WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ESTHER GOMEZ, *Applicant*

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by Sedgwick Claims Management Services, *Defendants*

Adjudication Number: ADJ11249966
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. Having completed our review, we now issue our Decision After Reconsideration.

Cost petitioner Scan Doc Imaging, Inc. (cost petitioner) seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 20, 2022, wherein the WCJ found in pertinent part that no compensation is due and owing to cost petitioner.

Cost petitioner contends in relevant part that the WCJ erred in her application of Labor Code section 5307.9[1] because it does not bar recovery when a defendant is not in possession of applicant's records when the subpoena issues and/or when an applicant's attorney did not request the records before issuing the subpoena.

We received an Answer from defendant.

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, the Answer, and the contents of the Report. Based on our review of the record, and as discussed below, we will rescind the F&O and

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

substitute new Findings. We will find that section 5307.9 does not apply in this matter; defendant failed to issue Explanations of Benefits (EOBs) or any payment to cost petitioner within 60 days; cost petitioner met its burden under sections 4620, 4621, and 4622; and defendant is liable for payment of penalties and interest under section 4622(a)(1). We will defer the issue of attorney's fees and costs and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to the neck, shoulder, back, stress, and psych while employed by defendant as a teacher, during the period from May 25, 2017, to March 15, 2018.

On March 12, 2018, applicant was seen at Burbank Urgent Care Center and taken off work with a return date of March 26, 2018. (Exhibit 6, 3/12/2018.)

On March 14, 2018, applicant was examined by Dr. Hernandez at Health Care Partners Medical Group. (Exhibit 7, 3/14/2018.)

On March 23, 2018, applicant's attorney filed an Application for Adjudication of Claim (Application). Paragraph 9 states that, "This application is filed because of a disagreement regarding liability for: Temporary disability, Permanent disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Supplemental Job Displacement/ Return to Work, Compensation at proper rate, and Other ALL PER ALL CODES."

On March 29, 2018, and April 23, 2018, cost petitioner issued three subpoena duces tecum as follows: Burbank Urgent Care, served on April 4, 2018; Healthcare Partners, served on April 3, 2018; and Los Angeles Unified School District, served on April 25, 2018. (Exhibit 3, 3/29/2018-4/23/2018.)

On April 25, 2018, April 26, 2018, and January 24, 2019, cost petitioner issued itemized statements to defendant for its services. (Exhibit 4, 4/25/2018-1/24/2019.)

On May 10, 2019, defendant issued a "Notice Regarding Delay of Workers' Compensation Benefits Panel Qualified Medical Evaluation Requested" to applicant and enclosed a form to request a panel of Qualified Medical Evaluators (QMEs). (Exhibit A, 5/10/2019.)

On July 30, 2019, defendant issued a "Notice of Denial of Claim for Workers' Compensation Benefits" to applicant. (Exhibit B, 7/30/2019.)

On August 21, 2019, defendant filed an Answer to the Application. In its Answer, defendant denied all of the allegations in the Application as indicated: "Occupation, Injury, Liability for self-procured treatment, Liability for future medical treatment, Medical Legal Costs, Earnings, Periods of Disability, Rehabilitation, Supplemental Job displacement/return to work, and Permanent disability."

On November 4, 2019, the parties entered into a Compromise and Release (C&R) resolving the matter. In Paragraph 9, under Comments, it states in pertinent part that: "This claim is denied based on post-termination, good faith personnel action defense, and lack of medical, factual, or legal evidence to substantiate the claim, [settlement] reached in lieu of any further litigation, cost, or delay. (All capitals in original.)"

On November 7, 2019, the WCJ issued an Order Approving the C&R (OACR). Among the boxes checked on the OACR are: "The reasons set forth in the Compromise and Release"; and "A good faith dispute exists as to injury AOE/ COE and/or liability for injury to one or more body parts which could, if resolved against the applicant, defeat applicant's right to recover benefits."

Defendant issued checks to cost petitioner dated December 30, 2020 (Burbank Urgent Care), March 11, 2021 (Healthcare Partners), and May 11, 2021 (Los Angeles Unified School District), each in the amount of $183.49 for the subpoena services. (Exhibit 5, 12/30/2020.)

On April 28, 2021, cost petitioner filed a "Petition for Reimbursement of Medical-Legal Expenses (Non-IBR), and Request for Penalties, Interest, Costs, Monetary Sanctions, and Attorneys' Fees" (Cost Petition). In the Cost Petition, cost petitioner sought payment of $183.49 for each of the subpoenas to Healthcare Partners and to Los Angeles Unified School District.

On June 3, 2021, cost petitioner issued a request for production of documents on defendant.

On June 15, 2021, defendant objected to cost petitioner's request for production of documents.

On August 18, 2021, cost petitioner filed a "First Amended Petition for Reimbursement of Medical-Legal Expenses and Request For Penalties Interests, Costs, Monetary Sanctions, and Attorneys' Fees" (Amended Cost Petition), acknowledging payment for the three subpoenas and alleging that payments was late, and seeking payment of penalties, interest and attorney's fees and costs.

The WCJ's F&O is dated January 19, 2022, and was issued on January 20, 2022.

DISCUSSION

In its Answer, defendant contends that:

> . . .if, and only if, the 30 day requirement [in section 5307.9] is met, then it would go to a Labor Code 4621 analysis regarding whether the services were reasonable and necessary. In this case, the Labor Code 5307.9 requirement was not met, and therefore it is unnecessary to proceed with the Labor Code 4621 analysis.

(Answer, p. 4.)

We disagree. As explained below, here section 5307.9 does not apply. And, as discussed below, even if it did apply, defendant's failure to comply with section 4622(a)(1) means that it waived any objection based on section 5307.9. Section 5307.9 establishes the general rules for compensability of copy and related services. Section 5307.9 states,

> On or before December 31, 2013, the administrative director . . . shall adopt . . . a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and ***shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim***. The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(Lab. Code, § 5307.9 [italics and bold added for emphasis].)

AD Rule 9982(d) states in pertinent part that:

> . . . . There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. . . .

(Cal. Code Regs., tit. 8, § 9982(d)(1).)

The WCJ states in her Opinion on Decision, "Although applicant is entitled to an affidavit by the custodian of the records sought, applicant's attorney must first make a good faith demand for records prior to issuing subpoenas." (Opinion on Decision, 1/20/2022, p. 2.)

We disagree with the WCJ. While the above statute and regulation do not allow for payment of a subpoena served within 30 days of a request for records, they do not state that a request for records must be requested before they can be subpoenaed. In other words, there is no mandate or requirement that an applicant or their attorney make a request for records from the employer or the insurer prior to requesting that a subpoena issue for records. Thus, a failure to make such a request is immaterial, and section 5307.9 does not apply.

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.*) Permitting liberal discovery is consistent with our Constitutional mandate that proceedings be expeditious.

In our recent en banc opinion in *DiFusco v. Hands On Spa et al* (2025) 90 Cal.Comp.Cases 1007, we observed that:

> Our holding herein is consistent with the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) We emphasize that in workers' compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have greater discretion with respect to evidentiary matters than courts in civil proceedings, and not narrower discretion as defendant appears to believe. Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that "admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure" will not invalidate an order, decision or award. (Lab. Code, § 5709.)
>
> Unlike a discovery request where the right to privacy or another privilege is implicated, proof of good cause is not required for a routine discovery request such as the one here.

(*Id.*)

A 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, 5705.5; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 (Appeals Board en banc).) As we explained in our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), section 4622 provides the framework for reimbursement of medical-legal expenses. Subsection (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (Lab. Code, § 4622(f).)

WCAB Rule 10786 states in relevant part that:

> ***
>
> (b) If a defendant has failed to file and serve a petition for determination of medical legal expenses and a Declaration of Readiness in compliance with subdivision (a), a medical-legal provider may file and serve a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed, the medical-legal provider shall be added to the official address record.
>
> ***
>
> (e) A defendant shall be deemed to have waived all objections to a medical-legal provider's billing, other than compliance with Labor Code sections 4620 and 4621, if:
>
> > (1) The provider submitted a properly documented billing to the defendant and, within 60 days thereafter, the defendant failed to serve an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or
> > (2) The defendant failed to make payment consistent with an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or
> > (3) The provider submitted a timely and proper request for a second review to the defendant and, within 14 days thereafter, the defendant failed to serve a final written determination that complies with any applicable regulations adopted by the Administrative Director; or
> > (4) The defendant failed to make payment consistent with a final written determination that complies with any applicable regulations adopted by the Administrative Director.
>
> ***

(Cal. Code Regs., tit. 8, § 10786(b), (e).)

We agree with the WCJ that there was a contested claim, but we disagree with her statement that it is unclear as to when defendant decided to deny the claim. The issue is not when did defendant eventually deny applicant's claim, but when did applicant's claim become contested. Here, on March 23, 2018, applicant's attorney filed an Application and marked every allegation in paragraph 9, which indicated that applicant's claim was contested as of March 23, 2018. All of cost petitioner's subpoenas issued after March 23, 2018. (Exhibit 3, 3/29/2018-4/23/2018.) We note that in its Answer, defendant appears to concede that a contested claim existed at the time that the subpoenas issued.

The subpoenas were for medical and employment records, and all appear to be reasonably calculated to lead to the discovery of relevant evidence. Here, the discovery by applicant may have led to relevant or potentially relevant materials and/or information to help with narrowing the issues in their case. Therefore, the expenses were incurred for the purpose of proving or disproving a contested claim; and the expenses were reasonable and necessary at the time they were incurred. Thus, cost petitioner met its burden under sections 4620 and 4621.

A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, §4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an EOB with its payment. But when payment is not made and/or an EOB does not issue, "that portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer." (Lab. Code, §§ 4622(a)(1).)

Here, defendant submitted no evidence that is issued any EOBs or any payment in response to cost petitioner's April 25, 2018, April 26, 2018, and January 24, 2019, itemized statements for its services. (Exhibit 4, 4/25/2018-January 24, 2019.) Eventually, defendant issued three checks to cost petitioner on December 30, 2020, in the amount of $183.49; on March 11, 2021, in the amount of $183.49; and on May 11, 2021, in the amount of $183.49. (Exhibit 5, 12/30/2020.) Notably, while Exhibit 5 is labeled "Sedgwick Payment & EOBs," there are no EOBs and no proofs of mailing. Regardless, while defendant issued full payment for cost petitioner's services, payment was made almost two years after the services were provided and the invoices were issued. Thus,

pursuant to section 4622(a)(1), defendant is automatically liable for payment of penalties and interest.

Moreover, if a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections to the medical-legal provider's billing except compliance with sections 4620 and 4621. (Cal. Code Regs., tit. 8, § 10786(e); see *Colamonico*, *supra*.) Consequently, even if defendant here had successfully showed that section 5307.9 applied, it had already waived this defense when it failed to comply with section 4622(a)(1).

Accordingly, we rescind the F&O and substitute new Findings that find that section 5307.9 does not apply in this matter; defendant failed to issue EOBs or any payment to cost petitioner within 60 days; cost petitioner met its burden under sections 4620, 4621, and 4622; and defendant is liable for payment of penalties and interest under section 4622(a)(1). We defer the issue of attorney's fees and costs and return the matter to the WCJ so that the WCJ may consider the issue in the first instance.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 20, 2022 Findings of Fact is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Labor Code section 5307.9 does not apply in this matter.

2. Defendant failed to issue Explanations of Benefits or any payment to cost petitioner within 60 days.

3. Cost petitioner met its burden of proof under Labor Code sections 4620, 4621, and 4622.

4. Pursuant to Labor Code section 4622(a)(1), defendant is liable for payment of penalties and interest in an amount to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

5. The issue of whether defendant is liable for payment of attorney's fees and costs to cost petitioner is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 2, 2026

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

SCANDOC IMAGING INC.
LITIGATION AND CONSULTING ASSOCIATES, PLC
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

DLM/kl

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