

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

**ROBERTO GARCIA, *Applicant***

**vs.**

**CURRENCY CLOTHING; CASTLEPOINT NATIONAL INSURANCE COMPANY,  
in liquidation, serviced by CALIFORNIA INSURANCE GUARANTEE ASSOCIATION,  
*Defendants***

**Adjudication Number: ADJ8097031; ADJ9943904  
Los Angeles District Office**

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

Lien claimant Tower Imaging (lien claimant) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings and Orders (F&O) of June 6, 2024, wherein the WCJ found in relevant part that there was no contested claim at the time lien claimant provided photocopy services and ordered that the lien is disallowed.

Lien claimant in essence contends that applicant's claim was contested at the time it provided photocopy services and the lien should be allowed.

We received an Answer from defendant. We received a Report and Recommendation on Petition For Reconsideration (Report) from the WCJ, which recommends that the Petition be denied.

We have reviewed the record, and we have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review and for the reasons discussed below, we will grant the petition for reconsideration, and affirm the F&O, except that we will amend it to find that a contested claim existed at the time the lien claimant's services were rendered and defer all other issues as to lien claimant's lien. (Finding of Fact 2; Order.)

## I.

We will briefly review the relevant facts:

Applicant filed two Applications for Adjudication.

The first Application was filed on December 5, 2011, by applicant's former attorneys Law Offices of Robin Jacobs, alleging cumulative injury to his head, back, neck, shoulders, and other body parts during the period from July 1, 2011 through November 8, 2011, while employed by defendant as a machine operator (seamster) (ADJ8097031).

On February 6, 2012, the Employment Development Department (EDD) filed a lien claiming that it had paid benefits to applicant beginning on December 14, 2011 and continuing.

The record also reflects that numerous medical treatment liens were filed throughout 2012.

On January 25, 2013<sup>1</sup>, defendant filed a notice of representation, which is the first response to applicant's claim in the record.

On June 6, 2013, a WCJ ordered payment of Labor Code section 5710 fees to applicant's attorneys for a deposition taken on March 5, 2013.

On August 21, 2013 and November 18, 2013, applicant's attorney ordered subpoenas for various sources through lien claimant. (Exh. 1 and Exh. 2, Order Referral from Applicant's Attorney dated 8/21/2013 and 11/18/13.)

On September 9, 2013, lien claimant issued a subpoena duces tecum to obtain records from United Service Plus dba Ronco Drugs. The Declaration of Service is completed and dated September 11, 2013. (Exh. 3, Subpoena Duces Tecum (SDT), 9/11/2013.)

On September 13, 2013, lien claimant issued a Records Order Form and Notice to Interested Parties of Copying to Tower Group Companies. (Exh. 5, Records Order Form and Notice To Interested Parties of Copying, 9/13/2013.)

On October 1, 2013, lien claimant provided copy services as indicated by the fully executed Declaration of Custodian of Records. (Exh. 3, SDT with attached Declaration of Custodian of Records, 10/1/2013.)

On November 19, 2013, lien claimant issued a subpoena to obtain records from April 16, 2013 to the present from Tower Group Companies. (Exh. 4, SDT, 11/19/2013, p. 1.)

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<sup>1</sup> The document has a date stamp of January 25, 2013, indicating that it was received in the Los Angeles District Office on that date.

Lien claimant submitted two invoices to defendant for its copy services. One invoice is dated October 17, 2013 with a date of service of September 12, 2013. (Exh. 6<sup>2</sup>, Invoice, 10/17/2013.) The other invoice is dated December 26, 2013 with a date of service of November 22, 2013. (Exh. 7<sup>3</sup>, Invoice, 12/26/2013.)

On January 14, 2014, applicant was evaluated by a qualified medical evaluator (QME) Jacob (Hagop) M. Ishkanian, M.D. (Exh. 11.) By way of history, he told Dr. Ishkanian that he had reported the injury to his employer, but they had not provided him any medical treatment. He then sought legal representation and was referred by his attorney for medical treatment. (Exh. 11, p 4.)

On December 31, 2014, applicant substituted the Law Offices of Telleria, Telleria & Levy as his attorneys.

Applicant filed a second Application on May 4, 2015, alleging a specific injury on July 1, 2011, to his shoulders and knee while employed by defendant as a machine operator (seamster) (ADJ9943904).

According to defendant's benefit printout, the first payment of temporary disability paid to applicant was for the period commencing on March 11, 2016. (Exh. A.)

On February 19, 2019, both cases were resolved by way of a Compromise & Release (C&R) for \$50,000.00. In Paragraph 9, the parties checked every issue as disputed.

On April 23, 2024, lien claimant and defendant proceeded to trial. The relevant issues raised for trial were the lien of lien claimant, and whether there was compliance with Labor Code<sup>4</sup> sections 4620 and 4621.

On June 6, 2024, the WCJ issued the F&O. In pertinent part, it was found that: "There was *no contested claim* at the time Lien Claimant Tower Imaging provided photocopy services in this case." (Italics added.) It was ordered that the lien of the lien claimant was disallowed.

In his Opinion on Decision, the WCJ stated that:

**LIEN OF TOWER IMAGING/LC 4620/CONTESTED CLAIM**

It is the Lien Claimant's burden to prove that a contested claim existed at the time its services were provided.

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<sup>2</sup> Exhibit 6 is an Invoice from Tower Copy to defendant dated October 17, 2013, for services provided on September 12, 2013, but the date of service on the subpoena duces tecum is September 11, 2013, and that is the date that the lien claimant's employee declared she served the subpoena duces tecum. The date on the invoice is incorrect and should be September 11, 2013.

<sup>3</sup> Exhibit 7 is an Invoice from Tower Copy to defendant dated December 26, 2013, for services provided on November 22, 2013, but the date of service of the subpoena duces tecum dated November 19, 2013 is unknown because the Declaration of Service is blank.

<sup>4</sup> All further statutory references are to the Labor Code, unless otherwise noted.

In this case, Lien Claimant has submitted invoices for photocopying services performed on 10/17/13 and 12/26/13. It appears there was another date of service of 10/2/13, but no specific invoice was submitted for that date.

The parties have stipulated that Applicant sustained injury in this case. *The evidentiary record does not include evidence that Defendant rejected liability for a claimed benefit, failed to accept liability for benefits at any time, or failed to respond to a demand for payment of benefits.*

Additionally, *it was not established that a disputed medical fact existed at the time Lien Claimant rendered its services.* As such, Lien Claimant did not meet its burden to prove the existence of a contested claim at the time its services were provided. (Opinion on Decision (O.O.D.), 6/6/2024, pp. 1-2 italics added.)

## II.

A lien claimant has the initial burden of proof to show that: 1) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to section 4620; and 2) its medical-legal services were reasonably, actually, and necessarily incurred pursuant to section 4621(a). (*Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Board en banc).)

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs “for the purpose of proving or disproving a contested claim.” (Lab. Code §4620(a).) Copy service fees incurred to obtain medical and other records are considered medical-legal expenses under section 4620(a) that may be recovered by the filing of a lien claim. (*Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal. Comp. Cases 48 (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 (Appeals Board en banc).)

Section 4620(b) states that:

“A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists:

- (1) The employer rejects liability for a claimed benefit.
- (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim.

(3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.” (Lab. Code, § 4620(b).)

A contested claim is not limited to those instances where the claims administrator has rejected all liability for a claim. A contested claim includes instances where the claims administrator has rejected liability for *a specific claimed benefit*, or *has not timely accepted liability for a claim*, or where the claims administrator has admitted liability for the claim and a disputed medical fact exists, e.g., a dispute regarding the nature and extent of the injury. (Lab. Code § 4620(b); Cal. Code Reg., tit. 8, § 9793(b), italics added.)

Here, applicant filed the Application on December 5, 2011, and claimed cumulative injury from July 1, 2011 through November 8, 2011. The Application indicated there was a disagreement regarding liability for the following: temporary disability, reimbursement for medical expense, medical treatment, permanent disability indemnity, rehabilitation, supplemental job displacement/return to work, and other-all benefits.

A review of the record does not reflect that defendant responded to applicant’s claim by timely paying benefits or by denying it. Instead, the record reflects numerous liens for unpaid benefits, including for medical treatment and payment of disability benefits by EDD.

Applicant’s attorney thereafter ordered subpoenas duces tecum for records, and lien claimant performed copy services in September and November 2013. At that time, it is clear that a contested claim existed, because the Application claiming injury and seeking benefits was filed by applicant on December 5, 2011 almost two years before, and the dates that the subpoena duces tecum were issued were well beyond the 14 day period for defendant to begin paying applicant temporary disability, to offer medical treatment, or to respond to applicant’s claim. Thus, a “contested claim” existed prior to the lien claimant performing any copy services.

Accordingly, we affirm the F&O, except that we amend it to find that a contested claim existed at the time that lien claimant Tower Imaging provided its services and defers all other issues as to Tower Imaging.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant Tower Imaging’s Petition for Reconsideration of the Findings and Order issued on June 6, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 6, 2024 is **AFFIRMED** except that it is **AMENDED** as follows:

**FINDINGS OF FACT (ADJ8097031)**

2. A contested claim existed at the time lien claimant Tower Imaging provided photocopy services in this case. All other issues are deferred as to the lien of Tower Imaging.

**ORDERS (ADJ8097031)**

IT IS ORDERED that the issue of defendant's liability for the lien of Tower Imaging is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**August 29, 2024**

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

**TOWER IMAGING  
GUILFORD SARVAS & CARBONARA  
INNOVATIVE MEDICAL MANAGEMENT  
UNITED SERVICES PLUS**

**DLM/oo**

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