

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

JUAN CHAVEZ, *Applicant*

vs.

FRESNO PRODUCE, INC.;
STAR INSURANCE, administered by ILLINOIS MIDWEST INSURANCE AGENCY,
Defendants

**Adjudication Number: ADJ8914656
Fresno District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the presiding workers' compensation administrative law judge (PWCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the PWCJ's report, which we adopt and incorporate, we will grant reconsideration, amend the workers' compensation administrative law judge (WCJ)'s decision as recommended in the report, and otherwise affirm the February 10, 2022 Findings of Fact, Order.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the February 10, 2022 Findings of Fact, Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 10, 2022 Findings of Fact, Order is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. Lien Claimant Paul Schroeder Fresno is entitled to recovery on its lien in an amount subject to the Official Medical Fee Schedule, as well as penalties and interests, less credit for an amount not to exceed \$545.77, all to be adjusted by the parties subject to proof, with jurisdiction reserved at the trial level if there is any dispute.

ORDER

IT IS SO ORDERED that defendant pay the lien of Paul Schroeder
Fresno pursuant to Findings of Fact number 2.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 2, 2022

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

**BRADFORD & BARTHEL
PAUL SCHROEDER, D.C.**

PAG/pc

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

**REPORT AND RECOMMENDATION ON
DEFENDANT'S PETITION FOR RECONSIDERATION**

This Report and Recommendation is submitted in response to the timely filed and verified Petition for Reconsideration of Defendant ILLINOIS MIDWEST INSURANCE AGENCY, LLC (Hereinafter, Illinois Midwest, or Petitioner) on behalf of STAR INSURANCE COMPANY.

**I.
INTRODUCTION**

On 12/2/2021, a Lien Trial in this action was convened before former WCJ Angelique Scott, who issued her Minutes of Hearing, Opinion on Decision, Findings of Fact and Award on 2/10/2022. Petitioner timely filed its subject verified Petition for Reconsideration on 3/2/2022.

Former WCJ Angelique Scott's appointment ended. effective 3/4/2021, before she took action on the Petition. The undersigned has been instructed to submit this Report and Recommendation on Reconsideration.

Petitioner is aggrieved by the Award former Judge Scott issued in favor of Respondent Lien Claimant Paul Schroeder, D.C. (Hereinafter Respondent), Petitioner contends that:

- A. The evidence does not justify the findings of fact;
- B. The findings of fact do not support the order, decision, or award; and
- C. The trial judge, by virtue of the award and decision, acted in excess of her powers.

Petitioner's argues the WCAB lacks jurisdiction over this Lien Claim (payment for medical treatment) because a "chain of contracts" existed between ILLINOIS MIDWEST INSURANCE COMP ANY AND MED RISK, its medical billing servicing agency, and between MEDRISK and Respondent. Petitioner further contends Respondent failed to comply with required procedures to submit billings and to dispute Explanation of Review determinations, depriving the WCAB from having jurisdiction.

**II.
FACTS**

The following facts appear to be without substantial controversy (Minutes of Hearing/Summary of Evidence):

- 1. The workers' compensation insurer for Applicant's claims is Star Insurance Company, administered by Illinois Midwest

- Insurance Agency (Stipulated Fact No. 2; MOH/SOE, Fact No. 2)
2. Respondent was Applicant's primary treater (Id., Fact No. 6); and,
 3. Respondent provided all of Applicant's medical treatment (Id., Fact No. 5)

The following additional facts appear to be without substantial controversy, based on review of the record;

4. Rising Medical Solutions provided Utilization Review Services on behalf of Illinois Mid-West Insurance Company regarding requests for treatment authorization by Applicant's Primary Treater, Respondent Paul Schroeder, D. C. (Ex 1, 8); and,
5. A contract between Respondent and MedRisk, became effective 10/17/2017, which expressly was extended for two years, included a Reimbursement Schedule for California Chiropractic services. (Ex A)

III DISCUSSION

The sole issue identified by former Judge Angelique Scott is:

1. Medical lien of Schroeder Chiropractic in the amount of \$1,205.43. (MOH/SOE, 221-22)

The amount in controversy is inclusive of interest and penalties. (Pre Trial Conference Statement, Liens; Opinion on Decision, pg. 4)

Fonner Judge Scott (Hereinafter, Trial Judge), found there was no dispute regarding the reasonableness and/or necessity of the treatment rendered, nor does Petitioner dispute that finding. (Opinion on Decision, pg. 4; Petition for Reconsideration, pg. 4: 19-26)

JURISDICTION

A. Contract

Petitioner agrees the WCAB has jurisdiction to determine whether an "express agreement" between the employer and medical provider exists and that the employer has the burden of proof to establish there is an express agreement per LC5304. (Petition, 5: 9-11; 5:27-6:2)

Petitioner contends a valid contract was in effect during Respondent's care and treatment of the Applicant, which deprives this court of jurisdiction over the subject Lien Claim. (Petition, 4:21-22) The Trial Judge found:

... [N]o evidence was offered by Defendant to demonstrate MedRisk contract pertains to services rendered for this Defendant, or the claims administrator Illinois Midwest Insurance Agency, to find the contract to be controlling in this matter. As such the contract is not found to deprive the WCAB of jurisdiction over this medical treatment payment dispute. (Opinion on Decision, pg. 4; Petition for Reconsideration, 4:14-18)

It appears the Trial Judge found the mere existence of the contract for chiropractic services in California, which existed between MedRisk and Respondent (Exhibit A), was insufficient to determine that it actually controlled the amounts Respondent could charge for his treatment of Applicant, under the facts presented. The record lacks any evidence or testimony establishing that critical element. Accordingly, the Trial Judge found that the WCAB does have jurisdiction to adjudicate the subject Lien Claim.

B. Amount in Dispute

Petitioner contends:

The Award is in excess of the WCAB's authority because the dispute is over the amount of payment. (Petition, 4:23-24)

Respondent's Lien Claim is in the amount of \$1,205.43, including interest/penalty. (Pre Trial Conference Statement, pg. 3 Liens). The Trial Judge found there is no dispute regarding the reasonableness of that amount, nor that the treatment provided was reasonably necessary. (Opinion on Decision, pg.4)

Petitioner asserts:

Pursuant to section 4603.2(e)(1), a provider who disagrees with the amount paid by the employer must request that the employer reconsider its findings. The request must be made within "90 days of service of the explanation of review or an order of the appeals board resolving the threshold issue as stated in the explanations of review." (Petition, 8:15-18) (emphasis supplied)

In her review of the record, the Trial Judge explained:

Defendant proffered neither evidence nor argument disputing receipt of the claims for payment. Nor did Defendant proffer any evidence by way of Explanation of Review nor benefits printout to

demonstrate any payments were made either in full, part, or alternatively disputed entirely. (Id., pg. 5) (emphasis supplied)

Based on the Trial Judge's determination that there was a lack of evidence to establish any payments was actually made, Respondent's arguments regarding Respondent's obligation to request a second bill review were found irrelevant.

However, in her Minutes of Hearing and Summary of Evidence, pertaining to Respondent's testimony on cross-examination, the Trial Judge summary, is as follows, in pertinent part:

He acknowledges he was paid \$545.77 from the insurance carrier. (MOH/SOE, 5:10-11)

There is no indication in the record that there was any testimony by Respondent regarding the date(s) he upon which he may have received any payment for his treatment of the Applicant, nor for which dates of service any such payments might have been made.

On direct examination, Respondent's testimony was summarized, in part, as follows:

He billed the insurance carrier and also sent his second bill review to the insurance carrier. He received no response from the insurance carrier. (MOH/SOE, 4: 21-22)

It does not appear Dr. Schroeder testified with regard to any dates upon which he may have caused requests for second bill reviews to be sent to the claims administrator.

Petitioner cites Ex. 4 (Third Explanation of Review, received 4/27/2020) and Ex. 8, First Explanation of Review on Rebill, 8/30/19) as EORs issued in response to Respondent's bills for dates of service on 9/24/2018 and 10/10/2018. (Petition, 10:3-7). Petitioner asserts that those EORs were issued timely. (Id. 8-10). Petitioner contends:

In the absence of any valid request for second review that complies with section 4603.2, the bill is deemed satisfied and the Board is without jurisdiction to decide this dispute. (Id. 10: 10-12)

Exhibit 4 is identified as a Third Explanation of Review, and it references date of service on 9/24/2018. It is reasonably inferred that it was preceded by a Second Explanation of Review, triggered by a timely request by Respondent. Accordingly, it is found that the WCAB has jurisdiction over the Lien Claim for treatments on that date of service.

Exhibit 8 is identified as a First Explanation of Review on Rebill, received 8/30/2019, pertaining to a Date of Service on 10/10/2018; Post Date: 8/26/2019. The Total Charges, in the amount of \$419.51, were recommended to be reduced by that amount because they were made for a duplicate procedure (Code 224); Duplicate Charge for a Bill Previously Reviewed, or a "Balance Forward Bill" (Code G56). The record does not appear to include any evidence that a second Bill Review was requested timely. For that reason, it does not appear that Respondent's claim for treatment rendered on 10/10/2018 is within the WCAB's jurisdiction.

Exhibit 5 includes a medical Report and Health Insurance Claim Form, a bill for treatment rendered on 10/1/2020, including a Fax Proof of Service dated 11/18/2018, attesting that it was then transmitted to Illinois Midwest at 866.642.1234. The Fax Proof of Service is entitled to a rebuttable presumption that it was received. There is no evidence to the contrary. Petitioner's argument that service by Fax was improper are not sufficient to overcome the presumption they were sent to and received by Petitioner. (Petition, 11:21-24) It does not appear that an EOR was issued timely in response. For these reasons, the WCAB is found to have jurisdiction over that portion of the Lien Claim.

Exhibit 9 is a bill for treatment rendered on 10/15/2018, including a Fax Proof of Service confirming it was transmitted to Illinois Midwest on 11/18/2018 at 866.642.1234. There is no evidence that it was not received, and the Fax Proof of Service is entitled to a rebuttable presumption that it was. There is no evidence that an Explanation of Review was issued timely. Therefore, it is found that the WCAB has jurisdiction over this portion of the Lien Claim.

Exhibit 11 contains a medical report, billing and Health Insurance Claim form, for treatment rendered on 10/22/2018, including a Fax Proof of Service confirming it was transmitted to Illinois Midwest on 11/8/2018 at 866.624.1234. There is no evidence that it was not received, and the Fax Proof of Service is entitled to a rebuttable presumption that it was. There is no evidence that an Explanation of Review was issued timely. Therefore, it is found that the WCAB has jurisdiction over this portion of the Lien Claim.

Exhibit 12 contains a medical report, billing and Health Insurance Claim form for treatment rendered on 11/12/2018, including a Fax Proof of Service confirming it was transmitted to Illinois Midwest on 3/11/2019 at 866.642.1234. There is no evidence that it was not received, and the Fax Proof of Service is entitled to a rebuttable presumption that it was. There is no evidence that an Explanation of Review was issued timely. Therefore, it is found that the WCAB has jurisdiction over this portion of the Lien Claim.

C. Lien Claimant's Burden of Proof

LC 4603.2(b)(2) is cited by Petitioner, as requiring:

At a minimum, this section requires that a medical provider demonstrate that the requisite documentation was properly served on an employer or insurance carrier. Dr. Schroeder's evidence fails to meet that standard. (Petition, 11 :7-9)

Petitioner contends:

In this matter, the record contains multiple bills for dates of service from Dr. Schroeder. All of Dr. Schroeder's bills, including the so-called requests for second review appear to have been faxed to the parties. (Citation to Exhibits 2, 3, 5, 6, 7, 9, 10, 11 and 12)

The bill for October 10, 2018, does not even contain a proof of service at all. (Ex 6) And even the fax confirmation sheet shows that it was faxed solely to applicant's counsel. There is no indication that these bills were ever mailed to defendant. There is no indication that defendant agreed in writing to service of this documentation by fax or any other means other than regular mail. Thus, lien claimant cannot establish his burden of proof under section 4603.2 entitling him to any penalties or interest. (Petition, 11:10-24) (emphasis in original)

Although Petitioner argues that Exhibit 6, which pertains to a Date of Service on 10/10/2018, lacks even a Fax Proof of service to confirm transmittal to Illinois Midwest, that argument fails to address Exhibit 8, First Explanation of Review on Rebill, which also pertains to the same 10/10/2018 Date of Service, which was transmitted to Illinois Midwest via Fax, as referenced above. Nevertheless, for the reasons stated above, it does not appear Respondent can recover treatment billings for services rendered on 10/10/2018 for failure to timely request as second bill review.

Accordingly, the Trial Judge issued Finding of Fact no. 2, allowing Respondent recovery:

"in an amount subject to the Official Medical Fee Schedule, as well as penalties and interest, to be adjusted by the parties, with WCAB jurisdiction reserved". (Findings of Fact, Order and Opinion on Decision, pg. 2)

The Trial Judge Ordered that:

Lien Claimant Paul Schroeder Fresno is allowed recovery of its lien, penalties and interest.

Her Finding of, Fact No. 2 and Order are construed to provide that Respondent is entitled to recover \$1,205.43, inclusive of penalties and interest, as long as that amount does not exceed that allowed under the OMFS.

Based on the undersigned's review of the record, it appears appropriate that Finding of Fact No. 2 and the Order be amended to expressly exclude charges for treatment rendered on 10/10/2018, less an amount not to exceed \$545.77, according to proof, that any portion of that amount was remitted in partial satisfaction of the Lien Claim.

IV. RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the subject Petition for Reconsideration be granted for the limited purpose of clarifying the scope of Finding of Fact No. 2 and the Order by expressly excluding Lien Claimant's charges for services rendered on 10/10/2018, less an amount not to exceed \$545, 77, according to proof, that any portion of that amount was remitted in partial satisfaction of the Lien Claim.

Date 3/10/2022
Terry R. Menefee
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE