WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANGELA UPTON, *Applicant*

vs.

INNOVATIVE BUSINESS PARTNERSHIP;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ3739681 (POM 0291535)
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] Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant San Diego Imaging, Inc., dba California Imaging Solutions seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 27, 2021, wherein the WCJ found in pertinent part that that lien claimant shall take nothing because it failed to prove the following: A contested claim existed at the time services were rendered; that the expenses were necessary to prove a contested claim; and that the services were reasonable and necessary.

Lien claimant contends that a contested claim existed when the services were performed, the records were sought to prove the claim, the records were reasonable and necessary, and lien claimant should be reimbursed.

We received an Answer from defendant. 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, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will

[1] Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Reconsideration dated April 6, 2021. As Commissioner Lowe no longer serves on the Appeals Board, a new panel member has been substituted in her place.

rescind the Findings & Order and substitute a new Findings & Order that finds that a contested claim existed at the time services were rendered; that the expenses were necessary to prove a contested claim; that the services were reasonable and necessary; and that lien claimant is entitled to payment under section 4622. We will award payment, but we will defer the issue of the amount of the payment and return the matter to the WCJ to determine the amount of payment, including interest, costs, and penalties.

BACKGROUND

We will briefly review the relevant facts.

On August 2, 2006, applicant filed an Application for Adjudication, and alleged that while employed by defendant on July 9, 2005 as a community trainer, she sustained injury arising out of and in the course of employment to her back and claims to have sustained injury to her neck, hip, lower extremities, and psyche.

Lien claimant issued the following subpoenas: Dr. Anthony Fenison, dated March 24, 2009; Innovative Business Partnership, dated March 24, 2009; State Compensation Insurance Fund, dated October 8, 2009; State Compensation Insurance Fund, dated January 29, 2014; Jack Akmakjian, M.D., dated January 29, 2014; Mark Greenspan, M.D., dated January 29, 2014; Corwin Medical Urgent Care Center, dated December 2, 2014; and Avrek Law Firm, dated November 19, 2014. (Exhibit 16, 11/12/2020.)

Lien claimant issued invoices for its services which went unpaid and eventually it filed a lien for its services.

The case in chief was resolved via Compromise and Release (C&R) dated March 15, 2016. In Paragraph 9, the C&R states that: "State Fund has denied that applicant suffered any injury to her neck, hips, lower extremities, or psyche. . . ." Also on March 15, 2016, a WCJ issued an Order Approving the C&R (OACR) that states that: "A good faith dispute exists as to injury AOE/COE and/or liability for injury to one or more body parts which could, if resolved against applicant, defeat the applicant's right to recover benefits. As to neck, hips, lower extremities and psyche."

On August 10, 2020, we issued an "Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration" (Opinion) wherein we rescinded the WCJ's June 10, 2020 decision which ordered that lien claimant take nothing on the basis that lien claimant's subpoenas were not properly served. We stated that:

> Thus, upon return to the trial level, we recommend that the WCJ address the merits of lien claimant's lien. We take this opportunity to remind the parties of our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Board en banc), which described the general framework to address a medical-legal expense.

(Opinion, at p. 5.)

On December 3, 2020, the parties proceeded to a lien trial on the lien for medical-legal copy services in the amount of $8,065.13, costs, sanctions, penalties, and interest.

DISCUSSION

Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof pursuant under sections 4620 and 4621: that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its services were reasonably, actually, and necessarily incurred. We stated that:

> 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." (§ 4620(a).) Copy service fees are considered medical-legal expenses under section 4620(a). (Citations) Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a "contested claim" existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).)
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> . . . [W]e note that a determination of whether a purported medical-legal expense involves a "contested claim" is a fact-driven inquiry. The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal. App. 4th 654, 663 [84 Cal. Rptr. 2d 915, 64 Cal.Comp.Cases 624].) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases.

(*Id.* at p. 1062; see *Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 [2015 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 [2013 Cal. Wrk. Comp. LEXIS 69] (Appeals Board en banc).)

Here, the WCJ did not find that a contested claim existed as of March 24, 2009, when the first subpoenas were issued. As is demonstrated by the C&R and the WCJ's OACR, defendant

continued to dispute liability for benefits throughout the pendency of applicant's case. The WCJ conceded that issues such as parts of body were disputed by defendant but concluded that lien claimant had not provided a sufficient "reason" for the purpose of the subpoenas. We disagree with the WCJ's finding as to whether a contested claim existed because the WCJ appears to construe the meaning of "for the purpose of proving or disproving a contested claim" very narrowly. There is nothing in the statutory language that requires that the copy services lien claimant demonstrate "a reason" for each individual subpoena as part of its burden of proof because as explained in *Allison*, *supra*, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Id.* at p. 663.) Thus, lien claimant met its burden that a contested claim existed pursuant to section 4620.

Once a lien claimant has met its burden of proof pursuant to section 4620(a), it has a second hurdle to overcome; the purported medical-legal expense must be reasonably, actually, and necessarily incurred. (Lab. Code, § 4621(a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Id.*)

Section 5307.9 states,

> On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and ***shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim***. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(Lab. Code, § 5307.9 [italics and bold added for emphasis].)

AD Rule 9982(d) states in pertinent part that:

> . . . . There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation

> insurer for copies of records in the employer's claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. . . .

(Cal. Code Regs., tit. 8, § 9982(d)(1).)

Although the above statute and regulation does not allow for payment of a subpoena duces tecum served within 30 days of a request for records, it does not state that a request for records must be requested before they can be subpoenaed. In other words, there is no mandate or requirement that an applicant or their attorney must make a request for records from the employer or the insurer prior to requesting that a subpoena issue for records. Thus, a failure to make such a request is immaterial.

In the WCJ's Opinion, he states that:

> Assuming that the lien claimant can satisfy the first two prongs of the test, then they have to show the services were reasonable and necessary. It the present case, they cannot.
>
> Defendant's Exhibit E1 is 93 pages of transmittal letter indicating that the records in this case had been continually served on the Applicant Attorney throughout this case. There has been no showing that the subpoenas requested records that had not been previously served. If fact, it is the opposite, the subpoenas are for records that had already been served on Applicant Attorney.
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> This case was an accepted case with only certain body parts being contested. The Lien claimant has not shown what the purpose of the subpoenas was for, or how they would prove or disprove the contested portion of the claims. Defendant has shown that the records requested had been continually served through the life of this case. As a result, there has been no showing that the subpoenas were reasonable or necessary.
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> As indicated above, the lien claimant has failed to meet its burden under the test in Colamoncia [*sic*].
>
> All other issues are rendered moot by this finding.

(Opinion on Decision, p. 4)

Here, the WCJ found the subpoenas were non-compensable. As explained above, requesting the records from the employer or the claims administrator prior to issuing a subpoena duces tecum is not required prior to issuing a subpoena duces tecum. Thus, the fact that the subpoena duces tecum issued without first requesting records from the employer or claims administrator is immaterial, and lien claimant is entitled to payment for the services it provided.

Therefore, we conclude that lien claimant met its burden of proof pursuant to sections 4620 and 4621.

Once lien claimant met its burden under sections 4620 and 4621, the analysis shifts to the reasonable value of the invoices pursuant to section 4622. A defendant then has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1), 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant's burden. The defendant is deemed to have waived all objections to a medical-legal provider's billing other than compliance with sections 4620 and 4621 if they either fail to serve a timely and compliant explanation of review within 60 days, fail to make payment consistent with the EOR, fail to serve a final written determination after a timely request for second review, or fail to make payment consistent with a final determination. (Cal. Code Regs., tit. 8, § 10786; see *Colamonico*, *supra*.) Defendant is then liable for the reasonable value of the medical-legal services, as well as a 10 percent penalty and 7 percent per annum interest. (Lab. Code, § 4622(a)(1)).

Here, it is not entirely clear from the record how much defendant has already paid lien claimant. Therefore, we will find that lien claimant is entitled to payment under section 4622, but we defer the issue of the amount.

Accordingly, we rescind the F&O and substitute a new F&O that finds that a contested claim existed at the time services were rendered; that the expenses were necessary to prove a contested claim; that the services were reasonable and necessary; and that lien claimant is entitled to payment under section 4622. We award payment, but we defer the issue of the amount of the payment and return the matter to the WCJ to determine the amount of payment, including interest, costs, and penalties.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 27 2021 Findings & Order is **RESCINDED** and the following is **SUBSTITUTED** therefor.

FINDING OF FACT

Lien Claimant, California Imaging solutions has met its burden that:

a. A contested claim existed at the time services were rendered,

b. The expenses were necessary to prove a contested claim, and

c. The services were reasonable and necessary.

d. Lien claimant is entitled to payment under Labor Code section 4622.

AWARD

IT IS ORDERED that LIEN CLAIMANT, California Imaging Solutions, is **AWARDED THE FOLLOWING**:

Payment of invoices plus 10% penalties and 7% interest and costs to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 6, 2025

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

CALIFORNIA IMAGING
STATE COMPENSATION INSURANCE FUND

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