

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

MARIA REYNA VELAZQUEZ, *Applicant*

vs.

**CLIFFSIDE MALIBU, A CALIFORNIA CORPORATION;
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Numbers: ADJ11388750, ADJ11388749, SAU13697043
Santa Ana District Office**

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

Lien Claimant Bell Community Medical Group (lien claimant) seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 3, 2024, wherein the WCJ ordered that lien claimant's lien is stayed.¹

Lien Claimant contends that the WCJ did not identify any legal authority for granting the stay, that the stay is improper, and that it should be vacated.

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

We have considered the allegations in the Petition, defendant's Answers, and the contents of the Report with respect thereto. We have also reviewed the record in the special lien proceeding, case number SAU13697043, in which a significant number of lien claimant's liens, including the lien in case number ADJ11388750, were consolidated for discovery. Based on our review of the

¹ The F&O were issued in case number ADJ11388750 only. All citations herein are to case number ADJ11388750 unless otherwise indicated.

records, and as discussed below, we will grant lien claimant's Petition and vacate the F&O issued on September 3, 2024.

BACKGROUND

On July 10, 2018, applicant filed an Application for Adjudication (Application) in case number ADJ11388750, claiming cumulative injury to her shoulder, neck, arm and back during the period from November 4, 2014, through May 29, 2018, while employed by defendant as a laborer. On July 11, 2018, applicant filed a second Application in case number ADJ11388749, claiming cumulative injury to the same body parts, while working for the same employer, during the period from November 4, 2014 through March 1, 2016. Both of applicant's cases were resolved by Compromise and Release, approved by the WCJ on June 15, 2021. (6/15/21 Order Approving C&R.) Lien claimant's lien in case ADJ11388750 was filed February 10, 2022.

Subsequently, on August 8, 2023, Employer's Insurance Group filed an "Amended Petition for Order Consolidating Cases Pertaining to Lien Claimant Bell Community Medical Group (SAU)." (8/8/23 Petition for Consolidation, case SAU13697043.) On May 22, 2024, this special lien proceeding was set for status conference and assigned case number SAU13697043. (MOH 5/22/24, case SAU13697043.) A "Notice of Intent to Consolidate Liens, Designation of Master File, and Order of Assignment to WCJ" was issued by the Presiding WCJ on June 5, 2024. (NIT 6/5/24, case SAU13697043.) A status conference took place on June 18, 2024, and the matter was continued to August 13, 2024. (MOH 6/18/24, case SAU13697043, at p. 9.) On August 16, 2024, an Order of Consolidation issued, which indicated that "the liens of lien claimant Bell Community Medical Group identified as Exhibit A are consolidated for the purposes of discovery." (8/16/24 Order of Consolidation, case SAU13697043.) Case number ADJ11388750 is listed in Exhibit A of that Order and is thus subject to the order of consolidation.² (*Id.*, at p.3.)

Meanwhile, in the instant case, on April 6, 2024, defendant filed a Petition for Stay of the lien, in which it based its request for stay on the allegation that Dr. Bazel (also known as Dr. Bazelyansky, owner of Bell Community Medical Group) invoked the Fifth Amendment and declined to answer questions at his deposition in this matter and in many other matters involving

² We observe that neither lien claimant's petition in the present case, nor the WCJ's Report, indicate that this matter had been consolidated. The special lien proceeding and order of consolidation, under case number SAU13697043, were brought to our attention by Defendant, in its amended answer of October 9, 2024.

the same insurance company. (4/6/24 Petition for Stay, at pp. 1-7.) Lien claimant filed an opposition to the request for stay. (6/10/24 Opposition.)

On June 10, 2024, the matter was set for trial on the issue of the request to stay the lien. (6/10/24 MOH.) The matter proceeded to trial on August 6, 2024, on this issue only. (8/6/24 MOH.) The F&O, granting defendant's request for stay, was issued September 3, 2024. (9/3/24 F&O.) The WCJ found that applicant was employed by defendant on the dates in question; that defendant was insured by Berkshire Hathaway; and that Dr. Bazel, at his deposition, invoked his fifth amendment rights and declined to answer any questions other than stating his name. (*Id.*, at pp. 1-2.) The WCJ ordered a stay of lien claimant's lien, until lien claimant "demonstrates through further proceedings with this Court that it has cooperated with discovery efforts of defendant, including, but not limited to, the deposition of Dr. Michael Bazelyansky (aka Michael Bazel) regarding issues related to this case." (*Id.*, at p. 2.)

DISCUSSION

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on October 3, 2024, and 60 days from the date of transmission is December 2, 2024. This decision is issued by or on December 2, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 3, 2024, and the case was transmitted to the Appeals Board on October 3, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 3, 2024.

II.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the

petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings regarding the threshold issues of employment and insurance coverage. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, the petitioner is only challenging the order for a stay, which is an interlocutory order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra.*) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, the Order of Consolidation for purposes of discovery was issued on August 16, 2024, pursuant to WCAB rule 10396. (8/16/24 Order of Consolidation, case SAU13697043; Cal. Code Regs., tit. 8, § 10396.) We take judicial notice of case number SAU13697043 and of the Order of Consolidation issued in that case. We conclude that upon issuance of the Order of Consolidation, the WCJ in the present matter no longer had authority to issue orders related to discovery in this case, because jurisdiction over discovery issues in this matter lay with the Presiding WCJ in the consolidated proceeding. The September 3, 2024, F&O in this matter is thus unenforceable, until such time as the Order of Consolidation is revoked or the lien is transferred back to the original district office. For these reasons, we conclude that significant prejudice will result if removal is denied.

Accordingly, we grant lien claimant's Petition and vacate the WCJ's September 3, 2024, F&O.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration/Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision issued by the WCJ on September 3, 2024 is **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 2, 2024

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

**BELL COMMUNITY MEDICAL GROUP
THE LAW OFFICE OF PATRICK CHRISTOFF, APC
SIEGEL, MORENO & STETTLER, APC**

MB/ara

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