

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

CHRISELDA DAVIS, *Applicant*

vs.

**PREMIER SENIOR CARE LIMITED LIABILITY COMPANY;
STATE INSURANCE COMPENSATION FUND, *Defendants***

**Adjudication Number: ADJ10914834
Anaheim District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

We previously granted reconsideration¹ in this matter to study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Defendant State Compensation Insurance Fund (SCIF) seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on December 21, 2020. By the F&O, the WCJ found in relevant part that defendant breached its duty to timely contest the reasonableness and necessity of the fees, services and expenses incurred by cost petitioner Matrix Document Imaging; the services performed by cost petitioner constitute a valid medical-legal expense and defendant is liable for payment of the sum of \$645.70, a 10% penalty of the amount owed, together with interest; SCIF and its claims adjuster Christine J. Yrigoyen, shall jointly and severally pay sanctions in the amount of \$500.00.

Defendant contends that the services performed by cost petitioner do not constitute a valid medical-legal expense and that defendant's non-payment is justified and does not constitute a bad faith action or tactic. It also contends that the order of sanctions as to the claims adjuster is improper.

We received an Answer from cost petitioner. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending the Petition be denied

¹ Commissioner Lowe, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panelist was appointed in her place.

with the exception of amending the F&O to list the address where the sanctions check is to be mailed.

Defendant also filed a December 12, 2022 Petition for Approval to File a Supplemental Pleading and a Supplemental Pleading. We accept and have considered the Supplemental Pleading. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration, the Answer, and the Supplemental Pleading and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will affirm the F&O, except that we will amend it to find that defendant did not engage in bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay (Finding of Fact 6) and that sanctions and attorney's fees against defendant SCIF for the conduct at issue are disallowed (Orders C, D). We make no other changes to the F&O.

BACKGROUND

On June 23, 2017, applicant's attorney filed an Application for Adjudication of Claim alleging applicant sustained specific injuries in the form of stress, psyche, and digestive issues arising out of and occurring in the course of employment as a caregiver.

On June 30, 2017, defendant denied applicant's claim via letter stating that Labor Code section 3208.3² precludes compensation for applicant's psychiatric injuries because she had not been employed by her employer for six (6) months as required by the statute. (Exhibit A, 6/30/2017.)

On August 17, 2017, Matrix Document Imaging on behalf of applicant's attorney served a subpoena duces tecum on the central release of information Unit KFH (Electronic) (AKA Kaiser Permanente). (Exhibit 4, 8/16/2017.)

On October 25, 2018, applicant's deposition was taken by defendant. (Exhibit B, Deposition of Applicant, 10/25/2018.) Applicant was questioned at length, including with respect to her living situation, her current medications, her non-industrial medical conditions, her non-industrial medical care, her psychiatric treatment, her employment history, and her non-industrial physical conditions, including partial blindness. Yet, out of 70 pages, the only line of questioning with respect to applicant's length of employment with defendant, was:

² All further statutory references are to the Labor Code.

Q. When was your first day of work at Premier Senior Care?

A. I do not remember.

Q. Do you know what year it was when you first started working there -- was it last year?

A. I think it was this year.

Q. 2018?

A. I think so.

Q. MR. JOHNSON: Is this first day worked?

A. THE WITNESS: Yes.

A. MR. JOHNSON: Okay.

A. MR. VOLLMER: Yes, first day worked.

Q. 2017?

A. Yes.

Q. Do you remember what month?

A. I do not know.

Q. How long did you work at Premier Senior Care?

A. Four days.

Q. How many hours each day did you work?

A. Four hours.

Q. Four hours each day?

A. Yes.

Q. Do you remember the days of the week?

A. I think it was Monday through Thursday.

Q. And you worked every day?

A. Yes.

Q. Monday, Tuesday, Wednesday, and Thursday?

A. Yes.

(Exhibit B, p. 33, line 21 – p. 34, line 23.)

On January 3, 2019, cost petitioner filed a “Petition for Determination of Non-IBR Medical-Legal Dispute.”

The case in chief was resolved via a Compromise and Release (C&R), and on December 17, 2020, a WCJ issued an Order Approving the C&R. Notably, the C&R included release of claimed injury to the body parts of “stress,” psyche, digestive, head and back.

On November 4, 2020, cost petitioner and defendant proceeded to trial on the issue of cost petitioner’s claim for reimbursement. Neither party presented any witness testimony. As relevant here, defendant raised the issue of:

Whether costs are allowable under Labor Code § 4620, 4621, 4622, and WCAB Colamonico en banc case, considering that claim was denied solely on the basis of a threshold issue of less than six months of employment pursuant to Labor Code § 3208.3 and the records subpoenaed do not prove or disprove that issue.

On December 21, 2020, the WCJ issued the F&O. In relevant part, it was found that defendant should pay the sum of \$645.70 to cost petitioner as reasonable costs for its services, a 10% penalty of the amount owed, with interest at the rate of 7 percent. The WCJ also ordered that defendant State Compensation Insurance Fund and its adjustor Christine J. Yrigoyen, jointly and severally, pay sanctions in the amount of \$500.00.

The WCJ stated in relevant part in the Report that:

Defendant contends that the services and expenses incurred by Matrix Document Imaging for copying and retrieving documents does not constitute a reimbursable medical-legal expense because the records they obtained did not go toward proving or disproving a contested claim. This contention lacks merit.

In their petition Matrix Document Imaging contends that they performed medical-legal services consisting of subpoenaing and copying records from Kaiser Foundation Hospital for the injured worker; that they served invoices for these services on defendant; and that defendant failed to pay the invoice, supply an EOR or file a petition for determination of non-IBR medical- legal dispute and declaration of readiness to proceed. Matrix Document Imaging seeks full payment of their bill of \$645.70; penalties and interest pursuant to Labor Code section 4622(a) and sanctions, costs and attorney fees for defendant’s failure to pay or failure to make a good faith effort to comply with all applicable statutes, regulations and procedures.

Cost Petitioner’s Exhibit “5” consists of a breakdown of charges and outstanding invoice with a proof of service dated 08/30/2017. The invoice states that Matrix Document Imaging subpoenaed and copied records from Kaiser Foundation Hospital at the request of applicant attorney.

A Medical-Legal Provider Has the Initial Burden of Proof 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, 1061 (Appeals Board en banc.)

Defendant admits that a contested claim existed at the time the services were performed by Matrix Document Imaging. Defendant states that prior to these services being performed they denied this claim pursuant to Labor Code section 3208.3(d). (Defendant's Exhibit "A".) The parties stipulated that defendant had denied this claim on 06/30/2017 (MOH/SOE at 1:11-12.)

Defendant contends that "When a case is denied based on a threshold issue, the only discovery that a defendant should have to pay for is discovery on the threshold issue until the threshold issue is resolved." (Pet. For Recon, at 5:2-4.) Defendant does not cite any legal authority in support of its position.

The basis on which a defendant denies an injury claim does not limit the rights of an injured worker to incur costs and expenses for medical-legal expenses. (Labor Code section 4620(a).)

The Court's file indicates that an application for adjudication was filed on 06/23/2017.

The application for adjudication states that the following issues are in dispute: Temporary disability indemnity, reimbursement for medical expense, medical treatment, compensation at proper rate, permanent disability indemnity, rehabilitation, supplemental job displacement/return to work and all benefits per the Labor Code. (Paragraph nine of application for adjudication.) On 09/01/2017 an amended applicant for adjudication was filed to amend the parts of body pled. The issues in dispute remained the same. Therefore, when defendant denied the claim they were aware that applicant was claiming entitlement to various compensation benefits.

Cost Petitioner's Exhibit's "2", "3" and "4" consist of an order form from applicant's attorney dated 07/14/2017 requesting Cost Petitioner obtain the records of Premier Senior Care, State Compensation Insurance Fund and Kaiser Foundation Hospital; a notice to opposing parties with proof of service dated 08/16/2017 regarding the request to copy the previously mentioned records; and a subpoena duces tecum dated 08/16/2017 for the records of Kaiser Foundation Hospital, respectively.

Therefore, the expenses were incurred for the purpose of proving or disproving a contested claim.

Defendant contends that the evidence relied upon by the Court does not prove that defendant failed to timely contest the reasonableness and necessity of the bill of Matrix Document Imaging. Specifically, defendant argues that the Court relied on an invalid proof of service to make the determination that they did not “process” the invoice from Matrix Document Imaging. Defendant correctly notes that the proof of service for the invoice attached for the records of Kaiser Foundation Hospital dated 08/30/2017 (Cost Petitioner’s Exhibit “5”) describes the invoice served as “Invoices” which does not adequately describe the document being served. Defendant also correctly notes that the invoice dated 08/30/2017 lists the name of the defendant as ESIS even though the address listed below ESIS on the invoice is the correct address for State Compensation Insurance Fund. However these arguments are irrelevant because defendant has admitted to receiving the 08/30/2017 invoice contained in Cost Petitioner’s Exhibit “5” and admitted to issuing an EOR denying payment for this invoice on 01/30/2018 (Defendant’s Exhibit “C”). In addition, the proof of service is addressed to State Compensation Insurance Fund at PO Box 65005 Fresno, CA 93650. This is the same address listed for State Compensation Insurance Fund on the official address record.

Defendant then argues that:

“As the cost petitioner’s proof of service is invalid, the Board can only conclude State Fund received the invoice on the dated stated by Defendant’s explanation of review (EOR). The EOR for the Kaiser records does not state when the invoice was received (MOH, 11/04/20, Defendant’s Exhibit C), but since we don’t know when it was served we can’t conclude the EOR was untimely. The EOR for the employer records (Senior Premier Care) does state when it was received - January 16, 2018 (MOH, 11/04/20, page 4, Defendant’s Exhibit D). Since this EOR was issued near in time to the Kaiser EOR, it would be reasonable to conclude that the Kaiser invoice was received on or about the same date as the employer records invoice and this would make the Kaiser EOR issuance timely.” (Pet. For Recon., at 12:14-23.)

This argument makes no sense as defendant is seeking to have the Court speculate when defendant received the EOR that denied payment of the invoice for the Kaiser records. It also appears that defendant wishes this Court to believe that they do not know when they received the invoice for the Kaiser records. Insurance Companies who provide workers’ compensation insurance for California employers have

procedures that they must follow to process payment of bills especially those that are required by law to be paid within a specific period of time.

Subsection 4622(a) (1) requires that defendant contest the invoice for the Kaiser records within 60 days after receipt of the invoice. Defendant admits that the EOR that issued in response to the invoice from Matrix Document Imaging for the employer records (Premier Senior Care) lists the date that the invoice was received by defendant. No explanation was offered by defendant why the date of receipt of the invoice was not listed on the EOR for the Kaiser records and why defendant failed to offer any evidence at trial to indicate when they received that invoice. Defendant has the burden of proof to establish that they timely contested payment for the invoice for the Kaiser records and they failed to satisfy their burden.

(Report, pp. 3-11.)

DISCUSSION

With respect to the issue of whether defendant was liable for the cost of the copy services, interest, and penalties, we agree with the WCJ that cost petitioner met its burden of proof under sections 4620, 4621, and 4622. We observe that defendant's argument that applicant should not have engaged in discovery because applicant claimed injury to psyche and had been employed by it for less than six months to be disingenuous at best. The Application claimed injury to psyche and to applicant's digestive system, a physical injury. Notably, the C&R included release of claimed injury to the body parts of "stress," psyche, digestive, head and back. The six month prohibition in section 3208.3(d) only applies to injuries to psyche and not to claimed physical injuries. Thus, this argument is unwarranted and is not supported by the statutes, decisional law, or the evidence before us.

Turning to the issue of sanctions, the Appeals Board is authorized to impose sanctions, costs, and attorney's fees under section 5813, which states, in pertinent part, that

- (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(Lab Code, § 5813(a) and (b).)

WCAB Rule 10786(i)(1) states in pertinent part that:

If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs and for sanctions under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after October 23, 2013, the monetary sanctions shall not be less than \$500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, the defendant might be obligated to reimburse to the medical-legal provider.

(Cal. Code Regs., tit. 8, § 10786(i)(1).)

Here, the WCJ found that defendant engaged in bad faith actions or tactics because it failed to timely contest the reasonableness and necessity of the fees, services and expenses incurred by Matrix Document Imaging. We disagree. Simply being late with paying an invoice after receiving an Explanation of Review (EOR) does not rise to the level of bad faith nor warrant the issuance of sanctions. Instead, the evidence must demonstrate that defendant engaged in bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Based on our review, the evidence in the record before us does not support that defendant engaged in such conduct.

Thus, we amend the F&O to find that defendant did not engage in bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay (Finding of Fact 6) and that sanctions and attorney's fees against defendant SCIF for the conduct at issue are disallowed (Orders C, D).

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued on December 21, 2020 by the WCJ, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

6. Defendant did not engage in bad faith actions or tactics because they failed to timely contest the reasonableness and necessity of the fees, services and expenses incurred by Matrix Document Imaging.

ORDERS

[C], [D] Sanctions and attorney's fees against defendant SCIF for the conduct at issue are disallowed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 29, 2025

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

**LITIGATION AND CONSULTING ASSOC
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*