consistent with the Court’s November 21, 2019 decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision after Remittitur of the Workers’ Compensation Appeals Board that reconsideration of the April 26, 2018 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Remittitur of the Workers’ Compensation Appeals Board, that the April 26, 2018 Findings and Order is **RESCINDED**, and that the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Lien claimant DFS Interpreting was required to comply with Administrative Director Rule 9792.5.5.

2. The bills of lien claimant DFS Interpreting in this case are deemed satisfied due to its failure to request a second review and independent bill review as required by Labor Code section 4603.2(e).

3. Meadowbrook is not liable for further payment of the bills of DFS Interpreting in this case.

ORDER

IT IS ORDERED that lien claimant DFS Interpreting take nothing further on its lien.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 5, 2021

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

**BRADFORD AND BARTHEL
DFS INTERPRETING
MIGUEL VELAZQUEZ
SERVANDO VELAZQUEZ
WATKINS AND WATKINS
WORKERS' COMP LAW FIRM**

MWH/oo

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