WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CLAUDIA PADILLA, *Applicant*

vs.

COUNTY OF LOS ANGELES;
permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Number: ADJ8317187; ADJ9297365
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the November 15, 2024 Amended Findings and Order (Correcting Clerical Error) issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained industrial injury to her neck, upper extremities, back, trunk, musculoskeletal system, and psyche while employed as a payroll clerk during the period from February 28, 2011 through February 28, 2012. Defendant contends that service of the WCJ's decision on defendant was defective and that the WCJ erred in awarding penalties and interest without stating a specific amount and for a period during which the medical provider was suspended.

We received an Answer. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration, the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after

reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note that former Labor Code[1] 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, 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 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 April 16, 2025 and 60 days from the date of transmission is Sunday, June 15, 2025. The next business day that is 60 days from the date of transmission is Monday, June 16, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, June 16, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

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[1] All further statutory references are to the Labor Code, unless otherwise noted.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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. 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 February 14, 2025, and the case was transmitted to the Appeals Board on April 16, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on April 16, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 16, 2025.

II.

The WCJ stated following in the Report:

II. FACTS

> The matter proceeded to lien trial on the lien of RMS Medical, with the physician provider listed as Dr. Nia. Notice and Request for Allowance of Lien, dated June 7, 2017, filed in companion case ADJ9297365. EAMS DOC ID#22478717.
>
> The lien trial proceeded only on ADJ8317187, however, as noted, the lien was filed in the above referenced case, and both resolved via Stipulation with Request for Award, approved on September 19, 2018, by Judge Phillips.
>
> The [lien] trial began on July 31, 2024, and was submitted with testimony on September 19, 2024. The issues involved the lien of RMS Medical Group, which had a total balance of $18,025.35, and sought penalties and interest. Minutes of Hearing, July 31, 2024, page 2, lines 14-18. Lien Claimant submitted as exhibits various medical reports issued by Dr. Nia, who saw the applicant from RMS Medical Group. Lien Exhibits 12-24. Defendant did not submit any exhibits, and called as a witness Mr. Alexander To, who testified on day two of trial on September 19, 2024. Minutes of Hearing (Further) and Summary of Evidence, September 19, 2024.

The undersigned judge issued an Opinion on Decision and Findings and Order on November 14, 2024, finding in part that defendant was to pay RMS Medical in full, less amounts previously issued. Findings and Order, November 14, 2024, page 1. Further, it was noted that defendant did not "engage in any retroactive UR pursuant to CCR § 9792.9.1, and is liable for unpaid medical treatment." Id. at page 2.

The Opinion on Decision and Findings and Order were served via email on defense counsel, Patrick C. Stacker & Associates, and RMS Medical Group. Service was not completed on the third party administrator Sedgwick Claims. Additionally, there was an Amended Order issued and served on November 15, 2024, removing "SCIF" as the defendant. EAMS DOC ID# 78587347. This amended Order was served again only on defense counsel and RMS Medical Group.

Defense counsel for County of Los Angeles, Patrick C. Stacker & Associates filed a Petition for Reconsideration/Amendment of Finding and Award on January 30, 2025. An Answer was filed by RMS Medical Group, dated February 12, 2025.

III. DISCUSSION

A. TIMELY FILING AND ERROR IN SERVICE

Petitioner argues that the board did not provide proper service of the Opinion on Decision and Findings and Order. Specifically, that defense counsel was served using the email kathy@stackerlaw.com, and that Sedgwick was "removed" from the service list, and not served with the Opinion and Findings. Petition for Reconsideration, page 4, lines 9-11, and page 4-5, lines 25-4. Petitioner argues that it was "improper to remove Defense Attorney Marc Fitch's email from the service list…" and provides additional emails for service. Id. at page 5, lines 2-4, 21-23.

First, the undersigned acknowledges that unfortunately, due to a clerical error, Sedgwick was in fact not served with the Opinion on Decision and Findings and Order, or the subsequent Amended [Order]. However, defense counsel was served via email using the email of kathy@stackerlaw.com which is the email of record in EAMS for the defense firm.

While petitioner argues that said email has been out of service for "multiple years" petitioner has not filed any updated notices with the WCAB, as required, notifying of any changes to their physical or email addresses. Thus, defense counsel was served properly as per the current record in EAMS.

Nonetheless, given that Sedgwick was not served, it is found that pursuant to petitioner's representation that they received the Opinion on Decision and Findings and Order from the lien claimant on January 9, 2025, it is found that the Petition for Reconsideration is timely. Petition for Reconsideration, page 4, lines 2-4.

Petitioner's request that the appeals board "correct" the record and list the following emails for service: cameron@stackerlaw.com and pstacker@stackerlaw.com, is improper, since no formal request for change of address or email has been filed by petitioner advising the court that these are in fact the correct and updated email addresses. Petitioner should file a notice with the WCAB separately.

B. SUSPENSION OF DR. SHAMLOU

Petitioner argues that the findings of facts do not support the order and award, and that the undersigned "must take judicial notice of Dr. Shamlou's suspension" and that once it is taken "the court must find that the interest ordered to be paid must be reduced to reflect the suspension period." Petition for Reconsideration, page 5, lines 6-9.

Petitioner never advised the undersigned at either day of trial that a Dr. Shamlou has been suspended. Further, it was not raised as an issue at trial.

It appears that pursuant to the lien filed by RMS Medical Group in the companion ADJ, ADJ9297365, EAMS DOC ID#22478717, that Dr. Shamlou is one of the doctors for RMS Medical Group.

However, in the case herein, it was not established that the applicant was treated by Dr. Shamlou. In fact, parties stipulated at trial, that the applicant's PTP was Dr. Nia. Minutes of Hearing, July 31, 2024, page 2, line 10. Further, medical reports were provided by lien claimant, showing that the applicant treated with Dr. Nia, and by a few other doctors, none of which were Dr. Shamlou. Lien Claimant's Exhibits 12-24. Therefore, this is not only an argument and issue that was not raised at the time of trial, but does not apply to the doctors that actually treated the applicant.

C. BILL REVIEWER'S TESTIMONY AND CALCULATION OF AWARD:

Petitioner argues that because the undersigned had indicated that Mr. To's testimony "seemed credible but concluded that it cannot be relied upon because a bill review" was not submitted, is erroneous, and should be relied upon.

Petitioner did not submit any exhibits at trial, and presented Mr. To's testimony as a rebuttal to lien claimant's bill and lien, which included extensive dates of service that had not been paid.

Mr. To testified that he recommended a bill review amount of $5,365.64 based on review of prior amounts paid, invalid codes, and that some services were zeroed out. Minutes of Hearing and Summary of Evidence, September 19, 2024, page 3, lines 2-4. Not only was this a very generalized review for extensive dates of service that ran from 2012 through 2015, but it is unclear if the amount even accounts for the various unpaid dates of service. Without a line by line item review of each date of service, Mr. To's testimony is not substantial and does not support the amount of $5,365.64.

The claim was initially denied, and then accepted via a Stipulation and Order on November 13, 2012. However, despite admitting the claim, defendant did not issue any payments or conduct any retroactive review for the unpaid dates of service that occurred between June 1, 2012 and November 13, 2012. Defendant also missed paying various dates of service in 2013 and 2014. No evidence was submitted by defendant to support why these dates were not paid.

There was review of Dr. Nia's extensive treatment of the applicant by the AME Dr. Newton. In his first report of October 28, 2013, Lien Claimant's Exhibit 6, Dr. Newton addressed the CT and found that the applicant had in fact sustained injury to her bilateral wrists on an industrial basis. Dr. Newton also acknowledged that the applicant treated with Dr. Nia, and reviewed medical reports by Dr. Nia. Lien Claimant submitted Dr. Newton's additional reporting, which included the same findings regarding the applicant's CT to her bilateral wrists, and continued review of Dr. Nia's reports. Lien Claimant's Exhibits 7-9.

Lien claimant also submitted some of Dr. Nia's reporting from May 2, 2014 through March 25, 2015. Lien claimant's Exhibits 12-23. These reports include regular follow ups for the applicant's admitted body parts, and continued treatment which included medications and diagnostic studies. Further, the applicant had returned to work sometime in December of 2013, and had been following up under future medical care and for neck symptoms. Lien Claimant's Exhibits 20-23.

Thus, pursuant to the AME's and Dr. Nia's reports submitted at trial, it was found that defendant was liable for the lien of RMS Medical. The medical treatment provided by Dr. Nia as reviewed by the AME and in Dr. Nia's reports constitute substantial medical evidence.

Petitioner asks that a calculation be provided of the "actual award on the record," however the order instructs the parties to calculate same and that if there is a dispute, they can return to the undersigned judge. This is standard practice and procedure.

(Report, at pp. 2-4.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

A lien for medical treatment is allowable only when the treatment rendered is reasonably required to cure or relieve an injured worker from the effects of an industrial injury. (Lab. Code, §§ 4600(a), 4903(b).) A defendant will not be liable for a medical treatment where there is no industrial injury. (*Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588, 1593 (en banc).) Therefore, where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.CasAyes at p. 1592.).) Additionally, in *Torres v. AJC Sandblasting* (*Torres*) (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc), we explained that sections 3202.5 and 5705 "require that [a] lien claimant prove that the treatment rendered was reasonable and necessary to cure or relieve the effects of the injury." (*Id.* at p. 1121.)

Moreover, any award, order or decision of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code § 5952(d); *Lamb v. Workers' Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 280 [39 Cal.Comp.Cases 310].) The term "substantial evidence" means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…. It must be reasonable in nature, credible, and of solid value. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision regarding the amount owed by lien claimant without additional development of the record.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and

reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary

decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant defendant' s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 16, 2025

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

RMS MEDICAL GROUP
STACKER & ASSOCIATES

PAG/bp

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