

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

BLANCA ZELAYA, *Applicant*

vs.

CLOUGHERTY PACKING, permissibly self-insured, administered by ESIS, *Defendants*

**Adjudication Number: ADJ9369251
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Lien claimant (RMS Medical) seeks reconsideration of the Amended Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on April 19, 2022, wherein the WCJ found that RMS Medical was not owed any additional payment by defendant.

RMS Medical contends that at the request of applicant, it provided reasonable medical services so it should be paid for the services provided, plus penalties and interest. In the Petition for Reconsideration (Petition), RMS Medical also "asserts removal." (Petition, pp. 8 – 9.) The F&O is a "final" order that determines a threshold issue. Therefore, removal is not an available remedy and will not be addressed herein. (Lab. Code, §§ 5900(a), 5902, 5903; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068 [65 Cal.Comp.Cases 650].)

We received an Amended Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from defendant.¹

We have considered the allegations in the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings if necessary, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

¹ RMS Medical also filed an "Answer" to the WCJ's Report. RMS Medical did not comply with the requirements of Appeals Board rule 10964 and the "Answer" will not be considered. (Cal. Code Regs., tit. 8, § 10964.)

BACKGROUND

Applicant, Blanka Idalia Zelaya, claimed injury to her neck, shoulders, upper extremity, hand, right middle finger, lumbar spine, hip, and left knee, while employed by defendant as a packer on August 20, 2012. The injury claim was initially denied by defendant. Applicant received treatment from RMS Medical for the period from May 5, 2014, through January 20, 2016. (See LC Exh. 1, Ledger, May 3, 2021.) The parties settled the injury claim by a Compromise and Release that stated the accepted body parts were lumbar spine, left knee, and right middle finger; the WCJ issued the Order Approving Compromise and Release on January 25, 2016. RMS Medical filed its lien on October 14, 2016. It appears that a copy of the same lien document was filed again on April 14, 2021.

Defendant and RMS Medical proceeded to a lien trial on October 13, 2021. Fifteen issues were submitted for decision, including the RMS Medical lien, injury arising out of and occurring in the course of employment (AOE/COE), parts of body injured, reasonableness and necessity of treatment, and dispute of body parts treated. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 13, 2021, pp. 2 – 3.) The WCJ rescinded the December 13, 2021 Findings and Order and at the February 16, 2022 hearing the matter was again submitted for decision. (MOH/SOE, February 16, 2022.)

DISCUSSION

A WCJ is required to address all issues submitted by the parties to be determined and, "... 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, 5815; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board en banc).) A 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." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, as noted above, at the October 13, 2021 trial, the parties identified fifteen issues that were submitted for decision. (MOH/SOE, October 13, 2021, pp. 2 – 3.) However, the F&O only states that “RMS Medical is due no additional payment by defendant...” (F&O, p. 1.) Also, the Opinion on Decision states:

Lien claimant, RMS Medical, has requested additional payment for additional services provided injured worker. ... There will be no order to make further payment to lien claimant RMS Medical. The Lien Claimant exceeded 24 treatment cap.
(F&O, p. 2.)

The Opinion on Decision seems to imply that defendant did make some amount of payment to RMS Medical, but no additional payments were required. However, having reviewed defendant’s Benefits Printout it appears that defendant made no payments to RMS Medical for any treatment it provided applicant for the injured body parts accepted by defendant. (Def. Exh. F, Benefit Printout.)

Due to the lack of Findings addressing the issues submitted for decision, as well as what appear to be inconsistencies in the Opinion on Decision with the evidence submitted at trial, it is appropriate that we rescind the F&O. Notwithstanding the fact that we are rescinding the F&O, it must be made clear that we are not addressing the merits of the RMS Medical lien. This matter is being returned to the trial level in order to have the WCJ make findings necessary to determine the issues submitted for decision. Finally, we are not suggesting that there must be a Finding as to each issue identified by the parties. Findings as to some issues may render other issues moot, but the Findings and the Opinion on Decision must clarify the analysis, the reasoning, and the evidence that are the basis for making such findings. It is left to the discretion of the WCJ to decide whether the record should be further developed or if the determinations as discussed herein, can be made based on the existing record.

Accordingly, we grant reconsideration and rescind the F&O, and we return the matter to the WCJ for further proceedings if necessary, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that lien claimant RMS Medical's Petition for Reconsideration of the Amended Findings and Order issued by the WCJ on April 19, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 19, 2022 Amended Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings if necessary, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 29, 2022

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

**RMS MEDICAL GROUP
RESOLUTION PARTNERS**

TLH/pc

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