

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

LUIS HERNANDEZ, *Applicant*

vs.

**CESAR CHAVEZ FOUNDATION; BERKSHIRE HATHAWAY HOMESTATE
INSURANCE COMPANY c/o BERKSHIRE
HATHAWAY HOMESTATE COMPANIES,
*Defendants***

**Adjudication Number: ADJ11900759
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant Berkshire Hathaway Homestate Insurance Company (defendant) seeks reconsideration of our “Opinion Granting Petition for Reconsideration and Decision After Reconsideration” (Opinion) issued on March 17, 2025, wherein we found in pertinent part that a contested claim existed at the time that cost petitioner provided subpoena services in this case.

Defendant contends that “the Appeals Board misapplied Labor Code¹ section 4620(b) and 8 CCR section 9793(b), which establish the conditions of a contested claim, to the evidence in this case.”

We have not received an Answer from cost petitioner.

We have considered the allegations in defendant’s Petition for Reconsideration. Based on our review of the record, and as discussed below and as stated in the Opinion, which we incorporate by reference, we make no changes to our Opinion, and we will deny reconsideration.

BACKGROUND

On December 17, 2024, the WCJ issued the Findings of Fact & Order (F&O), finding, in pertinent part, that cost petitioner, DocCentral, failed to sustain its burden of proving that a contested claim existed at the time the expenses were incurred. On January 3, 2025, cost petitioner

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

filed a Petition for Reconsideration.

On March 17, 2025, we issued our Opinion, granting reconsideration, rescinding the WCJ's F&O, and substituting a new Findings of Fact and Order as follows:

1. The applicant, Luis Hernandez, while employed on January 18, 2019 as a Maintenance Worker, at Keene, CA, by the defendant, Cesar Chavez Foundation, insured by Berkshire Hathaway Homestate Insurance Company, administered by Berkshire Hathaway Homestate Companies claimed to have sustained injury arising out of and during the course of employment to his shoulders, back, neck, and upper extremities.
2. On January 20, 2021 the matter was resolved by way of a \$60,000 Order Approving Compromise and Release.
3. A contested claim existed at the time cost petitioner DocCentral provided subpoena services in this case. All other issues are deferred as to the lien of DocCentral.

Defendant contends in its Petition for Reconsideration that we "misapplied" section 4620(b) and AD Rule 9793(b) (Cal. Code Regs., tit. 8, § 9793(b)).

DISCUSSION

I.

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, 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 August 20, 2025 and 60 days from the date of transmission is Sunday, October 19, 2025. The next business day that is 60 days from the date of transmission is Monday, October 20, 2025, (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, October 20, 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, the case was transmitted to the Appeals Board on August 20, 2025. Since the Petition was filed in response to our Decision, there was no Report prepared, and no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, while the district office did not provide notice of transmission required by section 5909(b)(1), so that the parties did not have notice of the commencement of the 60-day period on June 6, 2025, this failure to provide notice does not alter the time for the Appeals Board to act on the Petition.

II.

Here, in its Petition, defendant ***erroneously*** contends that the Appeals Board misapplied section 4620(b) and WCAB Rule 9793(b) (Cal. Code Regs., tit. 8, § 9793(b)) to the elements of a contested claim. Defendant first asserts that “none of the enumerated conditions in the codes existed at the time cost petitioner’s copying service expenses were incurred.” Second, defendant contends that the filing of an Application does not establish a contested claim as set forth in the panel decision of *Calderon v. Knight Builders* (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 359.

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.

Section 4620(b)(2) states that: “A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists: . . . (2) The employer fails to accept liability for benefits after the expiration of a *reasonable period of time* within which to decide if it will contest the claim.” (Emphasis added.)

With respect to defendant’s first contention, while it is not entirely clear, defendant appears to be arguing that because the claim was on delay status when the subpoenas issued, there was no contested claim, and that the claim only became contested when a denial issued. Defendant alleges that it received notice of applicant’s claim on January 1, 2019, and responded with a notice of delay, so that the delay period expired on April 1, 2019. Specifically, defendant refers to the March 13, 2019 subpoena issued to Central Valley Occupational Group and the March 20, 2019 subpoena issued to the Caesar Chavez Foundation, and contends that those subpoenas issued before a “reasonable” amount of time had elapsed.

In *Chavarria v. Crews of California, Inc.* (December 2, 2019, ADJ12402022) [2019 Cal. Wrk. Comp. P.D. LEXIS 534], the panel held that section 4060 does not require the denial of a claim before a represented applicant can request a QME panel to address compensability. “[T]he combination of an applicant filing a claim form, and an employer notifying the applicant that further discovery is needed is sufficient to meet that definition [of a “dispute” under section 4062.2]. Both parties have the right to perform discovery regarding the causation of applicant’s injury while an employer determines whether to accept a claimed injury.”

Applying that logic here, we conclude that when a defendant issues a delay notice, although it is within defendant’s right to do so, applicant is not precluded from commencing discovery. In our recent en banc opinion in *DiFusco v. Hands On Spa et al* (2025) 90 Cal.Comp.Cases ___, we observed that:

Our holding herein is consistent with the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers’ compensation cases. (*Allison v. Workers’ Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) We emphasize that in workers’ compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have *greater* discretion with respect to evidentiary matters than courts in civil proceedings, and *not narrower* discretion as defendant appears to believe. Section 5708 mandates that we are not “bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to *ascertain the*

substantial rights of the parties and carry out justly the spirit and provisions of this division.” (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that “admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure” will not invalidate an order, decision or award. (Lab. Code, § 5709.)

Unlike a discovery request where the right to privacy or another privilege is implicated, proof of good cause is not required for a routine discovery request such as the one here.

(*Id.*)

If we were to accept defendant’s argument, the proceedings would indeed be “delayed.” Instead, we believe that permitting discovery during the delay period, is consistent with our Constitutional mandate that proceedings be “expeditious.” We also observe that the subpoenas issued more than 60 days after defendant was aware of the claimed injury, and just a few weeks before the end of defendant’s claimed “delay period.” Under the circumstances here, we conclude that a reasonable amount of time had elapsed.

In *DiFusco*, *supra*, 90 Cal.Comp.Cases ___, we held in pertinent part that “All en banc decisions are binding on panels of the Appeals Board and WCJs. . .” We explained that:

Sections 111 and 115 grant statutory authority to the Appeals Board to issue en banc decisions. Appeals Board en banc decisions have the same legal effect as published appellate opinions. (*Signature Fruit Co. v. Workers’ Comp. Appeals Bd. (Ochoa)* (2006) 142 Cal.App.4th 790, 796, fn. 2 [71 Cal.Comp.Cases 1044].)

Specifically, en banc decisions “are binding on panels of the Appeals Board and workers’ compensation judges as legal precedent under the principle of *stare decisis*.” (Cal. Code Regs., tit. 8, § 10325.) The principle of *stare decisis* means that precedent-setting court opinions may only be overruled by the same court, or a higher court. Hence, an Appeals Board en banc opinion must be followed by panels of the Appeals Board and by all WCJs until rescinded, altered, or overruled by the Appeals Board en banc, overruled by a Court of Appeal or the California Supreme Court pursuant to sections 5950 through 5956, or rendered inapplicable by a legislative enactment.

(*Id.*)

Defendant is taking great liberty in this case by applying the reasoning in a panel decision rather than addressing our en banc decision in *Colamonico v. Secure Transport* (2019) 84 Cal. Comp. Cases 1059 (Appeals Board En Banc) and fails to explain how *Colamonico* applies to the

instant matter. We suspect defendant's failure to address how *Colamonico* impacts the instant matter stems from the fact that it resolves the split of authority, but not in defendant's favor.

In *Calderon*, 2017 Cal. Wrk. Comp. P.D. LEXIS 359, a 2017 panel decision, applicant filed two Applications for Adjudication for injuries sustained while employed by the defendant as a carpenter. The first Application was filed for a hernia, and it was accepted and assigned case number ADJ8911648. The second claim was for a cumulative injury to multiple body parts sustained during the period of January 1, 2004 to February 8, 2013 and it was apparently denied, though the record does not show exactly when the denial occurred and it was assigned case number ADJ8911665. Both cases were resolved by way of a compromise and release which was approved by the WCJ on October 20, 2014. In the settlement, defendant admitted liability only for the hernia. In *Calderon*, the panel concluded that proof of a contested claim must comply with the three subsections listed in section 4620(b).

However, in 2019, we issued the en banc decision in *Colamonico, supra*, 84 Cal. Comp. Cases 1059, where we stated,

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs "for the purpose of proving or disproving a contested claim." (§ 4620(a).) Copy service fees are considered medical-legal expenses under section 4620(a). (Citations) Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a "contested claim" existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).)

. . . [W]e note that a determination of whether a purported medical-legal expense involves a "contested claim" is a fact-driven inquiry. 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.)

In the instant matter, on February 1, 2019, applicant's attorney filed an Application for Adjudication of Claim and marked all of the allegations in Paragraph 9 as follows: "This

application is filed because of a disagreement regarding liability for: Temporary disability, Permanent disability indemnity, Reimbursement for medical care, Rehabilitation, Medical treatment, Supplemental Job Displacement.” (Application for Adjudication of Claim, 2/1/2019.) On February 15, 2019, defendant issued a “Notice Regarding Delay of Workers’ Compensation Benefit.” (Exhibit D, 2/15/2019.) At that point, when defendant issued the delay notice, a contested claim existed under section 4620(b) because the Delay Notice is evidence of a dispute since a claim is contested unless all benefits owing are paid forthwith. Moreover, the Application indicating a disagreement had been filed, thus the claim was contested when the subpoenas issued on March 13, 2019 and March 20, 2019.

Therefore, we continue to conclude that cost petitioner met its burden that a contested claim existed pursuant to section 4620(b) when cost petitioner issued the first subpoena duces tecum on March 13, 2019 (Exhibit 7, 3/13/2019) and the second subpoena duces tecum on March 20, 2019, (Exhibit 9, 3/20/19.) Hence, we make no changes to our Opinion.

Accordingly, we deny defendant’s Petition for Reconsideration of our Opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Opinion Granting Petition for Reconsideration and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on March 17, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2025

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

**THE JIN LAW FIRM
PEATMAN LAW GROUP**

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*