

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

GWENDOLYN BLESSITT, *Applicant*

vs.

**CROTHALL SERVICES GROUP, INC.;
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA) for RELIANCE
INSURANCE COMPANY, in liquidation, AMERICAN HOME ASSURANCE
COMPANY, care of AIG, *Defendants***

**Adjudication Numbers: ADJ1208836 (VNO0429313), ADJ3704380 (VNO0429312),
ADJ4088542 (VNO0429314)
Oxnard District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision 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 grant reconsideration to rescind the order taking Cases Nos. ADJ3704380 and ADJ4088542 off calendar. We will otherwise affirm the WCJ's decision for the reasons stated in the WCJ's Report and Opinion on Decision.

I.

Preliminarily, we note that former Labor Code¹ 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.

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

(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.”

Here, according to Events, the case was transmitted to the Appeals Board on May 18, 2026 and 60 days from the date of transmission is July 17, 2026. This decision is issued by or on July 17, 2026, so that we have timely acted on the petition as required by section 5909(a).

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 May 18, 2026, and the case was transmitted to the Appeals Board on May 18, 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 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 May 18, 2026.

II.

On March 28, 2005, lien claimant David Silver, M.D., filed a medical treatment lien pursuant to section 4903 in Case Nos. ADJ1208836, ADJ3704380, and ADJ4088542. The EAMS record indicates that a lien activation fee was paid in Case Nos. ADJ3704380 and ADJ4088542 but was not paid on Case No. ADJ1208836. All three cases went to trial on February 3, 2026. The Minutes of Hearing and Summary of Evidence (MOH/SOE) reflect that lien claimant withdrew his liens in Case Nos. ADJ3704380 and ADJ4088542 and those matters were ordered off calendar. We observe that the lien activation fee required by the section 4903.06(a) was paid in Case Nos. ADJ3704380 and ADJ4088542, but not in Case No. ADJ1208836. Thus, we consider that the request to withdraw those liens may have been in error and no action has been taken by the Workers' Compensation Appeals Board (WCAB) with respect to that request. On May 5, 2026, lien claimant sought reconsideration only in Case No. ADJ1208836. Pursuant to our authority under sections 5803, 5805, 5906 and 5907, we grant reconsideration in all three matters and will rescind the order taking Case Nos. ADJ3704380 and ADJ4088542 off calendar. We otherwise affirm the May 4, 2026 Findings and Order.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 4, 2026 Findings and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 17, 2026

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

**GWENDOLYN BLESSITT
LEGAL SERVICE BUREAU
ME LAW**

PAG/cm

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION:

Applicant worked as a housekeeper, when they sustained a partially admitted cumulative trauma injury during the period 1/10/2000 through 11/15/2000 to the lumbar and cervical spine. Defendant denied the alleged injury to the headaches, lower extremities, upper extremities, and fibromyalgia. The case-in-chief settled by way of a joint compromise and release settlement agreement approved on 1/25/2024 in the amount of \$102,552.50.

Lien claimant, Dr. David Silver, is the Petitioner herein, and filed a timely, verified, Petition for Reconsideration (hereinafter, the “Petition”) on 5/5/2026. Petitioner takes issue with this Court’s Findings and Order and Opinion on Decision, dated 5/1/2026 and served by the Court on 5/4/2026. In that Findings, this Court found that the lien claim of Dr. David Silver was dismissed by operation of law pursuant to Labor Code §4903.05(c)(3) for failure to file any declaration pursuant to Labor Code §4903.05(c)(2).

Petitioner contends the Court erred in so doing, alleging that all of the precedent used by the Court as a basis to find that lien claimant was required to file a declaration pursuant to Labor Code §4903.05(c)(2) was wrongly decided and, presumably, should have been ignored. Petitioner argues that lien claimant was not required to file a declaration pursuant to Labor Code §4903.05(c)(2) because lien claimant filed their lien on 3/28/2005 and was not subject to a filing, which lien claimant believes is required pursuant to Labor Code §4903.05(c)(2). This position by lien claimant is in contradiction to multiple panel decisions by the Appeals Board that applies the requirements of Labor Code §4903.05(c) to all lien claimants equally.

The parties are hereby on notice pursuant to Labor Code §5909(b)(1) that the case is being transmitted to the Appeals Board concurrently with this Report and Recommendation as of the date of service of this Report and Recommendation indicated below.

II. STATEMENT OF FACTS:

This claim involves a partially admitted cumulative trauma claim, as indicated above, which ultimately settled by joint compromise and release settlement agreement approved on 1/25/2024 in the amount of \$102,552.50.

Lien claimant, Dr. David Silver, filed their lien for medical treatment on 3/28/2005. Lien claimant did file their lien on two companion cases, but lien claimant agreed to withdraw those filings in order to proceed solely on the above claim at the time of trial (*Minutes of Hearing and Order Taking Off Calendar*, dated 2/3/2026, page 2, lines 9 to 11). Lien claimant never filed any declaration pursuant to Labor Code §4903.05(c).

On 2/3/2026, a lien trial was held before the undersigned WCJ, with the parties indicating that they were unable to resolve their pending dispute. The matter proceeded to trial on the issues of the lien of Dr. David Silver, Defendant's contention that the lien is limited to OMFS value for compensable treatment, Defendant's contention that the treatment for fibromyalgia was not compensable, whether Labor Code §4903.05 were properly filed, interest pursuant to Labor Code §4603.2(b), 15% increase pursuant to Labor Code §4603.2(b), and lien claimant's allegation that fees above OMFS value are appropriate due to extraordinary circumstances.

After marking and identifying all exhibits for the record, neither party offered any testimony as evidence. The matter stood submitted for decision at that time.

On 5/4/2026, the Court's Findings and Order and Opinion on Decision was served on the parties. In that Findings, the Court found that the lien claim of Dr. David Silver was dismissed by operation of law pursuant to Labor Code §4903.05(c)(3) for failure to file any declaration pursuant to Labor Code §4903.05(c)(2).

The very next day, lien claimant, Dr. David Silver, filed their Petition at issue herein. Lien claimant takes issue with all the Appeals Board's decisions that find Labor Code §4903.05(c) is applicable to all lien claimants. Despite only some of that precedent being cited by this Court in the Opinion on Decision, lien claimant has chosen to take issue with all the Appeals Board decisions addressing this issue. Lien claimant takes issue with the Appeals Board's analysis of the statute in those decisions and requests that it now all be ignored in favor of a finding that Labor Code §4903.05(c)(2) only applies to lien claimants that paid a filing fee pursuant to Labor Code §4903.05(d).

No response to the Petition has been received from Defendant as of the completion of this Report and Recommendation.

III. DISCUSSION:

A. The lien claim of Dr. David Silver was dismissed by operation of law pursuant to Labor Code §4903.05(c)(3) and the clear precedent laid forth by the Appeals Board:

Petitioner goes to great length in the Petition to argue against the analysis provided by the Appeals Board in six different panel decisions (*Petition*, pages 11 to 19) and to provide his own analysis as to how Labor Code §4903.05(c) should be interpreted (*Petition*, pages 4 to 11). This analysis appears to have been a long-simmering disagreement the representative for lien claimant has had against the Appeals Board's decisions, going so far as to also filing a letter, dated 5/30/2025, from the lien rep to the Appeals Board on a different case with the same issue. It is unclear why this letter is being filed in the present case. This Court disagrees with lien claimant's analysis and their request to overturn the Appeals Board's prior non-binding, but highly persuasive, precedent.

As indicated in the Petition, this issue has been addressed by multiple Appeals Board panels. Those decisions, although not binding authority, are highly persuasive and the analysis provided is applicable in this case. Those decisions note that the provision at issue herein was part of an amendment of Labor Code §4903.05 in 2016 by SB 1160 adding section (c), as an anti-fraud measure. As an anti-fraud measure, it would make little sense to apply that section to some lien claimants, and not all lien claimants, as Petitioner urges. Petitioner would have this Court only apply Labor Code §4903.05(c)(2) to those liens filed between 1/1/2013 and 1/1/2017, and exclude all liens claims filed prior to 1/1/2013. This would lead to an absurd result and would undermine the anti-fraud purpose of the statute.

The decisions by the Appeals Board have made clear that the declaration requirement is imposed on all lien claimants, with Labor Code §4903.05(c)(1) addressing liens filed on or after 1/1/2017, and Labor Code §4903.05(c)(2) addressing all liens filed before 1/1/2017. This interpretation leads to a fair and even-handed application of the statute to all lien claimants. This Court has always strived to apply the law and rules of this Court evenly and fairly to all who appear before this Court, despite the resistance of some. To hold otherwise would be contrary to the clear intent of the statute.

Lien claimant had until 7/3/2017 within which to file a declaration in compliance with Labor Code §4903.05(c). Petitioner does not dispute that lien claimant failed to do so. The lien claim of Dr. David Silver was dismissed by operation of law, therefore.

Based upon the above, this Court believes this is not a basis to grant reconsideration of the Court's Findings.

IV. RECOMMENDATION:

The undersigned WCJ recommends that the lien claimant's Petition for Reconsideration dated 5/5/2026, be denied.

Date: **May 18, 2026**

Peter M. Christiano
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

Labor Code §4903.05(c) declarations:

Applicant, Gwendolyn Blessitt, sustained an admitted cumulative trauma claim during the period 1/10/2000 through 11/15/2000 while working as a housekeeper for the employer to the lumbar and cervical spine. Applicant also alleged injury to the headaches, lower extremities, upper extremities, and fibromyalgia, which Defendants denied. The matter settled by way of compromise and release settlement agreement on 1/25/2024, with Defendant continuing to deny liability for any body parts other than the lumbar and cervical spine (*Compromise and Release Settlement Agreement*, dated 1/24/2024, page 10).

Lien claimant, Dr. David Silver, filed a lien for medical services pursuant to Labor Code §4903(b) on 3/28/2005, according to the EAMS record. Although the EAMS record does not indicate that a lien activation fee was paid in this case, the lien claim was filed on the two companion cases (ADJ3704380 and ADJ4088542) as well, and the lien activation was paid on those two cases per the respective EAMS record for those cases. It is unclear when exactly the lien activation fee was paid, however.

Defendant now contends that lien claimant was required to file a declaration pursuant to Labor Code §4903.05(c), and their failure to do so resulted in the lien being dismissed by operation of law. (*Defendant's Amended Trial Brief*, dated 2/2/2026, pages 11 to 12) Lien claimant responds that Labor Code §4903.05(c) “does not apply to liens filed before January 1, 2021.” (*Lien Claimant's Trial Brief*, dated 2/2/2026, page 12)

It appears undisputed that lien claimant did not file any declaration pursuant to Labor Code §4903.05(c). The only evidence submitted to this Court to support the lien filing is contained in *Lien Claimant's Exhibits 28 and 29*. Neither of those documents contain a declaration that complies with Labor Code §4903.05(c). Furthermore, this Court's review of the EAMS record on the above-entitled case, and on both companion cases (ADJ3704380 and ADJ4088542), failed to locate any declaration that complies with Labor Code §4903.05(c) filed by lien claimant.

Labor Code §4903.05(c) states as follows:

“(1) For liens filed on or after January 1, 2017, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

“(A) Is the employee's treating physician providing care through a medical provider network.

“(B) Is the agreed medical evaluator or qualified medical evaluator.

“(C) Has provided treatment authorized by the employer or claims administrator under Section 4610.

“(D) Has made a diligent search and determined that the employer does not have a medical provider network in place.

“(E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600.

“(F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

“(G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director.

“(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.” (Emphasis added)

Lien claimant’s argument that Labor Code §4903.05(c) does not apply to any liens filed before January 1, 2013 has already been addressed and rejected by multiple WCAB panel decisions (see *Uruena v. Research Metal Industries*, 2021 Cal. Wrk. Comp. P.D. LEXIS 78; *Montelongo v. Gelson's Market*, 2022 Cal. Wrk. Comp. P.D. LEXIS 41; *Hurst v. Kimco Staffing Services*, 2026 Cal. Wrk. Comp. P.D. LEXIS 9). Although only panel decisions, the holdings contained in those cases is clear and persuasive. The declaration requirement is imposed on all lien claimants, with Labor Code §4903.05(c)(1) addressing liens filed on or after 1/1/2017 and Labor Code §4903.05(c)(2) addressing liens filed before 1/1/2017. The result for all lien claimants is the same, therefore, pursuant to Labor Code §4903.05(c)(3), as the “failure to file a signed declaration under this subdivision shall result in dismissal of the lien with prejudice by operation of law.”

Lien claimant had until 7/3/2017, by 5:00 p.m. within which to file a declaration in compliance with Labor Code §4903.05(c). Lien claimant failed to do so. The lien claim was dismissed by operation of law.

Pursuant to the above, it is Found that lien claimant, Dr. David Silver, failed to file a declaration pursuant to Labor Code §4903.05(c)(2) on or before 7/3/2017, resulting in dismissal of their lien filed on 3/28/2005 with prejudice by operation of law pursuant to Labor Code §4903.05(c)(3), rendering this court lacking jurisdiction to address their lien.

All other issues raised by the parties are rendered moot by the above Findings.

Date: **May 1, 2026**

Peter M. Christiano

WORKERS’ COMPENSATION JUDGE