WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FARQAD SALIM, *Applicant*

vs.

NORTHERN FREIGHT EXPRESS, INC.; CLEAR SPRING PROPERTY & CASUALTY CO., administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ16554524
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioner, Document Analyst Group (DAG) (cost petitioner) seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on the March 3, 2025, wherein the WCJ found in relevant part that cost petitioner shall take nothing because it failed to prove that the records from San Diego Orthopedic Associates Medical Group were reasonable and necessary at the time the services were performed; "[n]o evidence shows an order by Applicant's Attorney for [cost petitioner] to obtain records from Sedgwick"; "[n]o evidence shows that [cost petitioner] actually performed services related to obtaining records by Subpoena Duces Tecum or otherwise from Sedgwick, therefore the invoice of $75 for cancellation of such services is not recoverable as a medical-legal expense"; "[n]o sanctions, costs, or attorney fees are owed by Defendant for opposing liability for the costs claimed herein by Document Analyst Group"; cost petitioner "engaged in frivolous litigation by pursuing recovery of expense for work that was known or should have been known by the MSC date to be unnecessary and duplicative without offering any contrary proof at trial"; and cost petitioner "engaged in frivolous litigation by pursuing recovery of expense for work that was without supporting evidence or documentation."

Cost petitioner contends that the records that were produced in response to the March 27, 2023 subpoena were not duplicative and that its services were reasonable and necessary and should be reimbursed; and that it did not engage in frivolous litigation.

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 for the reasons discussed below, we will rescind the Findings & Order and substitute a new Findings & Order that finds that the services provided by cost petitioner to obtain records from San Diego Orthopedic Associates Medical Group were reasonable and necessary at the time they were performed and that cost petitioner is entitled to payment; finds that cost petitioner did not meet its burden on the subpoena to Sedgwick; finds that cost petitioner did not engage in bad faith or frivolous conduct and sanctions are not warranted; and defers the issue of whether defendant engaged in bad faith or frivolous conduct thereby subjecting it to sanctions, costs and attorney's fees.

I.

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."

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

Here, according to Events, the case was transmitted to the Appeals Board on April 8, 2025 and 60 days from the date of transmission is Saturday, June 7, 2025. The next business day that is 60 days from the date of transmission, is Monday, June 9, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, June 9, 2025, so that we have timely acted on the petition as required by 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 April 8, 2025, and the case was transmitted to the Appeals Board on April 8, 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 April 8, 2025.

II.
BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to his hands, fingers, body, stress, psyche, upper extremities, head, sleep, reproductive system while employed on July 26, 2022, by defendant as a truck driver due to his hand getting crushed with the dolly that is put behind the truck.

On August 15, 2022, applicant filed an Application for Adjudication (Application), claiming that he sustained a specific injury to his hand, fingers, psych, stress and other body parts on July 26, 2022. The case was assigned Case No. ADJ16554524.

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[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.

On October 5, 2022, defendant issued a notice of claim denial and advised that it was accepting liability for applicant's claim of injury to his left index finger and denying liability for claimed injury to all other body parts. (Exhibit J, Partial Denial Notice, October 5, 2022.)

On October 31, 2022, defendant filed an Answer To Application For Adjudication of Claim, disputing injury and compensation.

On November 21, 2022, defendant obtained records via subpoena from San Diego Orthopedic Associates Medical Group. (Exhibit D, Subpoenaed Records from San Diego Orthopedic Associates Medical Group, November 21, 2022.) Defendant provided copies of those records to applicant.

On February 24, 2023, defendant's attorney wrote to cost petitioner, and stated that:

> You served (a) subpoena(s) duces tecum on Northern Freight Express, Inc., and/or Sedgwick, our client and third party administrator respectively in the above-captioned matter, on behalf of Alvandi Law Group, on February 3, 2023.
>
> This letter is an objection, and formal notice that our client will not comply with your subpoena. The basis for the objection is that the subpoena seeks privileged and non- privileged documents alike; that it is vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, and that it is an improper form of conducting discovery on a represented party in a workers' compensation matter.
>
> Please refrain from further discovery efforts. Such further efforts following receipt of this notice may constitute a violation of Labor Code §5813.

(Exhibit G, Objection to Subpoena, February 24, 2023.)

On February 24, 2023, defendant's attorney wrote to applicant's attorney, and stated in pertinent part that:

> Your copy service at your instruction served (a) subpoena(s) duces tecum on Northern Freight Express, Inc., and/or Sedgwick, and/or Alvandi Law Group, on February 3, 2023 our client and third party administrator respectively in the above-captioned matter, on February 3, 2023.
>
> We have served them notice of our objection, and you have been copied. This is notice of our objection for the reasons stated in the letter to your copy service.

(Exhibit L, Letter to Applicant's Attorney, February 24, 2023.)

On March 23, 2023, cost petitioner issued a subpoena to San Diego Orthopedic Associates Medical Group. (Exhibit 2, Subpoena to San Diego Orthopedic Associates Medical Group, March 23, 2023.)

On June 2, 2023, the matter was resolved by way of a Compromise & Release (C&R), and according to Paragraph 9, "a serious and good faith issue of injury AOE/COE exists, which if resolved against applicant would totally bar recovery of workers' compensation benefits."

On July 31, 2023, a WCJ issued an Order Approving Compromise and Release (OACR).

On October 23, 2023, cost petitioner sent a past due invoice to defendant for "cancelled service" for records from Sedgewick for $82.73, with included the cost of $75.00, with penalties and interest. (Exhibit 7, Past Due Invoice, October 23, 2023.)

On May 23, 2024, lien claimant's representative filed a petition for reimbursement for medical-legal expenses, seeking payment for the February 3, 2023 subpoena to Sedgwick and the March 27, 2023 subpoena to San Diego Orthopedic Associates Medical Group.

On June 4, 2024, defendant filed a *verified* objection to cost petitioner's petition for reimbursement. As relevant herein, it stated that:

> On February 24, 2023, Defendant issued objection to Petitioner regarding the subpoena duces tecom on Northern Freight Express, Inc. and/or Sedgwick dated February 3, 2023. (***Already part of the Board's File – DOC ID: 52192401***)
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> On February 24, 2023, Defendant issued correspondence objection to Applicant's attorney, Alvandi Law Group, regarding the subpoena duces tecom issued by Petitioner. (***Already part of the Board's File – DOC ID: 52192400***)
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> Furthermore, Defendant has evidence that the subpoena duces tecum issued against Sedgwick on or about February 3, 2023 is duplicative, unreasonable and unnecessary as Sedgwick served Applicant's attorney previously with indemnity benefit printout, entire medical file, DWC, and all correspondence to applicant via Proof of Service dated September 26, 2022. (***Already party [sic] of the Board's File – DOC ID: 52192397***)
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> Petitioner billed for cancelled service for the subpoena duces tecum issued to Sedgwick Claims Management Services invoice dated October 23, 2023 AFTER an Order Approving C&R issued on July 31, 2023. Petitioner has not provided proof Applicant's attorney requested they cancel the services and it is unclear why this would be billed after the case resolved via Order Approving C&R.

(Exhibit N, Objection to Petition for Reimbursement, June 4, 2023, bold and italics in original.)

On February 10, 2025, cost petitioner and defendant proceeded to trial on the issue of cost petitioner's petition for reimbursement. At trial, cost petitioner submitted the subpoena to San Diego Orthopedic Associates Medical Group (Exhibit 2) as evidence, but neglected to submit the subpoena to Sedgwick as evidence.

On March 3, 2025, the WCJ issued the F&O. In the Opinion on Decision, with respect to the subpoena to Sedgwick, he stated that:

> Insofar as the cancellation charge of $75 related to the Sedgwick records [See Ex 7], there is a different problem. Labor Code section 4621 requires among other things that the expense "actually" be incurred. This requires proof. Such proof would be based on some or all of the following: an order form from Applicant attorney requesting the service, a copy of the prepared subpoena, the proof of service of the subpoena, declaration from the custodian of records, the actual records, a cancellation request, etc. This analysis is different than looking at the timing of the work; instead, it's looking to see if the work was actually done.
>
> While we have an order from Applicant attorney for records to be obtained by DAG, the order refers to records of two medical facilities, not to records from Sedgwick. There's no request from Applicant attorney for the Sedwick records, no prepared subpoena, no proof of service of the subpoena, no cancellation request, basically nothing to document that the work which underlies the $75 bill was in fact done.
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> ***
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> Here, the only evidence offered is the invoice [Ex 7]. However, the invoice standing alone doesn't prove the work was actually done and is insufficient proof upon which to impose liability for the $75 cancellation charge.
>
> ***
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> DAG has the burden of proving that the defendant's actions (non-payment, litigating liability) were taken in bad faith. However, no bad faith exists here. Defendant did not act frivolously. It had every right to oppose liability on the basis it did. . . .

(Report, pp. 9-10; 11.)

III.

A lien claimant/cost petitioner holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See Lab. Code, §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant/cost petitioner is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were

incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico v. Secure Transport*, (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc).)

Section 5307.9 states:

> On or before December 31, 2013, the administrative director . . . shall adopt . . . 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.)

AD Rule 9982(e) states in pertinent part that: "The claims administrator is not liable for payment of: (1) records previously obtained by subpoena . . . and served from the same source." (Cal. Code Regs., tit. 8, § 9982(e)(1).)

Here, the WCJ concluded that there were contested issues regarding injury to body parts other than the left index finger when the subpoenas were issued. The reason that the WCJ found the services by cost petitioner related to San Diego Orthopedic Associates Medical Group were neither reasonable nor necessary at the time the services were performed was because the same medical records had previously been provided directly to applicant's attorney by defendant.

However, we disagree that the services were duplicative and therefore not recoverable. Defendant served a subpoena on November 21, 2022, and 20 pages of medical records from San Diego Orthopedic Associates Medical Group were produced. On March 27, 2023, the subpoena by cost petitioner on behalf of applicant's attorney to San Diego Orthopedic Associates Medical Group resulted in the production of 29 pages.

In contrast to the evidence defendant submitted with respect to the subpoena to Sedgwick (Exhibits G, L), defendant submitted no evidence that it advised cost petitioner (or applicant's attorney) when it received notice of the subpoena that it had already provided subpoenaed records

from San Diego Orthopedic Associates Medical Group. We note that section 5307.9 institutes a 30 day bar when documents have been requested, but contains no such statutory prohibition for "records previously obtained by subpoena . . . and served from the same source" as set forth in AD Rule 9982(e). Under the circumstances here, we do not believe that the subsequent subpoena was improper where there was no notice to the unsuspecting cost petitioner at the time that the subpoena issued.

As we stated in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc),

> 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.)

The purpose of discovery is to seek information that *may* lead to relevant evidence. With the passage of time, it is not unexpected that more evidence may become available, and we do not second-guess applicant's attorney's decision to subsequently pursue a subpoena with San Diego Orthopedic Associates Medical Group. But more importantly, the analysis under sections 4620 and 4621 turns on whether it was reasonable and necessary to obtain the services *at the time they were performed*. Though it is tempting to focus on whether a subpoena was successful, *the determination under 4620 and 4621 is not based on what was subsequently produced and/or obtained in response to the subpoena*. Instead, as explained in *Allison*, *supra*, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence means that attorneys are given wide latitude in considering what evidence could potentially be useful in presenting their case.

Under the same reasoning as explained above, it is not relevant whether any documents were ultimately produced in response to a subpoena in determining liability for payment. Thus, had cost petitioner properly submitted the subpoena to Sedgwick into evidence, we would have found that it was entitled to payment for it. Unfortunately, we are unable to award payment, since production of an invoice is not sufficient to meet cost petitioner's burden. (See generally *Colamonico*, *supra*.)

However, we emphasize that in letters submitted into evidence *by defendant*, and in a *verified* pleading *by defendant*, ***it admits that it received the subpoena to Sedgwick and that it refused to provide responsive documents***. While we do not consider the issue of whether defendant should have been sanctioned with respect to this conduct, we observe that defendant's conduct in admitting to its receipt of the subpoena and its refusal to comply with it, and threatening sanctions and then seeking sanctions against cost petitioner for the subpoena appears to be in bad faith and borders on frivolous.

Therefore, we will find that cost petitioner is entitled to payment for the cost of the subpoena to San Diego Orthopedic Associates Medical Group. We note that we are unable to find support for defendant's continued position that it did not owe for the cost of the subpoena, and we defer the issue of whether defendant is liable for sanctions.

Accordingly, we grant cost petitioner's Petition for Reconsideration, rescind the F&O and substitute a new decision that finds that the services provided by cost petitioner to obtain records from San Diego Orthopedic Associates Medical Group were reasonable and necessary at the time they were performed and that cost petitioner is entitled to payment for the services; that cost petitioner did not meet its burden to show that it was entitled to payment for the cost of the subpoena to Sedgwick; and that cost petitioner did not engage in bad faith or frivolous conduct and sanctions are not warranted; and defers the issue of whether defendant's conduct was in bad faith or frivolous, thereby subjecting it to sanctions, costs and attorney's fees.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the Findings & Order issued on March 3, 2025 by the WCJ is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings & Order of March 3, 2025 is **RESCINDED** and the following is **SUBTITUTED** therefor:

FINDINGS OF FACT

1. At the request of applicant's attorney, cost petitioner Document Analyst Group issued a subpoena duces tecum for records of San Diego Orthopedic Associates Medical Group on March 27, 2023.

2. A contested claim existed under Labor Code section 4620 at the time the services were performed by Document Analyst Group for the subpoena for records of San Diego Orthopedic Associates Medical Group, and the services were reasonable and necessary under Labor Code section 4621.

3. Document Analyst Group is entitled to payment of $230 for its services for obtaining the records of San Diego Orthopedic Associates Medical Group. The amount of interest and penalties shall be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

4. Document Analyst Group failed to meet its burden as to the services related to obtaining records by subpoena from Sedgwick, therefore the invoice of $75 for cancellation of such services is not recoverable as a medical-legal expense.

5. Document Analyst Group did not engage in bad faith or frivolous conduct, and defendant is not entitled to sanctions, costs, or attorney's fees.

6. The issue of whether defendant Clear Spring Property and Casualty, as administered by Sedgwick engaged in bad faith or frivolous conduct is deferred.

AWARD

Document Analyst Group is awarded payment of $230.00 and penalties and interest against defendant Clear Spring Property and Casualty for its services for obtaining the records of San Diego Orthopedic Associates Medical Group on March 27, 2023. The amount of interest and penalties shall be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

ORDERS

A. Defendant is not liable for the cost of the February 3, 2023 subpoena to Sedgwick by Document Analyst Group.

B. The issue of defendant's liability for sanctions, costs, and attorney's fees is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 9, 2025

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

LAW OFFICES OF PATRICK CHRISTOFF
MICHAEL SULLIVAN & ASSOCIATES

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