

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

EUGENIO MENDEZ MONTIEL, (DEC.), *Applicant*

vs.

**TARGET CORP., permissibly self-insured,
adjusted by SEDGWICK, *Defendants***

Adjudication Number: ADJ17559319

Oakland District Office

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Lien claimant seeks reconsideration of the Findings and Order (F&O) issued on January 10, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found that lien claimant failed to sustain its burden of proof on its lien and ordered that lien claimant take nothing on their lien.

Lien claimant argues that it was not required to provide evidence of causation as to the medical services it rendered because applicant's injury was accepted as industrial.

We have not received an answer from defendant.

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

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

FACTS

Per the WCJ's Report:

The late injured worker, Eugenio Mendez, [who was 49 years old on the date of injury], while employed on November 20, 2021, as a food and beverage stocker, at San Ramon, California, by Target Corporation, sustained injury arising out of and in the course of employment to his head -laceration. The claim is accepted for head-laceration only.

On the date of injury, the applicant was stocking shelves at Target when he apparently began having tingling in his right upper extremity. He is diabetic and believes he has peripheral neuropathy. He had a loss of consciousness then, and a loss of time. He awoke at John Muir Hospital where he was admitted for several days and received treatment for a host of issues. Sometime thereafter, the applicant passed away, apparently of unrelated issues.

John Muir Hospital has filed an application in this matter asserting a lien in the amount of \$284,284.32 for dates of service for November 20, 2021, through November 24, 2021. They claim that no amount has been reimbursed. This matter came regularly to trial on November 13, 2023, on the following issues:

1. Lien of John Muir Hospital for hospital emergency services, ER pre admission, in the amount of \$284,284.32 for dates of service 11/20/21 11/24/21;
2. OMFS: nature and extent;
3. If a workers' compensation payor denies emergency hospital treatment, is lien claimant bound by the OMFS?; and
4. What is the reasonable value for the lien of John Muir Hospital

(WCJ's Report, p. 3.)

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)¹ The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

¹ The use of the term 'appeals board' throughout the Labor Code refers to the Appeals Board and not a DWC district office. (See e.g., Lab. Code, §§ 110, et. seq. (Specifically, § 110 (a) provides: "'Appeals board' means the Workers' Compensation Appeals Board. The title of a member of the board is 'commissioner.'") Section 111 clearly spells out that the Appeals Board and DWC are two different entities.

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not “act on” the petition within 60 days of the petition’s filing with the ‘appeals board’ and not within 60 days of its filing at a DWC district office. A petition for reconsideration is initially filed at a DWC district office so that the WCJ may review the petition in the first instance and determine whether their decision is legally correct and based on substantial evidence. Then the WCJ determines whether to timely rescind their decision, or to prepare a report on the petition and transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8, §§ 10961, 10962.)² Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then “act” on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. On other rare occasions, the case file may be transmitted, but may not be received and processed by the Appeals Board within the 60-day period, due to an administrative error or other similar occurrence. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner’s control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers’ Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers’ Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of

² Petitions for reconsideration are required to be filed at the district office and are not directly filed with the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a “district office” as a “trial level workers’ compensation court.”].) Although the Appeals Board and the DWC district office are separate entities, they do not maintain separate case files; instead, there is only *one case file*, and it is maintained at the trial level by DWC. (Cal. Code Regs., tit. 8, § 10205.4.)

When a petition for reconsideration is filed, the petition is automatically routed electronically through the Electronic Adjudication Management System (EAMS) to the WCJ to review the petition. Thereafter, the entire case file, *including the petition for reconsideration*, is then electronically transmitted, i.e., sent, from the DWC district office to the Appeals Board for review.

fact whether an equitable doctrine such as laches applies. (*Kwok, supra* 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.³

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, at p. 1108.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Ibid.*) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division".].)

With that goal in mind, 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].) If a timely filed petition is never considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code,

³ Labor Code section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

§5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra* 1 Cal.3d 627, 635.) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control.

In this case, the WCJ issued the Findings and Order on January 10, 2024, and lien claimant filed a timely petition on January 31, 2024. According to EAMS, the WCJ served the Report on February 7, 2024; however, the WCJ did not transfer the file to the Appeals Board. The case file was first transmitted to the Appeals Board on September 16, 2024. Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on defendant's petition was equitably tolled until 60 days after September 16, 2024. Accordingly, our decision has timely issued.

II.

A lien claimant has a duty to know or discover the facts regarding the compensability of its lien prior to submitting its lien for trial. (Cal. Code. Regs., tit. 8, § 10880(a)(1).)

Here, the WCJ denied lien claimant's recovery on the grounds that lien claimant failed to prove causation of injury. In its petition, lien claimant correctly points out that causation of injury was stipulated. However, lien claimant fails to recognize two important elements to its burden of proof. First, defendant disputed the nature and extent of injury. (Lien Claimant's Exhibit 2.) Causation was stipulated as to a head laceration only. (*Ibid.*) Lien claimant argues that all treatment rendered in its emergency room was industrial. However, arguments are not evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473, 476 (Appeals Board en banc).) Where liability is disputed, lien claimant was required to establish that its treatment was encompassed within the nature and extent of injury. Absent such evidence, lien claimant failed to meet its burden of proof.

Second, even where a claim is accepted, lien claimant must prove that the treatment rendered was reasonable and necessary to cure or relieve from the effects of the industrial injury. (Lab. Code⁴, §§ 4600, 4610.5(c)(2); 5705.) Lien claimant provided no evidence as to the reasonableness of the treatment rendered. Lien claimant could have submitted the treatment it provided as a request for authorization of retrospective medical treatment. (§§ 4610, 4610.5; Cal. Code Regs., tit. 8, § 9792.9.1.) Then defendant could have either approved the treatment, or submitted it for retrospective utilization review. This did not happen. Furthermore, lien claimant submitted no other medical reports establishing the reasonableness and necessity of the treatment rendered. Instead, it appears that lien claimant simply sent its billing to defendant on the assumption that reasonableness was not in dispute. (Lien Claimant's Exhibit 1.) Defendant responded to the billing by denying liability to all body parts outside of a head laceration. At that point, lien claimant was on notice that a dispute existed and should have obtained evidence to establish its burden of proof.

Lien claimant failed to meet its burden of proof.

Accordingly, we deny reconsideration.

⁴ All future references are to the Labor Code unless noted.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order issued on January 10, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 22, 2024

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

**ALEX KHAZIN, GETEXHEALTH LLC
JOHN MUIR HEALTH SYSTEMS WALNUT CREEK
SEDGWICK LIEN RESOLUTION RANCHO CORDOVA**

EDL/mc

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