

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

REBECCA WEAVER, *Applicant*

vs.

**FIRST FOURSQUARE CHURCH OF VAN NUYS; CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION for FREMONT INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ4661348 (VNO 0347369)
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR REMOVAL**

Dan Escamilla, specially appearing for himself and on behalf of former lien claimant David Silver, M.D., seeks removal of the May 8, 2025 trial proceedings and subsequent orders. The May 8, 2025 trial proceeded without the appearance of both Mr. Escamilla and Dr. Silver.

Mr. Escamilla contends that (1) the Worker's Compensation Appeals Board (WCAB) lacks jurisdiction to conduct any proceedings after its February 6, 2024 denial of reconsideration; (2) the workers' compensation administrative law judge (WCJ) lacks jurisdiction to determine issues under Labor Code,¹ section 4907, which authorizes the removal, denial, or suspension of a hearing representative; (3) the WCJ should have recused himself from further proceedings in this case; (4) the WCJ committed prejudicial error by failing to rule on Mr. Escamilla's continuance request; (5) the WCJ's failure to rule on the continuance violated due process; (6) the record of events were manufactured; and (7) the decision to proceed to trial on May 8, 2025 caused significant prejudice and irreparable harm.

We received an answer from California Insurance Guarantee Association (CIGA). CIGA seeks sanctions, costs, and permanent suspension of Mr. Escamilla as a hearing representative. We note that CIGA's answer is 30 pages long and attaches 225 pages of exhibits in violation of WCAB Rules 10940 and 10945. (Cal Code Regs., tit. 8, §§ 10940, 10945.)

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

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) seeking guidance from the Appeals Board on issues of jurisdiction, testimonial evidence from the WCJ, and the authority to revoke Mr. Escamilla's privilege to practice before the WCAB.

We have considered the Petition for Removal, the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we deny removal.

FACTS

As the WCJ stated in his Report:

This case involves a specific injury of December 2, 1992, and was resolved for a Compromise and Release on December 21, 2019 for \$358,085. There were two liens filed for Dr. Silver. The more recently filed lien was settled by an order from WCJ Jackson on 02-21-2019 according to EAMS ID 69515899; this order of 02-21-2019 stated the following on the face of the order: "Dr. Silver has 1 other lien pending—11/7/97 – 11/12/02." This "other" lien is the older lien of Dr. Silver and is dated 03-29-2005 and was filed in 2005. See EAMS ID 27534395, and it was for dates of service of 11-07-1997 through 11-12-2002, as indicated in the 2005 lien document and as further indicated in the order of WCJ Jackson of 02-21-2019. This older lien is the lien which has seen so much litigation in the last five years or so. No LC4903.05 (c) declaration was ever filed for this older lien of Dr. Silver and it was, or should have been, dismissed by operation of law on July 3, 2017 at 5:01 p.m. And yet, like a relentless weed it has had a life of its own.

This older lien of Doctor David Silver was initially taken to trial before WCJ Walker, who found that lien claimant Doctor David Silver was not entitled to payment in excess of the fee schedule. Please see the Decision of WCJ Walker dated January 16, 2020. The lien representative for Doctor David Silver filed a Petition for Reconsideration which was denied. Several years later, the lien representative for Doctor David Silver, Dan Escamilla, filed a somewhat unique pleading which he called a Petition to Reopen.

Mr. Escamilla also filed a Declaration of Readiness to Proceed on March 23, 2023. The lien representative for Doctor David Silver argued that the order of Judge Walker was not a final order. Judge Walker had retired, so the case was set before WCJ Spoeri, who took this matter to trial. In the trial by WCJ Spoeri in 2023, Trial Stipulation Number 4 indicated, "Dr. David Silver filed a lien dated 03-29-2005 on or about 03-29-2005" In the same trial, by WCJ Spoeri, Trial Stipulation Number 17 indicated that "[t]he EAMS file of documents does not contain an LC4903.05 Declaration from lien claimant Dr. David Silver" WCJ Spoeri found that there was no evidence of a filing before 07-03-2017 of a declaration comporting with Labor Code section 4903.05; this meant that the pre-2017 lien of Doctor David Silver had been dismissed by operation of law, and therefore WCJ Spoeri had no jurisdiction over this lien because Dr.

Silver/Dan Escamilla had failed to file a declaration comporting with LC 4903.05 before the 07-03-2017 deadline. See EAMS 77376432.

The lien claimant for Doctor David Silver filed a Petition for Reconsideration of WCJ Spoeri's Findings of Fact on November 20, 2023 (EAMS 49451879). The Commissioners indicated that they agreed with Judge Spoeri that Judge Walker's January 16, 2020 Findings of Fact were a final judgment and Judge Spoeri had no jurisdiction over the lien (EAMS 77616164). Mr. Escamilla filed a Petition For Reconsideration.

The Petition for Reconsideration was denied on February 6, 2024 and the lien claimant appears to be arguing that on this date, the WCAB lost jurisdiction over anything having to do with the lien of Doctor David Silver, including the WCAB losing jurisdiction over any issues concerning penalties, sanctions and costs against Dr. Silver and/or his representative. Lien claimant Doctor David Silver and his representative did not cite any case authority for this proposition that the WCAB lost jurisdiction over any collateral issues concerning this lien, such as sanctions, penalties and costs.

On 5/29/2024 the defendant filed a petition for sanctions and costs, reflected by EAMS number 52146024. At the same time the defendant filed a request with Chief Judge Levy that Judge Spoeri recuse himself because he was a percipient witness to some of the events alleged in the petition for sanctions against Doctor David Silver and/or Dan Escamilla and that the defendant wanted to call Judge Spoeri as a witness. This request was never granted. Please see EAMS 52146025. No Petition For Disqualification has ever been filed in this case. A DOR was filed on 6/27/2004 reflected by EAMS number 52628349.

On September 17, 2024, Dan Escamilla sent correspondence reflected by EAMS number 53916973. In this correspondence of September 17, 2024, Mr. Escamilla stated in a letter directed to Judge Robert Spoeri, with a carbon copy to the defense attorney, that Mr. Escamilla was upset that the defendant was accusing him of a pattern of conduct that constitutes vexatious litigation. Mr. Escamilla felt that the allegations by the defense attorney were "frivolous." Mr. Escamilla also stated "Your Honor has already declined to find jurisdiction to decide this case. And without jurisdiction over the parties, the court does not have power to determine the case. See *Airlines Reporting Corp v. Renda* 177 Cal.App. 4th 14 at 20 (2009)." Mr. Escamilla also added that Doctor Silver "is no longer a party to this case and we are no longer a party representative in this case. We consider this matter fully and finally resolved as of February 6, 2024 when the Board denied [the Petition] of [For] Reconsideration (EAMS 77616164). We object to the May 29, 2024 petition by defendant (EAMS 52146024) on jurisdictional grounds and do not intend to make any further appearances in this case. In any event, the next hearing is set as an MSC on September 14, 2024, and lien claimants are not to are not required to appear at these hearings." (Emphasis added).

Mr. Escamilla missed three Mandatory Settlement Conferences and one trial date in late 2024 and early 2025. WCJ Spoeri outlined this portion of the history of the case when he sent a notice of intention to go forward with trial on April 2, 2025 (EAMS 79025028).

This case came up for trial on May 8, 2025. Mr. Escamilla and Legal Service Bureau had notice of this trial. They also had notice of all prior hearings in this case which Legal Service Bureau and/or Dan Escamilla failed to attend. WCJ Spoeri reviewed the file shortly before May 8, 2025, so that he could be prepared for what he knew was going to be a challenging trial. Sometime on the trial date of May 8th, 2025 a written request for a continuance reached the EAMS computer filing system for the WCAB; WCJ Spoeri did not look at the EAMS computer filing system on the morning of trial on May 8, 2025, because he had already prepared for the trial and was busy with appearing on a zoom-like computer platform known as Court Call (which the WCAB uses for virtual appearances) for what was scheduled to be a virtual trial in this case. The virtual appearance arguably would have made it easy for Mr. Escamilla to appear. Mr. Escamilla never asked the defense attorney for a continuance.

The defense attorney and his witness were on the Court Call virtual trial platform with WCJ Spoeri starting at 8:30. Judge Spoeri even got on shortly before 8:30. The defense attorney had no knowledge that Mister Escamilla was asking for a continuance. WCJ Spoeri asked the defense attorney to call up Dan Escamilla and to ask him where he was and if he would please appear on Court Call. The defense attorney, Mr. Jeffrey Sardell called Mr. Escamilla's office at WCJ Spoeri's request and left a message and had no response. This is set out in the minutes of hearing document dated 5/8/2025.

WCJ Spoeri inconvenienced the defense attorney and his witness to wait till the afternoon to give Mr. Escamilla additional time. The parties did not go on the record until 2:45 PM. For almost the entire time between 8:30 AM and about 3:45 PM on 5/8/2025, with the exception of a lunch break, WCJ Spoeri was on the court call line for virtual trials. Mr. Escamilla never appeared. No one from his office appeared, no one made a phone call to the WCAB-MDR, and no one from his office called by telephone into the Court Call platform. (Report, pp. 3-6.)

DISCUSSION

A. Jurisdiction

The procedural history in this matter is long and therefore confusing. We start with the January 16, 2020 Findings of Fact by WCJ Walker. WCJ Walker found in relevant part:

3. Lien Claimant Dr. David Silver did not meet his burden of proof to establish that his charges were reasonable.

4. Lien Claimant Dr. David Silver is not entitled to payment in excess of the fee schedule due to extraordinary circumstances related to any unusual nature of the services rendered to Applicant.

5. It is found that the Official Medical File schedule is applicable to the charges of Lien Claimant Dr. David Silver.

6. The issues of penalty and/or interest owed is moot.

7. All petitions for costs and sanctions and for delaying conduct are denied. (Findings of Fact dated January 16, 2020, Findings nos. 3-7.)

On February 10, 2020, Legal Service Bureau/Mr. Escamilla, on behalf of Dr. Silver, filed a petition for reconsideration of the January 16, 2020 Findings of Fact. (Petition for Reconsideration filed February 10, 2020.) On March 17, 2020, the Appeals Board denied the petition for reconsideration. (Opinion and Order Denying Petition for Reconsideration dated March 17, 2020.) No writ of review of the March 17, 2020 denying reconsideration was filed. At that point, the January 16, 2020 Findings of Fact became final and Dr. Silver's lien, as well as the issue of penalties, sanctions, and costs, were adjudicated.

More than three years later, on May 23, 2023, Legal Service Bureau/Mr. Escamilla, on behalf of Dr. Silver, filed a petition to reopen, thereby submitting themselves again to the jurisdiction of the Workers' Compensation Appeals Board. (Petition to Reopen dated May 23, 2023.) A trial was held on November 6, 2023 on the issues raised in the petition to reopen. At trial, the parties stipulated: "All claims for both sides on penalties, sanctions and costs are bifurcated with jurisdiction reserved." (Minutes of Hearing and Summary of Evidence (MOH/SOE) dated November 6, 2023, Finding no. 24; Findings of Fact dated November 20, 2023, Stipulated Findings of Fact no. 24 ["All claims for both sides on penalties, sanctions and costs are bifurcated with jurisdiction reserved."].)

WCJ Spoeri issued a Findings of Fact on November 20, 2023 and found that "the Findings of Fact of WCJ Walker of 01-16-2020 are a final order/judgment on the matter of the lien of Dr. David Silver and preclude further trial-level proceedings on the lien of Dr. David Silver." (Findings of Fact dated November 20, 2023, Finding no. 3.)

Legal Service Bureau/Mr. Escamilla filed a petition for reconsideration/removal of the November 20, 2023 Findings of Fact. (Petition for Reconsideration/Removal dated December 8, 2023.) On February 6, 2024, the Appeals Board denied reconsideration and stated, "We agree

with WCJ Spoeri that WCJ Walker's January 16, 2020 Findings of Fact is a final judgment." (Opinion and Order Denying Petition for Reconsideration dated February 6, 2024.) Thus, the issue of Dr. Silver's lien was resolved at this point. However, the issues of penalties, sanction, and costs were not resolved since the parties stipulated to bifurcate these issues "with jurisdiction reserved." Thus, the WCAB still has jurisdiction over the issues of penalties, sanctions, and costs that have been filed since the May 23, 2023 petition to reopen.

In light of the above conclusion, and given Mr. Escamilla's failure to show at several court proceedings despite notice, and in light of the Notice of Intention to Go Forward with Trial dated April 2, 2025, we conclude that the trial on May 8, 2025 was properly held. The record indicates that this trial was continued to November 20, 2025, at which time Dr. Silver and his representative may cross-examine the trial testimony taken on May 8, 2025.

B. Labor Code Section 4903.05

Sections 4903.05(c)(2) and (3) provide:

(2) Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) for any lien claim filed before January 1, 2017, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.

(3) The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law. Filing of a false declaration shall be grounds for dismissal with prejudice after notice.
(§ 4903.05(c)(2) and (3).)

The lien at issue here is dated March 29, 2005, which is before January 1, 2017. However, the issue of subject matter jurisdiction was raised sua sponte by the WCJ and not until the November 20, 2023 Report. (Findings of Fact dated November 20, 2023, Finding nos. 1 and 2.) Subject matter jurisdiction is an affirmative defense. The burden of proof of an affirmative defense rests with the party holding the affirmative of the issue. Here, neither lien claimant nor CIGA raised this issue.

Furthermore, while the failure to file a declaration results in the dismissal of a lien by operation of law, WCJ Walker adjudicated the issue of the lien in her January 16, 2020 Findings of Fact, and no party objected to her jurisdiction to do so. She also adjudicated the issues of existing claims for penalties, sanctions, and costs. Once we issued our decision denying reconsideration on March 17, 2020, those findings became final because they were not challenged.

Thus, while CIGA could have raised the issue of whether the lien had been dismissed by operation of law, it did not, and we decline to do so now.

The issues here are penalties, sanctions, and costs after May 23, 2023, when lien claimant placed himself under the jurisdiction of the WCAB. There was no remaining issue on the lien then and although ordinarily, a dismissal of a lien ends all proceedings with the lien claimant, given the unique and extensive procedural facts in this matter, and lien claimant's actions in submitting himself to workers' compensation proceedings, we conclude that the WCAB maintains jurisdiction to adjudicate the issues of penalties, sanction, and costs after May 23, 2023.

C. WCAB Rule 10360(b)

WCAB Rule 10360(b) provides:

(b) The testimony of a judicial or quasi-judicial officer shall be given only on the terms and conditions ordered by the presiding workers' compensation judge of the district office having venue, or by the Appeals Board, after the filing of a "Petition to Compel the Testimony of a Judicial or Quasi-Judicial Officer."

(1) The petition to compel shall set forth with specificity the facts (or alleged facts) and law that support the petition.

(2) The petition to compel shall be verified under penalty of perjury.

(3) The petition to compel shall be served on all other parties, on all lien claimants whose liens are presently pending in issue in the underlying claim to which the petition relates and on the Legal Unit of the Division of Workers' Compensation (DWC-Legal Unit), together with a proof of service.

(4) A petition to compel that does not meet all of the foregoing requirements may be summarily dismissed or denied. (Cal. Code Regs., tit. 8, § 10360.)

Here, no Petition to Compel the Testimony of a Judicial Officer has been filed and therefore there is no order from the presiding judge on the terms and conditions of such testimony.

D. Labor Code Section 4907

Section 4907 provides:

(a) The privilege of any person, except attorneys admitted to practice in the Supreme Court of the state, to appear in any proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law judges, may, after a hearing, be removed, denied, or suspended by the appeals board for either of the following:

(1) For a violation of this chapter, the Rules of the Workers' Compensation Appeals Board, or the Rules of the Administrative Director.

(2) For other good cause, including, but not limited to, failure to pay final order of sanctions, attorney's fees, or costs issued under Section 5813.

(b) For purposes of this section, nonattorney representatives shall be held to the same professional standards of conduct as attorneys. (§ 4907.)

We agree that the issue of whether Mr. Escamilla's privilege to appear before the WCAB is an issue for the Appeals Board and not the district offices. However, we decline to consider this issue at this time as there is no such petition before us, no hearing on the issue, and no findings of facts as to the alleged underlying conduct.

E. CIGA's Request For Sanctions And Costs

In its answer to Legal Service Bureau/Mr. Escamilla's petition for removal, CIGA seeks sanctions, costs, and permanent suspension of Mr. Escamilla as a hearing representative. These are issues that were being litigated at the May 8, 2025 trial and not properly before us at the moment. (MOH/SOE dated May 8, 2025, p. 3:3-16.) The issue raised in the petition for removal is one of jurisdiction to proceed on the issues of penalties, sanctions, and costs, and as discussed above, we conclude that the WCAB has jurisdiction on these issues.

Accordingly, there was no prejudice or irreparable harm in the May 8, 2025 proceedings and we therefore deny the petition for removal.

For the foregoing reasons,

IT IS ORDERED that Legal Service Bureau/Mr. Escamilla's Petition for Removal dated June 3, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 25, 2025

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

**DAVID SILVER, M.D.
LEGAL SERVICE BUREAU/DAN ESCAMILLA
FLOYD SKEREN MANUKIAN LANGEVIN, LLP**

LSM/ara

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