

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

RAMON MARTINEZ, *Applicant*

vs.

**EUGENE FROST TRUCKING AND SALES INC.,
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9354045
Bakersfield District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Lien claimant Citywide Scanning Service, Inc. (lien claimant) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) "Ruling on Evidence, Findings of Fact, and Order" (F&O) of May 11, 2020, wherein the WCJ found in relevant part that lien claimant's services were not shown to be reasonable or necessary, and ordered that the lien claim was disallowed.

Lien claimant contends that applicant's claim was contested at the time it performed its services, and the services were reasonable and necessary, and that it should be reimbursed for all services performed.

We received an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, which recommends that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will rescind the F&O, and substitute a new Findings of Fact that finds that a contested claim existed at the time that the services were provided and that the services were reasonable and necessary, and defers the

issue of the amount of payment owed to lien claimant. We will return the matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

On March 14, 2014, applicant filed an Application for Adjudication (Application), claiming that he sustained injury to the back while employed on May 22, 2013, by defendant as a truck driver. The case was assigned Case No. ADJ9354045. Paragraph 9 of the Application For Adjudication states, “This application is filed because of a disagreement regarding liability for: Temporary disability indemnity, Permanent disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Supplemental Job Displacement/Return to Work, Compensation at proper rate, Other (Specify) AS PER LABOR CODE.”

On September 8, 2014, applicant filed a Substitution of Attorney.

Between September 16, 2014, through May 27, 2015, at the request of applicant’s attorney, lien claimant issued multiple Subpoenas Duces Tecum to various entities. (Exhibits 7-17, 9/24/2014-5/27/2015.) Defendant filed multiple objections to the Subpoenas. (Exhibits D-F, H, J, L, and M.)

On July 1, 2015, lien claimants compiled multiple invoices dated September 15, 2014, through July 1, 2015, for various dates of service from September 15, 2014, through June 4, 2015. (Exhibit 23, various dates.)

Lien claimant also submitted multiple objections to Explanations of Review (EORs). (Exhibits 26-29, 6/18/2015 – 2/25/16.) Defendant did not submit any EORs as evidence. Instead, defendant issued generic objection letters indicating it would not pay lien claimant for the services it rendered after it performed its subpoena duces tecum services and issued invoices. (Exhibits E, F, H, J, L, and M.)

On July 29, 2015, the case in chief was resolved by way of a C&R. As relevant herein, in the form language of Paragraph 9, it states that:

The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a *serious dispute exists* as to the following issues (initial only those that apply).

Here, all of the issues are initialed. Moreover, under Comments, it states that the parties resolved the matter based on the Agreed Medical Evaluator (AME) Dr. Pechman and that the settlement “resolves all retro benefits to date, including but not limited to retro medical mileage to date.”

On March 9, 2016, lien claimant filed its lien for copy services.

On February 21, 2020, lien claimant and defendant proceeded to trial on the lien. Among the issues were whether services were reasonable and necessary “or simply duplicated carrier services”; and whether a contested claim existed under Labor Code section 4620 at the time the services were provided.

On May 11, 2020, the WCJ issued the F&O.

DISCUSSION

I.

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (§ 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 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 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. (§§ 4620, 4621, 4622(f); *Colamonico v. Secure Transport*, (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc).)

Section 4620(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).)

Here, the WCJ found that no contested claim existed at the time lien claimant performed its services. We disagree. When applicant filed the Application on March 14, 2014, he alleged that disputes existed as to multiple species of benefits. Moreover, the claim remained contested after the case was resolved by way of the C&R on July 29, 2015, because as stated in Paragraph 9 of the C&R, "a serious dispute still exists." Also, paragraph 9 states that the settlement is based upon the rating of AME Dr. Pechman on July 3, 2014, and an AME would not have become involved in this matter unless there were disputed issues as to permanent disability. Thus, lien claimant met its burden to show that a contested claim existed at the time that it provided the services.

Once a lien claimant has met its burden of proof pursuant to section 4620, it must show that the services were reasonable and necessary when the services were actually performed. (§ 4621(a).) A party's ability to subpoena records is governed by the Labor Code and the WCAB Rules of Practice and Procedure which generally provide "adequate tools to the practitioner for liberal discovery." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Ibid.*) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases. The decision about how best to proceed in a case is a matter of the attorney's discretion. Moreover, there is no requirement that an applicant's attorney informally request records from a prior attorney before subpoenaing the records nor is there a reasonable time requirement that a prior attorney provide them if requested by a newly retained attorney.

Since we find that there was a contested claim when lien claimant's services were performed and that the services were necessary and reasonable, upon return to the trial level, the WCJ must consider the requirements of section 4622 and then determine the amount of payment, including interest and penalties, that lien claimant is entitled to.

Accordingly, we rescind the F&O, and substitute a new Findings of Fact that finds that a contested claim existed at the time that the services were provided and that the services were reasonable and necessary, and defers the issue of the amount of payment owed to lien claimant. We return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the "Ruling on Evidence, Findings of Fact, and Order" of May 11, 2020 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Ramon Martinez (Applicant), while employed as a Truck Driver at Arvin, California by Eugene Frost Trucking and Sales, Inc. (Employer) sustained an injury arising out of and in the course of his employment to his low back.
2. Employer's workers' compensation insurance carrier was State Compensation Insurance Fund (Defendant).
3. Lien claimant Citywide Scanning Services met its burden under Labor Code section 4620 to show that a contested claim existed at the time that it provided its services.
4. Lien claimant Citywide Scanning Services met its burden under Labor Code section 4621 to show that its services were reasonable and necessary at the time they were provided.
5. The issue of lien claimant's entitlement to payment under Labor Code section 4622, including interest and penalties, is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2025

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

**CITYWIDE SCANNING SERVICE
STATE COMPENSATION INSURANCE FUND**

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*