**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**WILLIAM GRANCICH,** ***Applicant***

**vs.**

**ALTA DENA CERTIFIED DIARY;**
**LIBERTY MUTUAL INSURANCE COMPANY,** ***Defendants***

**Adjudication Numbers: ADJ8310173; ADJ9048241**
**Pomona District Office**

# OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] We now issue our Opinion and Decision After Reconsideration.

Lien claimant Keystone Medical Group seeks reconsideration of the Order Taking Off Calendar (OTOC) and the Order for Costs (Order) issued by the workers' compensation administrative law judge (WCJ) on October 10, 2018, and October 16, 2018, respectively, wherein the WCJ took the matter off calendar and by way of a separate order, awarded costs to defendant. Lien claimant contends that it is entitled to proceed to trial on the merits of its lien and that it did not engage in bad faith or frivolous conduct.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny Reconsideration.

We have reviewed the record, and the allegations of the Petition and the Answer and the contents of the Report. Based on our review, as our Decision After Reconsideration, we will rescind the Orders and return the matter to the trial level for further proceedings consistent with this decision.

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[1] Commissioner Dodd was on the panel that issued the order granting reconsideration. As Commissioner Dodd is currently unavailable to participate in this case, a new panelist was appointed in her place.

## FACTS

While employed by defendant as a diary loader, applicant claimed injury to his upper extremities (right shoulder) on October 5, 2011 (ADJ8310173) and to his right leg and back on June 1, 2012 to July 10, 2013 (ADJ9048241). Notably, defendant employer, defendant workers' compensation insurance company, and defendant's attorneys are identical in both cases.

Applicant's specific injury claim resolved via a Stipulation and Award, which was approved on March 27, 2013, and his cumulative injury claim resolved via a Stipulation and Award, which was approved on July 5, 2017.

Lien claimant Keystone Medical Group, specifically, Brent Pratley, M.D., was the authorized primary treating physician for the applicant in his claims of injury against defendant. Lien claimant filed a lien dated August 19, 2016 in ADJ8310173, and properly submitted payment of the lien fee of $150.00.

On April 14, 2018, lien claimant filed a Declaration of Readiness (DOR) in ADJ8310173, and listed ADJ9048241 as a companion case. On July 5, 2018, the parties completed a pre-trial conference statement. According to defendant's hand-written admission on the statement, it was aware that lien claimant had filed the lien under the wrong case number.

On August 9, 2018, the parties appeared for trial. However, the WCJ did not allow the matter to go forward, and on August 20, 2018, she issued a notice of intention to order costs against lien claimant as follows:

> IT APPEARING THAT Pristine Medical Group and Keystone Medical failed to withdraw a lien from this case despite it being clear that the lien was filed in the wrong case, lien claimant having been advised by Defendant at a Lien Conference held October 20, 2017 that the lien was filed in the wrong matter, forcing defendant to prepare for and attend not only a Lien Conference again on July 6, 2018 and trial on August 9, 2018,
>
> NOTICE IS HEREBY GIVEN an Order for Costs for Defendant in the amount of $2,905 will issue in 15 days if no good cause is shown as to why said Order for Costs should not issue.

On August 29, 2018, lien claimant Keystone Medical Group filed a timely objection to the notice of intention and listed both case numbers. In that objection, it also advised that it intended to appear at the mandatory settlement conference in ADJ9048241 on October 18, 2018.

On October 10, 2018, the parties appeared for a mandatory settlement conference in ADJ8310173. The WCJ again did not allow a hearing to proceed, and she issued the OTOC.

On October 16, 2018, the WCJ issued the Order of Costs as follows:

> IT APPEARING THAT no timely objection showing good cause in 15 days beyond August 20, 2018, from Keystone Medical, and;
>
> GOOD CAUSE APPEARING;
> IT IS ORDERED THAT costs are awarded to defendant, in the amount of $2,905 to be paid by Keystone Medical within twenty (20) days along with five (5) days for mailing.

Separately, on October 18, 2018, the parties appeared for a lien conference in ADJ9048241, and lien claimant appeared at that conference. The matter was taken off calendar, and there is nothing in the minutes to explain the basis for the order.

**DISCUSSION**

A WCJ is required to ". . . 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, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (*Blackledge*) (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The 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* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must

contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra,* at p. 475.)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, *lien claimant did file a timely objection to the notice of intention,* so that the WCJ should have considered it before issuing the Order for Costs, and lien claimant's alleged failure to object cannot provide a basis for the Order. Had the WCJ wished to do so, she could have issued a new notice of intention, but she did not. Moreover, lien claimant was entitled to a hearing following its objection.

Further, lien claimant was entitled to a hearing and the creation of a record on the issue of whether the error in listing the case number could be cured. Thus, there was no basis for the OTOC.

We also observe that the WCJ could have consolidated the two cases, since they involve the same applicant, the same employer, the same insurer, and the same defense attorney. (Cal. Code Regs., tit. 8, former § 10589, now § 10396.)

Turning to defendant's contentions regarding procedurally defective pleadings, we observe that the principles of "liberal pleading" have infused California's statutory landscape for more than 150 years. Enacted in 1872, Code of Civil Procedure section 452 requires that, "[i]n the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." Also enacted in 1872, Code of Civil Procedure section 473 provides in pertinent part, "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other

proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Cal. Code Civ. Proc. § 473(b).) Enacted more "recently" in 1963 is Code of Civil Procedure section 576, which provides that, "[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." What follows from these statutory pronouncements is more than a century of consistent jurisprudence emphasizing the public policy preference favoring adjudication on the merits, rather than on procedural deficiencies.

In 1890, the California Supreme Court opined:

> The principal purpose of vesting the court with the discretionary power to correct "a mistake in any other respect" is to enable it to mold and direct its proceedings so as to dispose of cases upon their substantial merits, when it can be done without injustice to either party, whether the obstruction to such a disposition of cases be a mistake of fact or a mistake as to the law, although it may be that the court should require a stronger showing to justify relief from the effect of a mistake of law than of a mistake of fact. (*Ward v. Clay* (1890) 82 Cal. 502, 23 P. 50, 1890 Cal. LEXIS 591.)

In *Dunzweiler v. Superior Court of Alameda County* (1968) 267 Cal. App. 2d 569, 577 [73 Cal. Rptr. 331], the Court of Appeal observed:

> If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and **where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion**. [Citations.] And as stated in *Jepsen v. Sherry* (1950) 99 Cal. App. 2d 119, 121 [220 P.2d 819], the discretion to be exercised by trial courts is "**one controlled by legal principles and is to be exercised in accordance with the spirit of the law and with a view to subserving, rather than defeating, the ends of substantial justice**." (Bolding added.) (*Dunzweiler v. Superior Court of Alameda County, supra,* 267 Cal. App. 2d at 577.)

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal. 3d 410, 419 [39 Cal. Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal. Comp. Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal. Comp. Cases 513].) "[I]t is an often-stated principle

that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.*, (2002) 103 Cal. App. 4th 485, 490 [67 Cal. Comp. Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200–01 [50 Cal. Comp. Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866].) Moreover, section 5709 states that "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division …" (Lab. Code, § 5709.) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio, supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, former § 10492, now § 10517.)

Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal. App. 4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902], "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

Therefore, in workers' compensation proceedings, it is settled law that:

(1) pleadings may be informal (*Zurich Ins. Co., supra,* 9 Cal. 3d at p. 852; *Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal. App. 3d 1452, 1456 [52 Cal. Comp. Cases 141]; *Liberty Mutual Ins. Co v. Workers' Comp. Appeals Bd.* (*Aprahamian*) (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal. App. 3d 590, 594–595 [40 Cal. Comp. Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal. App. 2d 204, 207– 210 [33 Cal. Comp. Cases 345]);

(2) claims should be adjudicated based on substance rather than form (*Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [53 Cal. Comp. Cases 502]; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal. App. 2d 592, 598 [24 Cal. Comp. Cases 274]);

(3) _pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim_ (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra,* 103 Cal. App. 4th at p., 490; *Rubio, supra,* 165 Cal. App. 3d at pp. 199–201; *Aprahamian, supra,* 109 Cal. App. 3d at pp.152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–209); and

(4) _technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction_ (*Bland, supra,* 3 Cal. 3d at pp. 331–332 & see fn. 13; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Aprahamian, supra,* 109 Cal. App. 3d at pp. 152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–210).

Reflecting these principles, current WCAB Rule 10617 (former Rule 10397) provides:

> (a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:
>
> > (1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;
> >
> > (2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or
> >
> > (3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.
>
> (Cal. Code Regs., tit. 8, former § 10397, now § 10617 (eff. Jan. 1, 2020).)

The rule thus provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain "a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file." (Cal. Code Regs., tit. 8, former § 10397, now §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, former § 10492, now §10517.) These rules represent the application of

California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

These principles of liberal pleading are further reflected in section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise, or excusable neglect in accordance with Code of Civil Procedure section 473. The Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox, supra,* 4 Cal. App. 4th 1196.)

With these principles in mind, defendant's contention that lien claimant should be denied relief due to filing of the lien under the incorrect ADJ number is simply not legally supportable. We are persuaded that the interests of substantial justice are better served by adjudication on the merits of the lien, rather than dismissal by administrative fiat for technical noncompliance in pleadings. Additionally, defendant offers no persuasive argument for prejudice, and we discern none in the record. As noted above, both cases involve the same applicant, the same employer, the same insurer, and the same defense attorney, and defendant entered into Stipulations in both cases.

Thus, upon return, the cases should be consolidated, and the parties should proceed with a mandatory settlement conference, and if necessary, a trial on the issue of the reasonableness and necessity of the medical treatment that is the basis for lien claimant's lien. As defendant has wasted substantial time in its meritless arguments as to "form" rather than proceeding to "substance" of the lien, it may be prudent for defendant to enter into settlement negotiations forthwith.

Accordingly, we rescind the OTOC and the Order for Costs and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Taking Off Calendar issued by the workers' compensation administrative law judge on October 10, 2018 is **RESCINDED**.

**IT IS FURTHER ORDERED** that the Order for Costs issued by the workers' compensation administrative law judge on October 16, 2018 is **RESCINDED**.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

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

**December 11, 2023**

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

**ASSOCIATED LIEN SERVICES**
**KEYSTONE MEDICAL GROUP, INC.**
**STANDER REUBENS THOMAS KINSEY**
**WILLIAM GRANCICH**

**AS/mc**

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