

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

PASCUAL MAGANA, *Applicant*

vs.

**KINGDOM GROUP PROTECTIVE SERVICES,
administered by SOUTHERN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ16872275
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 18, 2025, wherein the WCJ found in pertinent part that on February 10, 2023, "the date [cost petitioner] provided services, there were no contested issues"; the services were reasonable; "\$230.00 is the reasonable value of the services provided by [cost petitioner] on February 10, 2023"; and the record needs to be developed to determine if cost petitioner is entitled to costs, sanctions, and attorney fees.

Defendant appears to contend that the claim was not contested under Labor Code section 4620¹ and that therefore the services were not reasonable and necessary and that it did not engage in bad faith tactics or cause unreasonable delay.

We have not received an Answer from cost petitioner.

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 and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will

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

grant the Petition for Reconsideration, amend the F&O to find that the claim was contested (Finding of Fact 3), and otherwise affirm the F&O.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed a cumulative injury during the period from October 11, 2022, to October 26, 2022, while employed by defendant as a security guard due to a hostile work environment.

On October 27, 2022, applicant filed an Application for Adjudication (Application), claiming injury to the body parts of “Stress, Psych, Sexual Dysfunction, Sleep Disturbances, Digestive Gastro Intestinal, Headaches/Migraines, Hypertension, Asthma.”

On November 10, 2022, applicant’s attorney sent a letter addressed to defendant, and as relevant here, offered the names of agreed medical evaluators and stated that if a panel qualified medical evaluator (QME) was preferred, applicant designated a desired specialty. (Exhibit 1, 11/10/2022.)

On November 14, 2022, defendant issued a delay notice and included information and a form for applicant to obtain a panel QME. (Exhibit 7, 11/14/2022.)

On November 21, 2022, defendant issued a letter to applicant which states in relevant part that,

Please allow this letter to serve as authorization for the claimant to be seen and treated for the nervous system for stress, psychiatric/psych, and not specified as well as the reproductive system. The claim is currently on delay until a decision can be reached; however, the claimant is entitled (*sic*) until a decision is reached.

(Exhibit B, 11/21/2022.)

On January 31, 2023, defendant issued a letter accepting applicant’s claim of injury, but only to the body parts of nervous system-stress and psychiatric/psych. (Joint Exhibit A, 1/31/2023.)

At the request of applicant’s attorney, cost petitioner issued a subpoena duces tecum (SDT) dated February 10, 2023, which was served on February 13, 2023. The SDT requested records pertaining to applicant from defendant Kingdom Group Protective Services. (Exhibit 3, 2/10/2023.)

On April 5, 2023, cost petitioner issued a past due notice to defendant, and added a penalty and interest to the amount of \$230.00. (Exhibit 4, 4/5/2023.)

On April 12, 2023, defendant filed an Answer to the Application, checking multiple boxes for disputed issues and stating that it alleges “ALL AFFIRMATIVE DEFENSES UNDER THE LABOR CODE AND CASE LAW.”

Defendant asserts it paid \$230.00, which did not include penalties or interest, for the February 13, 2023 invoice on June 6, 2023. (Exhibit E, February 13, 2023.)

On October 19, 2023, the case-in-chief settled by way of a C&R, and on November 2, 2023, a WCJ issued an Order Approving Compromise & Release (OACR). In pertinent part that the OACR stated that:

In determining the adequacy of the Agreement, the Court considered . . . that a good faith dispute exists as to liability for injury to one or more body parts which could, if resolved against the applicant, defeat applicant’s right to recover benefits. . .

On May 8, 2024, cost petitioner filed a “Non-IBR Petition for Reimbursement of Medical Legal Expenses with Request For Penalties, Interest, Costs, Sanctions, and Attorneys Fees” dated May 2, 2024. Also, on May 8, 2024, cost petitioner filed a Declaration of Readiness (DOR) requesting a Status Conference to resolve the NON-IBR med-legal issues through WCAB assistance.

On December 11, 2024, the matter came on for lien trial.

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.”

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 March 25, 2025, and the case was transmitted to the Appeals Board on March 25, 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 March 25, 2025.

II.

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).)

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

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.)

Here, on November 14, 2022, defendant issued a delay letter to applicant with QME information. On November 21, 2022, defendant issued a letter to applicant that authorized some treatment because of the delay status. On January 31, 2023, defendant issued a letter to applicant accepting injury only to applicant’s claimed body parts of nervous system-stress and psychiatric/psych claims.

In the instant matter, the WCJ found, “On February 10, 2023, the date Document Analyst Group, Inc. provided services, there were no contested issues.” The subpoena is dated February 10, 2023, and was served on February 13, 2023.

We disagree with the WCJ’s finding as to whether a contested claim existed because the WCJ appears to construe the meaning of “contested issues” very narrowly. Defendant authorized treatment and eventually accepted liability for two body parts, but this did not mean that defendant did not dispute any other issues such as injury to other claimed body parts, temporary disability and permanent disability. As is demonstrated by defendant’s Answer and the WCJ’s OACR, defendant continued to dispute liability for benefits throughout the pendency of applicant’s case.

Moreover, we observe that the WCJ did find that the services were reasonable and necessary and that the amount of \$230.00 was reasonable. Pursuant to the statutory framework, and as explained in *Colamonico, supra*, lien claimant’s initial burden is to show that a contested claim existed under section 4620, and that issue must be determined *before* proceeding with the analysis under sections 4621 and 4622. Said another way, if there is no contested claim under section 4620, there is no reason to analyze the application of sections 4621 and 4622. Nonetheless,

as we have concluded in many panel decisions, where there are disputed issues, a lien claimant has shown that a contested claim existed.

Here, while defendant's contentions in its Petition are difficult to decipher, it appears that it does not challenge the invoice except on the grounds of timing; that is, the services were not reasonable or necessary because the claim was not contested at the time they were provided. However, as explained herein, we conclude that a contested claim existed at the time that the services were provided, and we amend the F&O accordingly. We agree with the WCJ that lien claimant met its burden under sections 4621 and 4622, and we do not disturb that part of the decision.

Accordingly, we grant defendant's Petition for Reconsideration, amend the F&O to find that a contested claim existed (Finding of Fact 3), and otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the February 18, 2025, Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of February 18, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

3. On February 10, 2023, the date Document Analyst Group, Inc., provided services, a contested claim existed under Labor Code section 4620.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 27, 2025

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

**LAW OFFICE OF PATRICK CHRISTOFF
AMTRUST NORTH AMERICA**

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*