

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JONATHAN NIETO HERNANDEZ, *Applicant*

vs.

**DIABLO DELTA PAINTING; STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ11504408
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Lien claimant John Muir Hospital seeks reconsideration of the September 17, 2025 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that there is a chain of contracts that constitute an express agreement fixing the amount that lien claimant is to be paid for the services it provided to applicant, and the Workers' Compensation Appeals Board (WCAB) has no jurisdiction under Labor Code, section 5304, to adjudicate lien claimant's lien claim for additional fees.¹

Lien claimant contends that (1) defendant's exhibit B, Individual Payment Report, was not properly listed in the pretrial conference statement or timely served to lien claimant; (2) inpatient rehabilitation services are exempt from the Official Medical Fee Schedule (OMFS); (3) defendant's conduct in delaying service of evidence and mislabeling it should be sanctioned; (4) defendant's late disclosure of defendant's exhibit B rendered the bill review process defective and requires the WCAB to retain jurisdiction; (5) the WCAB retains jurisdiction on threshold issues under section 4603.2(d)(1); and (6) lien claimant is entitled interest of ten percent per annum for the delayed payment and a penalty of 0.25% per day (up to 25%).

We received an answer from defendant State Compensation Insurance Fund. State Compensation Insurance Fund contends that (1) the WCAB does not have jurisdiction over lien

¹ All statutory references are to the Labor Code unless otherwise indicated.

claimant's bill dispute; (2) defendant did not act in bad faith; (3) lien claimant's second bill review was untimely; and (4) lien claimant has not proven the reasonable cost basis for their charges.

Lien claimant filed a supplemental reply to defendant's answer. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We decline to approve lien claimant's supplemental reply because the evidence admitted is sufficient to support the Findings and Award.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate, we deny reconsideration.

Former 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, Labor Code 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 October 21, 2025 and 60 days from the date of transmission is Saturday, December 20, 2025. The next business day that is 60 days from the date of transmission is Monday, December 22, 2025. (See Cal. Code

Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, December 22, 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 October 21, 2025, and the case was transmitted to the Appeals Board on October 21, 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 October 21, 2025.

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.

For the foregoing reasons,

IT IS ORDERED that lien claimant John Muir Hospital's Petition for Reconsideration of the September 17, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 22, 2025

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

**JONATHAN NIETO HERNANDEZ
ALEX KHAZIN – JOHN MUIR HEALTH SYSTEMS BUSINESS OFFICE
STATE COMPENSATION INSURANCE FUND**

LSM/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

&

NOTICE OF TRANSMISSION TO THE APPEAL BOARD

INTRODUCTION

Issue: Disagreement with Findings & Award

Date of Findings and Award: September 17, 2025

Petitioner: Lien Claimant

Timeliness of Petition: Timely

Verification of Petition: Verified

I

BACKGROUND INFORMATION

Jonathan Nieto Hernandez, born [] while employed on March 1, 2017, sustained injury to his back, psyche, bilateral lower extremities, head, bilateral shoulders, spine, urological and bilateral feet. This matter came regularly to trial on July 24, 2025. At the time of trial, the parties submitted Joint Exhibits 101 through 103, the Lien Claimant submitted Exhibit No 1 and Defendants submitted Exhibits A through F. Neither party objected to the Exhibits at the time of trial. No witnesses were presented and the matter was submitted on the record.

II

DISCUSSION

Background

On March 1, 2017, the applicant sustained an injury to his back, psyche, bilateral lower extremities, feet and shoulders; head, spine and urological issues. As a result of the injury, the applicant received treatment at John Muir Hospital where he was treated in the emergency room and later received rehabilitation services as well.

The bill for treatment for dates of service from 3/1/2017 – 3/10/2017 was served on Defendants and the defendant, SCIF, paid an amount for the bill on 4/26/2017. A second bill was served on SCIF for dates of service from 3/10/2017 – 4/18/2017 which an amount was paid on 5/24/2017.

Three years later a second bill review was requested on 9/3/2020 for the dates of service from 3/10/2017 to 4/18/2017 and a second review was conducted and the Explanation of Review was issued on 9/18/2020 which stated, among other things, that the bill was “repriced to your Anthem Blue Cross Contract.” It should be noted that the second bill review submitted by the lien claimant was untimely, however, Defendants conducted a second bill review and stated the bill was “Repriced to your Anthem Blue Cross Contract.”, in addition to other adjustments.

1. The WCAB has no Jurisdiction under LC section 5304

In pertinent part, Section 5304 provides that:

The appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer.

(Cal. Lab. Code, § 5304.)

Based on the above, where there is there is an “express agreement fixing the amount to be paid for medical treatment” between the medical provider and the insurer, then the Appeals Board does not have the right to exercise jurisdiction over medical treatment disputes or over whether there has been a breach of that express contract. The Appeals Board has the right to determine whether it has jurisdiction pursuant to section 5304. (Lab. Code, § 5305.)

It is established through applicable case law that a “chain of contracts” can constitute an “express agreement” which divests the Appeals Board of jurisdiction to determine the allowable amount of a lien claim pursuant to section 5304. (Tri-City Medical Center v. Workers’ Comp. Appeals Bd. (Streeter) (2010) 75 Cal.Comp.Cases 790 [writ den.].) In *Streeter*, the Appeals Board stated that,

Our prior determination in this matter is consistent with recent decisions, where we held that the language in the Blue Cross ‘Comprehensive Contracting Hospital Agreement,’ expressly provides for Blue Cross to contract with ‘Other Payors’ to provide access to a hospital’s medical services. Such ‘Other Payors’ are noted to consist of other *insurers*, including workers’ compensation insurers. (See e.g., *Recovery Resources, Inc. v. Workers’ Comp. Appeals Bd. (Gordon) (2009) 74 Cal. Comp. Cases 881 [writ denied]; See Ferguson v. Handee Market (2005 Cal. Wrk. Comp. P.D. Lexis 22[]]; Waters v. Los Angeles Clippers (2005 Cal. Wrk. Comp. P.D. Lexis 15.)*

In *Ferguson, supra*, an Appeals Board panel held that the Labor Code section 5304 requirement that there be an ‘express agreement’ does not require that there be a single agreement between the parties. In that case, the initial contracting agreement between the lien claimant hospital, St. Joseph and First Health, a PPO, acted as a chain of agreements to create a bridge between the defendant insurer and St. Joseph. As with Tri-City here, St. Joseph entered into the contract with a PPO with notice of certain provisions that encouraged the utilization of its services by additional affiliates and other payors of the PPO, such as the defendant. Thus, it was not unreasonable to read the contracts together to find that there was an ‘express agreement’ between St. Joseph and defendant, which triggered the application of Section 5304.

Similarly, in *Waters, supra*, an Appeals Board panel reversed the WCJ’s determination that a specific contract must exist between the medical services provider and the workers’ compensation carrier in order to create a binding agreement between the two and found, instead, that a chain of contracts may provide a bridge from the medical services provider to the carrier.

In *Gordon, supra*, the case involved the same Comprehensive Contracting Hospital Agreement between Blue Cross and the lien claimant hospital as entered between Blue Cross and Tri-City here. In that case, an Appeals Board panel found the agreement between Blue Cross and SCIF to utilize the hospital's services as an 'other payor,' at the preferred rates negotiated by Blue Cross. (*Streeter, supra*, 75 Cal.Comp.Cases 792-793.)

In this case, as in the above relevant cases, there is an express agreement between lien claimant and Blue Cross fixing the amount that lien claimant would receive for the services it provided. (Joint Exhibit 101, Anthem Contract dated 3/4/2013) Further, there is a second agreement between State Fund and Blue Cross. (Defense Exhibit D, Network Access Agreement dated 5/1/1998) In addition, there is a Network Leasing Arrangement Disclosure that clearly designated State Compensation Insurance Fund as "other payer." (Defense Exhibit F, Network Leasing Arrangements dated February 2017)

Based on the forgoing, it was determined that the chain of contracts precludes the WCAB from exercising jurisdiction over lien claimant's assertion that it is entitled to additional fees. Since the WCAB has no jurisdiction over the instant issues, the undersigned is also precluded from determining reasonable value or cost basis as well as any other issues in relation to such contracts, including medical treatment disputes.

However, it is noted that article VII of Joint Exhibit 101 addresses "Dispute Resolution" and it provides that Anthem and lien claimant are to follow the procedures set forth in section 7.1 and then proceed to arbitration of the dispute remains unresolved. (Joint Exhibit 101, pp. 15-16.)

Based on the forgoing, it was properly determined in the Findings & Award and Opinion on Decision that that the chain of contracts precludes the WCAB from exercising jurisdiction over lien claimant's assertion that it is entitled to additional fees. Since the WCAB has no jurisdiction over the instant issues, the undersigned is also precluded from determining reasonable value or cost basis as well as any other issues in relation to such contracts including medical treatment disputes.

It should further be noted that even if there were jurisdiction, which there is not, the lien claimant's request for the second bill review was untimely and therefore they did not have a remedy to contest the payments that defendants made in the first place.

2. The Lien Claimant's ground for Reconsideration concerning one of Defendant's Exhibits is without merit and should be denied.

At the time of trial, the parties both reviewed and submitted Joint Exhibits and their own respective Exhibits. After review of the Exhibits being presented for trial, the parties agreed to file Joint Exhibits 101 through 103 and the Lien Claimant submitted Exhibit No 1 and Defendants submitted Exhibits A through F. When such Exhibits were read into the record at trial and the parties were specifically each asked if there were any objections to the Exhibits being submitted for trial, both parties said there were none.

Based on the above, the Lien Claimant did not raise any objection to any Exhibits at the time of trial, nor lodge any objection to any Exhibits until after the trial was submitted and the Findings & Award and Opinion on Decision was issued. This issue was first raised belatedly in their Petition for Reconsideration.

Furthermore, the Lien Claimant failed to raise any objection or provide any legal basis concerning such an objection to the Exhibits both in the Pre Trial Conference Statement as well as at trial as indicated above, which was the proper time to object to any Exhibits. The Lien Claimant was provided ample opportunity to raise any legal objections and failed to do so. As a result, the Lien Claimant waived any objections thereto.

Based on the forgoing I recommend that the Petition for Reconsideration be denied.

Date: 10/21/2025

Sarah B. Carr