WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

OLGA LOPEZ, *Applicant*

vs.

VILLA TEPEYAC; PREFERRED EMPLOYERS INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ13324854 (MF); ADJ13324858
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Jonathan Kohan Sherman Oaks (lien claimant) seeks reconsideration of the Finding of Fact and Order (F&O) issued on September 11, 2025 by the workers' compensation administrative law judge (WCJ) which found in pertinent part that there was not a qualifying request for authorization (RFA) for the treatment in question and utilization review (UR) was irrelevant and moot; the issue of reasonableness and necessity is moot; the validity of the defense bill review is no longer relevant; Penalties & Interest are moot; and the lien of Dr. Kohan is disallowed. Then WCJ ordered that the lien of Dr. Kohan is disallowed and that Dr. Kohan take nothing on its lien.

Lien claimant contends that it provided self-procured treatment to applicant while the claim was denied and its lien should not be reviewed as if the claim was accepted; that it submitted RFAs electronically and defendant's explanation of reviews (EORs) should have issued electronically; and once it established causation and medical necessity, the burden shifted to defendant to rebut causation and medical necessity, and defendant failed to meet this burden.

We received an Answer from defendant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that the petition be granted for the sole purpose of determining whether, upon service of the panel qualified medical evaluator (PQME) report, lien claimant requested retrospective review of the treatment requested prior to March 2021 and whether defendant actually provided that review. Otherwise, the WCJ recommended that

reconsideration be denied. The WCJ further recommends that both sides be admonished to provide complete citations to any case they reference in support of their argument.

Lien claimant filed a Reply to Defendant's Answer to Petition for Reconsideration. Insofar as lien claimant's reply constitutes a supplemental pleading, we remind the parties that WCAB Rule 10964 requires that supplemental pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8 § 10964(a).) Our Rules further require that a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. (Cal. Code Regs., tit. 8 § 10964(b).) Lien claimant has not sought the permission of the WCAB to file a supplemental pleading, or set forth good cause for doing so. Accordingly, we have not considered the September 24, 2025 Reply to Defendant's Answer to Petition for Reconsideration herein.

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant lien claimant's Petition for Reconsideration. We will not disturb Findings of Fact #1 and #2 to which no party objected, and otherwise rescind the F&O. We defer all other issues. We return the matter to the WCJ for further proceedings consistent with this decision.

DISCUSSION

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

(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 1, 2025 and 60 days from the date of transmission is Sunday, November 30, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, December 1, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision was issued by or on December 1, 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 WCJ, the Report was served on October 1, 2025, and the case was transmitted to the Appeals Board on October 1, 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

[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.

5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 1, 2025.

II.

BACKGROUND

In ADJ13324854, from March 1, 1968 through March 17, 2020, applicant alleged industrial injury to back, shoulders, arm, knee patella, multiple parts more than five major parts, wrist, neck and abdomen/gastritis.

In ADJ13324858, from March 17, 2019 through March 17, 2020, applicant alleged industrial injury to psyche and wrist.

On December 15, 2020 a Notice Regarding Denial of Workers' Compensation Benefits issued[3]. (Exhibit A.)

On June 6, 2022 a Notice of Deferral of Medical Treatment Requests issued to lien claimant. (Exhibit B.) It states in relevant part:

> **Preferred Employers Insurance Company is unable process your request for medical treatment authorization because the request is for a claim that has been denied.** As a result, the request for treatment authorization is not subject to utilization review and is deferred until such time the liability is determined [§9792.9(b)(1) and §4610(g)(7)(8)].
>
> ***
>
> **The following pertains specifically to the employee:**
>
> Any dispute under this subdivision shall be resolved either by agreement of the parties or through the dispute resolution process of the Workers' Compensation Appeals Board.

(*Id*. at p. 1.)

On October 27, 2022, the parties filed a fully executed Compromise and Release which states in relevant part:

> WITHOUT ADMITTING LIABILITY, DEFENDANT AGREES TO PAY, ADJUST, OR LITIGATE ALL LIEN CLAIMS OF RECORD WITH REGARD TO THE INJURY OF CT: 03/17/2019-03/17/1020, CT: 03/01/1968-03/17/2020 ONLY….WCAB JURISDICION RESERVED….THE C&R IS BEING ENTERED INTO WITHOUT A FINAL REPORT AND WITH AOE?COE IN

[3] Defendant agrees, Exhibit A denied both claimed dates of injury. (Answer, at pp. 1:28-2:2; 2:5-6.)

> DISPUTE. THE PARTIES WISH TO BUY THEIR RESPECTIVE AND AVOID THE UNCERTAINTIES AND HAZARDS OF LITGATION.
>
> QME DR. KINNEY AND DR. MORADIAN HAVE ISSUED RESPECTIVE REPORTS IN THIS CLAIM WHICH ARE NOT FINAL. DEPENDANT HAS OBJECTED AND MAINTAINS THE POSITION THAT THE REPORTING DOES NOT CONSITUTE SUBSTANTIAL MEDICAL EVIDENCE INLCUDING AS TO FINDINGS OF CAUSATION.
>
> ***
>
> THERE IS A DISPUTE REGARDING THE NATURE AND EXTENT OF INJURY, THE DURATION OF TEMPOARRY DISABILITY, PERMANENT DISABILITY, EARNINGS, APPORTIONMENT, LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT, NEED FOR FURTHER MEDICAL TREATMENT, MEDICAL-LEGAL, MILEAGE EXPENSES, OTHER CLAIMED OUT-OF-POCKET EXPENSES, AND CLAIMED PENALTIES ON ALL SPECIES OF BENEFITS. TO RESOLVE ALL ISSUES AND AVOID THE HAZARDS OF DELAYS OF LITIGATION, THE PARTIES ENTER INTO THIS SETTLEMENT…

(Compromise and Release, at pp. 6-7.)

Addendum B to the Compromise and Release, signed by both parties, further explains the "serious dispute" regarding industrial causation and described the information defendant planned to offer in support of its claim of nonindustrial causation should the matter proceed to trial. (*Id*. at p. 12.)

In Addendum C, Panel QME/AME/PTP Final Report Waiver, applicant further acknowledged that she was settling her case without a final medical report. (*Id*. at p. 14.)

On October 28, 2022 a Joint Order Approving Compromise and Release issued and the case-in-chief with applicant resolved.

On November 4, 2022, Farah Ameri Chiropractic filed a Declaration of Readiness to Proceed (DOR) to lien conference. No objection to the DOR was filed by any party. From a continued lien conference on February 22, 2024, the parties jointly requested a continuance to lien trial.

On July 16, 2025, the matter to proceeded to trial and was submitted on the record. In ADJ13324854, at issue for trial, injury arising out of and in the course of employment (AOE/COE) to the neck, wrists, arms, back, shoulders, upper and lower extremities, internal organs and the lien of Dr. Jonathan Kohan, including penalties and interest, whether there was a qualifying RFA,

whether the treatment was reasonable and necessary, reasonableness and value of charges, validity of defense bill review, section 5402(c) and utilization review. (Minutes of Hearing and Order of Consolidation, at pp. 2-3.)

In ADJ13324858, at issue for trial, injury AOE/COE to wrists, psyche, nervous system and the lien of Dr. Jonathan Kohan, including penalties and interest, whether there was a qualifying RFA, whether the treatment was reasonable and necessary, reasonableness and value of charges, validity of defense bill review, section 5402(c) and utilization review. (*Id*., at p. 3.)

On September 11, 2025, in ADJ13324854, WCJ found injury AOE/COE to neck, wrists, arms, back, shoulders, upper and lower extremities and internal organs. (F&O, at p. 1.) In ADJ13324858, WCJ found injury AOE/COE to wrists, psyche and nervous system. (*Id*.) Regarding causation, the WCJ observed:

> Based on the reports of Drs. Moradian and Kohan, particularly Exhibits 9 and 19, it is evident that these continuous traumas are industrial in origin. None of the exhibits reviewed cast any doubt on this conclusion so that these reports stand as credible and unrebutted.

(Opinion on Decision, at p. 1.)

Regarding the lien at issue, the WCJ found that lien claimant failed to submit any qualifying RFA for the treatment in question thereby rendering all other lien issues—UR, bill review, penalties and interest—irrelevant and/or moot. (FOF, at p. 1.) Then WCJ ordered that the lien was disallowed and lien claimant shall take nothing. (*Id*. at p. 2.) It is from these findings and order only that lien claimant seeks reconsideration.

III.

First, we consider the WCJ's recommendation, absent a denial of the Petition for Reconsideration, that the petition be granted for the sole purpose of determining whether, upon service of the PQME report, lien claimant requested retrospective review of the treatment requested prior to March 2021 and whether defendant actually provided that review. Presumably, WCJ is referring to the March 27, 2021 PQME report of Maxim Moradian, M.D., wherein the doctor determined that because of her heavy, repetitive work duties applicant suffered a cumulative

industrial injury to her thoracic spine, lumbar spine, right shoulder, right and left wrists, left and right hips, right and left knees and the right ankle.[4] (Exhibit 19, at p. 54.)

We disagree with the WCJ's recommendation.

Specifically, defendant denied the claims on December 15, 2020. (Exhibit A.) On June 6, 2022, defendant issued a Notice of Deferral of Medical Treatment Requests, indicating that this claim was denied. (Exhibit B, at p. 1.) Accordingly, any request for treatment authorization was not subject to utilization review and was deferred until such time the liability is determined. (Cal. Code Regs., tit. 8 § 9792.9(b)(1).)

Thereafter, before any final report was obtained from Dr. Moradian, the case-in-chief settled informally between the parties. Repeatedly in their Compromise and Release settlement agreement, the parties memorialized that liability for the industrial event was in still dispute. Hence, liability was not determined in these matters until September 11, 2025 when the WCJ issued his unchallenged Findings of Fact #1 and #2 regarding causation of industrial injury.

Now that occupational injury has been determined, we proceed to section 4610(l)(m) effective January 1, 2018 on this issue which states in relevant part:

> (l) Utilization review of a treatment recommendation shall not be required while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Section 4062.
>
> (m) If utilization review is deferred pursuant to subdivision (l), and it is finally determined that the employer is liable for treatment of the condition for which treatment is recommended, the time for the employer to conduct retrospective utilization review in accordance with paragraph (2) of subdivision (i) shall begin on the date the determination of the employer's liability becomes final, and the time for the employer to conduct prospective utilization review shall commence from the date of the employer's receipt of a treatment recommendation after the determination of the employer's liability.

(Lab. Code, § 4610(l)(m).)

Additionally, as indicated by defendant in its Exhibit B denial notice, WCAB Rule 9792.9(b)(2) states:

> If utilization review is deferred pursuant to this subdivision, and it is finally determined that the claims administrator is liable for treatment of the condition

[4] We note that the March 27, 2021 PQME report of Dr. Moradian, was not a final report as applicant was not MMI because on date of examination she was temporary partially disabled, necessary treatment was outstanding, some records for review were outstanding and a reevaluation would be necessary after the treatment was completed or in about six months' time. (Exhibit 19 at pp. 53-55.)

> for which treatment is recommended, either by decision of the Workers' Compensation Appeals Board or by agreement between the parties, the time for the claims administrator to conduct retrospective utilization review in accordance with this section shall begin on the date the determination of the claims administrator's liability becomes final. The time for the claims administrator to conduct prospective utilization review shall commence from the date of the claims administrator's receipt of a DWC Form RFA after the final determination of liability.

(Cal. Code Regs., tit. 8 § 9792.9(b)(2).)

Lastly, we admonish the parties for lack of proper citation to legal authority as stated by the WCJ in the Report at p. 7.

Accordingly, we will grant reconsideration, rescind the September 11, 2025 Findings of Fact and Order, and substitute them with new Findings of Fact, as provided below, restating the unchallenged WCJ's Findings of Fact #1 and #2, which determined liability for these claims. Upon return to the trial level, all other issues regarding the lien can be adjudicated.

Based on the foregoing,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding of Fact and Order issued on September 11, 2025, is **RESCINDED, and that new Findings of Fact, as provided below, be SUBSTITUTED in its place.**

FINDINGS OF FACT

1. In case number ADJ13324854, Applicant, OLGA LOPEZ, aged 63 on the date of injury, while employed as a waitress at South El Monte, California by VILLA TEPEYAC, sustained injury arising out of and in the course of said employment during the period of March 1968 to 17 March 2020 to her neck, wrists, arms, back, shoulders, upper & lower extremities and internal organs.

2. In case number ADJ13324858, Applicant, OLGA LOPEZ, aged 63 on the date of injury, while employed as a waitress at South El Monte, California by VILLA TEPEYAC, sustained injury arising out of and in the course of said employment on during the period of 17 March 2019 to 17 March 2020 to her wrists, psyche and nervous system. The 5402(c) presumption need not apply.

3. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 1, 2025

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

JONATHAN F. KOHAN, M.D.
SYNAPSE LIEN UNIT
MEDICAL COST REVIEW

SL/abs

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