WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ARIGA DAVODYAN, *Applicant*

vs.

PRINTOGRAPH, INC., dba GOTPRINT;
NATIONAL UNION FIRE INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, *Defendants*

Adjudication Number: ADJ13441476
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioners/lien claimants Physical Rehabilitation Services, Inc. and Arbi Mirzaians, D.C. (lien claimants) seek reconsideration of the Findings of Fact and Order (F&O) issued on July 30, 2026 by a workers' compensation administrative law judge (WCJ), wherein it was found that applicant sustained an injury arising out of and in the course of employment, was not barred by the post-termination defense, and fell within the exception pursuant to Labor code section 3600, subdivision (10)(D); the employer furnished no medical treatment and the primary treating physician (PTP) was Arbi Mirzaians, D.C.; PTP Dr. Mirzaians' examinations of March 16, 2022 and April 19, 2022 were medical-legal examinations for which defendant is liable, but no other dates of service provided by Physical Rehabilitation Services are medical-legal examinations and "are disallowed"; defendant's failure to object to the PTP election and initial examination does not result in liability for all costs and penalties sought; defendant's failure to admit applicant's claim despite the medical-legal findings by PTP Dr. Mirzaians and the panel qualified medical evaluator (QME) does not result in liability for all costs, penalties and interest sought by cost petitioner; and, defendant did not litigate in a frivolous manner. The WCJ ordered that defendant is liable for the medical-legal examinations conducted by PTP Dr. Mirzaians dated March 16, 2022 and April 19, 2022, to be calculated by the parties with jurisdiction reserved for any disputes; and, that

the remaining dates of services provided by Physical Rehabilitation Services "are disallowed and dismissed."

Lien claimants seek reconsideration only of the findings and order of the WCJ related to four dates of service (separate from the allowed March 16, 2022 and April 19, 2022 dates of service), and contend that these four dates of service were disallowed in error as all were medical-legal services for which defendant is liable pursuant to section 4620, subdivision (c) as they issued while the claim was still in dispute; the WCJ failed to evaluate the substance of the remaining dates of service and did not base the findings and order related to those dates of service on substantial evidence or proper legal support, especially given that defendant waived the right to object when it failed to review the reports from the remaining dates of service and notify the provider that it would provide reimbursement should certain deficiencies not be remedied.

Defendant filed an Answer to Petition for Reconsideration (Answer) and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have reviewed the record in this matter, as well as the allegations in the Petition for Reconsideration and the Answer and have considered the contents of the Report. For the reasons set forth below, we grant reconsideration, and as our decision after reconsideration, we rescind and amend the WCJ's decision in part (Findings of Fact nos. 4-6 and Order b.) and return this matter to the trial level for further proceedings consistent with this decision.

I. THIS DECISION IS TIMELY ISSUED PURSUANT TO SECTION 5909

Petitions for reconsideration filed on or after July 14, 2026, are subject to Labor Code section 5909, which states 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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code 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 September 15, 2026, and 60 days from the date of transmission is Saturday, November 14, 2026. The next business day that is 60 days from the date of transmission is Monday, November 16, 2026 . (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, November 16, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on and the case was transmitted to the Appeals Board on September 15, 2026. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 15, 2026.

II. DISCUSSION

There are four dates of service in dispute: May 31, 2022, October 25, 2022, December 7, 2022, and February 1, 2023. (See LC Exhs. 5-8.) As an initial matter, lien claimants

[1] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)), states: "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."

admit that based on its own ledger, defendant paid lien claimant for the "ML202" charge for the October 25, 2022, services and report and therefore, does not seek "duplicate principal recovery for that service." (Petition for Reconsideration, p. 3.) It is undisputed that defendant did not object to any of PTP Dr. Mirzaians' reporting or billing, including the October 25, 2022, date of service. (F&O, Opinion on Decision, p. 5.) Thus, even if defendant wanted to seek restitution or reimbursement for its payment of the October 25, 2022, medical-legal billing, defendant is prohibited from seeking restitution or reimbursement. (*American Psychometric Consultants, Inc. v. Workers' Comp. Appeals Bd.* (1995) 36 Cal.App.4th 1626, 1640 [60 Cal.Comp.Cases 559]; *Zarate v. JJ Farm Labor*, 2018 Cal. Wrk. Comp. P.D. LEXIS 140, *6.) Therefore, the Appeals Board does not address the October 25, 2022 (LC Exh. 6), as it was paid and that payment is final.

We address the remaining three reports of May 31, 2022 (LC Exh. 5), December 7, 2022 (LC Exh. 7), and February 1, 2023 (LC Exh. 8). The issue determined by the WCJ was whether these three reports represent a "medical legal expense" pursuant to the requirements of section 4620 and Rule 9793 (Cal. Code Regs., tit. 8, § 9793). Section 4620 defines a "medical-legal expense" as follows:

> (a) For purposes of this article, **a medical-legal expense means any costs and expenses incurred by or on behalf of any party**, the administrative director, or the board, which expenses may include X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees by a certified interpreter pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code, **for the purpose of proving or disproving a contested claim**.
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> (b) **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:
>
> **(1) The employer rejects liability for a claimed benefit.**
>
> (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.
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> (3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.

(Lab. Code, § 4620, subds. (a)-(b), emphasis added.)

Rule 9793 provides guidelines for determining whether a follow-up medical-legal evaluation report is or is not a "medical-legal expense":

> (h) **"Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties**, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, **for the purpose of proving or disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:**
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> (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
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> (2) **The report is obtained at the request of a party or parties**, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
>
> (3) **The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.**
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> (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
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> (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793, subd. (h), all emphasis added.)

It is undisputed that applicant's claim was denied by defendants on August 6, 2020. (Def. Exh. B.) Applicant designated PTP Dr. Mirzaians on February 24, 2022. (F&O, Opinion on Decision, p. 5.) Therefore, applicant's claim was a "contested claim" pursuant to section 4620,

subdivision (b)(1) on all three dates of service. (Lab. Code, § 4620, subd. (b).) Contrary to lien claimants' contention, however, the WCJ *did* provide specific grounds for finding that these three reports did "not meet the qualifications of a medical legal report..." (F&O, Opinion on Decision, pp. 5-7.) We concur with the WCJ that none of the three reports were issued at the request of any party. (*Ibid.*) In addition, we concur that the content of these three reports is duplicative of each other and of prior reporting. (*Ibid.*) As a result, although the three reports may be "capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim," these three reports *duplicated* prior reporting that could also do so.

The WCJ declined to address whether the reports and services provided by lien claimants to applicant on these three dates constituted medical treatment "reasonably required to cure or relieve the injured worker form the effects of the worker's injury..." (Lab. Code, § 4600, subd. (a)).

> Despite the untrue statement above, the WCJ did in fact go through each report. Petitioner does not provide any argument or analysis to rebut the above findings and offer support that the reports in fact qualify as medical legal costs, or in the alternative as treatment services.
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> In fact, **petitioner argues that if the WCJ's findings are followed that the exams are not medical legal, that the "inaccurate analysis should otherwise have been recharacterized as evaluation and management treatment codes in this compensable claim of injury."** Petition for Reconsideration, page 2, lines 15-17.
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> **However, petitioner did not request same be considered, and has all along argued that these charges are medical-legal and should be paid as such.** Petitioner has not met its burden supporting that the dates of service in question qualify as medical legal exams.

(Report, p. 6, emphasis added.)

We note that the issues identified on the day of trial were not well articulated and may have been broad and vague enough to encompass the "medical treatment" issue:

> 2. Lien of Physical Rehabilitation Services, a medical-legal lien with $8,524.06 billed and $1,316.25 paid, an OMFS value listed as $7,207.81.
>
> 3. **Reasonableness and necessity of med-legal and medical treatment** with Lien Claimant raising LC 4622 violation by Defendant and 10786.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), May 8, 2026, p. 2, emphasis added.)

Regardless, the WCJ did not determine the issue, even after finding that these three reports did not constitute medical-legal expenses in a claim that the WCJ found to be compensable and not barred by the post-termination defense. (F&O, Finding of Fact nos. 1-3.) Given that defendant failed to provide medical treatment to applicant for this compensable injury, the next logical inquiry is whether the three reports at issue herein may represent self-procured medical treatment for which defendant may be liable.

> Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. **In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.**

(Lab. Code, § 4600, subd. (a), emphasis added.)

We cannot interpose our own findings on the issue without violating the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] citing *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158). All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

We note that upon return to the trial level, the WCJ has the discretionary authority to develop the record if the record does not contain substantial evidence and/or if appropriate to provide due process or fully adjudicate the issue of whether these three dates of service represent self-procured medical treatment for which defendant may be liable. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924];

see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Accordingly, we grant reconsideration in order to amend the WCJ's decision (Findings of Fact no.4 and Orders), and to add a finding of fact related to the October 25, 2022, date of service.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the Findings of Fact and Order issued on July 30, 2026, by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on July 30, 2026 by a workers' compensation administrative law judge is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

. . .

4. It is found that Dr. Mirzaians initial exam of March 16, 2022, was a medical-legal exam, for which defendant is liable, as well as the follow up exam of April 19, 2022. Defendant is ordered to pay penalties and interest owed for same.

. . .

8. There is no issue related to Dr. Mirzaian's report of October 25, 2022 as defendant already paid lien claimant for that "ML202" charge without first objecting (Lab. Code, § 4622) and cannot therefore seek reimbursement or restitution from lien claimants for that payment.

ORDER

a. Defendant is liable for the medical-legal exam conducted on March 16, 2022, and the follow up evaluation of April 19, 2022, for which parties are to calculate the amounts owed, including penalties and interest for same, with the board reserving jurisdiction for any disputes, less amounts previously paid.

b. All issues related to Dr. Mirzaian's reports and dates of service for May 31, 2022 (LC Exh. 5), December 7, 2022 (LC Exh. 7), and February 1, 2023 (LC Exh. 8) are deferred, including whether these dates of service are

for medical treatment "reasonably required to cure or relieve the injured worker from the effects of the worker's injury" (Lab. Code, § 4600), and any penalties and interest owed by defendant.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 16, 2026

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

PHYSICAL REHAB SERVICES
AV MANAGEMENT COLLECTION
TESTAN LAW

AJF/mc

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