WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ESMERALDA SANCHEZ, ***Applicant***

vs.

KELLERMEYER BERGENSONS SERVICES, LLC; CONSTITUTION STATE SERVICES; ZURICH AMERICAN INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ18189986
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant and lien claimant Spectrum Medical Group each seek reconsideration of the May 5, 2025 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant claims to have sustained industrial injury to her knees, feet, trunk, both shoulders, and lumbar spine while employed as a janitor during the period from August 31, 2022 through August 31, 2023. The WCJ further found that "lien claimant, standing in applicant's shoes, has failed in its burden to prove injury [arising out of and occurring in the course of employment (AOE/COE)]" and that "[d]efendant is liable only for services provided by lien claimant on [October 25, 2023] and lien claimant is due nothing further." Based on these findings, the WCJ awarded lien claimant the amount of $1,000.00 along with penalties and interest, to be adjusted by the parties.

Defendant contends that the WCJ erred in making the award of $1,000.00 to lien claimant arguing that the evidence the WCJ relied upon is inadmissible.

Lien claimant contends that the WCJ should have relied on the record to find injury AOE/COE or developed the record further.

Defendant and lien claimant each filed Answers. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration of lien claimant's

petition and that we grant reconsideration of defendant's petition and amend the May 5, 2025 Findings and Award to exclude additional evidence and to develop the record further.

We have considered the Petitions for Reconsideration, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's and lien claimant's Petitions for Reconsideration. Our order granting the Petitions 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 Petitions 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 June 16, 2025 and 60 days from the date of transmission is August 15, 2025. This decision is issued by or on

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

August 15, 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 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 June 16, 2025, and the case was transmitted to the Appeals Board on June 16, 2025. 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 16, 2025.

II.

The WCJ stated following in the Report:

> II
> FACTS
>
> Applicant filed an application for adjudication and claim form alleging injury to the knees, shoulders, feet and waist due to continuous trauma 8/31/2022 – 8/31/2023 with service on the employer on 9/8/2023.
>
> Defendant sent a Delay Letter dated 11/22/2023 (Exhibit E) and a Denial Letter dated 12/1/2023 (Exhibit F).
>
> The case was resolved by Compromise and Release approved 3/20/2024. There had been no finding regarding injury aoe/coe prior to the 2/18/2025 lien trial.
>
> Spectrum Medical Group has submitted its lien in the amount of $5,131.32 for services rendered beginning with an initial evaluation and report dated 10/25/2023 and with the latest billing for treatment rendered on 1/10/2024. Included are charges in the amount of $2,015.00 for a Medical Legal evaluation and report on 1/3/2024.

The undersigned found that lien claimant had failed to carry its burden of proof regarding injury aoe/coe as it was found that the 1/4/2024 medical legal report of Dr. Nia failed to comply with Labor Code §4628 as no interpreter had been identified as participating in the evaluation; the report was based upon an inaccurate and incomplete history and failed to disclose the time spent performing the evaluation.

It was found that lien claimant is due reimbursement only for the first date of service on 10/25/2023 as all subsequent treatment was provided only following defendant's 12/1/2023 denial. It was found that reimbursement in connection with the 1/4/2024 medical legal report was not due pursuant to Labor Code §4628 (e).

III
DISCUSSION

LIEN CLAIMANT'S PETITION FOR RECONSIDERATION:

Lien claimant contends that the undersigned erred in finding that Dr. Nia's report fails to comply with Labor Code §4628 which states in pertinent part:

(a) The report shall disclose…whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report…other than its clerical preparation.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

Lien claimant argues variously and incorrectly that the requirements set forth in Labor Code §4628 are somehow obviated because: 1)issuance of a medical legal report was appropriate based upon Labor Code sections 4620 and 4621(a); 2) defendant failed to serve medical records on Dr. Nia; 3) WCAB rules such as 8 CCR §9795 which apply only to medical legal charges excuse somehow excuse compliance with §4628.

Lien claimant argues that it should now be allowed to attempt to rehabilitate Dr. Nia's reporting both by introduction of new and previously unidentified evidence in the form of an affidavit from an interpreter and requests leave to now provide records to Dr. Nia in order to rehabilitate his report based on Verdeja v. WCAB (ADJ15691107)

The Board in Verdeja dealt with whether a medical legal evaluator's failure to review the entire medical record automatically renders the report invalid. The undersigned finds that the history provided to Nia by the applicant was fatally inaccurate due to applicant's failure to disclose allegation of prior injury and not due to some automatic trigger occasioned by his failure to review the entire medical record.

Lien claimant pursues its lien while standing in applicant's shoes. Applicant was in a position to answer the question as to prior injuries truthfully and failed to do so. Lien claimant chose not to offer applicant's testimony at trial in an effort to rehabilitate the report.

Based upon all of the foregoing, Dr. Nia's medical legal report does not comply with the provision of Labor Code §4628 and reimbursement is precluded pursuant to §4628(e).

As the report of Dr. Nia is not substantial evidence on the issue of injury aoe/coe, lien claimant has failed to carry its burden and reimbursement for self-procured treatment after the date of the denial is not owed by defendant.

Applicant's prior claim (ADJ19002254) involves a claim undisclosed to Dr. Nia and which involved allegation of injury to the shoulder, feet, right arm, hands and fingers and with an Order Approving Compromise and Released dated 1/13/2020. Lien claimant argues that the undersigned erred in taking Judicial Notice as to ADJ19002254, essentially, as a denial of due process. Lien claimant is not prejudiced as defendant's request for Judicial Notice was listed at the time of the MSC

The Board may take judicial notice of medical records from an applicant's previous workers' compensation case. The Court of Appeal has held that the WCAB did not exceed its jurisdiction when…the WCJ impeached applicant with medical reports from prior claim even though they were not listed at MSC. **Amoroso v. Workers Compensation Appeals Bd., 1999 Cal. Wrk. Comp. LEXIS 5697**

DEFENDANT'S PETITION FOR RECONSIDERATION:

Defendant's sole contentions on Reconsideration are that the undersigned erred in admitting in evidence lien claimant's exhibits 1 and 2 (bill reviews) as lacking foundation and that penalties and interest on any unpaid amount due should not be awarded.

Defendant's contentions are well taken and the undersigned does recommend that the Award be rescinded and amended to indicate that: 1) Lien claimant's exhibits 1, 2, 4 and 8 are excluded from evidence; 2) Spectrum Medical Group be reimbursed for date of service 10/25/2023 in an amount to

be determined and 3) that lien claimant submit to defendant a statement for DOS 10/25/2023 to be submitted by defendant for bill review.

IV
RECOMMENDATION

It is respectfully recommended that lien claimant's Petition for Reconsideration dated 5/31/2025 be Denied.

It is respectfully recommended that defendant's Petition for Reconsideration dated 5/30/2025 be granted and that the Findings and Award be amended and revised as recommended herein above.

(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 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.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal. Comp. Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal. Comp. Cases 16].) "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 Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be

framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Where the evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Here, we are not persuaded that there is substantial evidence to support the WCJ's decision.

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 and lien claimant's Petitions for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions 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 and lien claimant's Petitions for Reconsideration are **GRANTED**.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSE H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 15, 2025

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

SATZMAN & ASSOCIATES
SPECTRUM MEDICAL GROUP

PAG/bp

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