

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LISA DRAGE, *Applicant*

vs.

**PAY TEAM PAYROLL SERVICES, INC., WESCO INSURANCE
COMPANY; administered by AMTRUST, *Defendants***

**Adjudication Number: ADJ11448862, ADJ11448863
Riverside 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.¹ Having completed our review, we now issue our Decision After Reconsideration.

Cost petitioner Matrix Document Imaging, Inc. (cost petitioner) seeks reconsideration of the Findings and Order (F&O), by the workers' compensation administrative law judge (WCJ) dated November 2, 2021 and issued on November 16, 2021, wherein the WCJ found, in pertinent part, that applicant while employed on September 30, 2016 by defendant sustained injury arising out of and in the course of employment (AOE/COE) to her hips, knee, back and ankle (ADJ11448862)²; that on April 12, 2019, a final Order on the Notice of Intention (NOI) was issued; that cost Petitioner's claim for costs and fees was denied; that defendant did not act in bad faith; and that the claims for sanctions were denied.

Cost petitioner contends that pursuant to Labor Code³ section 5313 the WCJ was required to issue a finding and/or order regarding all issues raised by the petitioner within their Non-IBR Petition which included costs, monetary sanctions, and attorney's fees based on the decision in

¹ Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

² Since the two cases were consolidated, and cost petitioner provided combined services in both cases, it is unclear why the WCJ only made a finding as to injury in one case.

³ Unless otherwise stated, all further statutory references are to the Labor Code.

Hamilton v. Lockheed Corp. (2001) 66 Cal.Comp.Cases 473, 476. Cost petitioner alleges that where the WCJ did not make a finding in the Order on issues raised in the Non-IBR Petition, those issues remain undecided and that they are triable. Cost petitioner contends that the WCJ does not give an explanation regarding his analysis and/or evidence he relied upon for making the determination not to allow costs, monetary sanctions, and attorney's fees.

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 for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, as our Decision After Reconsideration, we will rescind the F&O and substitute a new F&O which finds that the Order became final on May 16, 2019; that defendant's and cost petitioner's claims for costs, attorney's fees, and sanctions are denied; that defendant did not act in bad faith after May 16, 2019; and that cost petitioner shall take nothing further.

BACKGROUND

We will briefly review the relevant facts.

On October 17, 2016, defendant issued a letter to applicant accepting her September 30, 2016 specific injury claim and informing her that they will provide workers' compensation benefits. (Exhibit C, 10/17/2016.)

On August 29, 2018, applicant filed an Application for Adjudication of Claim (Application) alleging that applicant while employed on September 30, 2016 by defendant as a property manager, sustained injury arising out of and in the course of employment to her hips, knee, back and ankle. This matter was assigned Case Number ADJ11448862.

On August 29, 2018, applicant filed an Application alleging that applicant while employed between the period of November 1, 2015, to April 4, 2018, by defendant as a property manager, sustained a cumulative injury arising out of and in the course of employment to her psyche. This matter was assigned Case Number ADJ11448863.

On September 13, 2018, defendant accepted applicant's cumulative injury "11/1/2016-4/4/2018 claim of injury to back, hips, legs, ankle and knee." (Exhibit A, 9/13/2018.)

On October 1, 2018, cost petitioner served the subpoenas at issue.

On March 1, 2019, defendant accepted applicant's cumulative injury claim to psych and informed her that they will provide workers' compensation benefits. (Exhibit B, 3/1/2019.)

On April 11, 2019, cost petitioner filed the “Petition for Determination of Non-IBR Medical-Legal Dispute” and “Request for Costs, Sanctions and Attorneys’ Fees” (Non-IBR Petition). It sought \$405.00 for its outstanding balance for services; \$68.85 for penalties and interest; \$1,600.00 for attorneys’ fees; \$35.00 for costs; and “not less than” \$500.00 for sanctions.

On April 16, 2019, using the draft order that cost petitioner attached to its Non-IBR Petition, the WCJ issued a “Notice of Intention to Allow Payment,” which stated in pertinent part that:

IT IS ORDERED THAT, absent written objection showing good cause to the contrary, filed and served on or before twenty (20) calendar days after service of this notice of intent, the Defendant(s), AMTRUST IRVINE, shall pay the following sums to Medical Legal Provider within thirty (30) days.

1. X \$405.00, for the Medical-Legal Billings/Services of Provider Matrix Document Imaging Inc.; or in the alternative, an amount of \$_____.;

2. X Plus, \$68.85, as the applicable penalties and interest; or in the alternative, an amount of \$_____.;

3. _____ Plus, \$1,600.00, as the reasonable attorney's fees in reviewing, preparing, drafting, filing and serving this petition; or in the alternative, an amount of \$_____.;

4. _____ Plus, \$35.00, as reimbursement for costs in serving this Petition, on all relevant parties upon proof; and

_____ Other: _____

(“Xs” handwritten in original.)

No objection was filed by any party. Although evidence of payment was not submitted at trial, according to defendant’s verified Answer, it tendered payment on May 15, 2019 pursuant to the NOI.

Applicant and defendant entered into a Compromise and Release (C&R). On August 22, 2019, a WCJ issued an Order Approving a Compromise and Release (OACR).

On February 11, 2021, cost petitioner filed a Declaration of Readiness to Proceed (DOR) on its Non-IBR Petition.

On September 21, 2021, the matter came on for trial.

DISCUSSION

Preliminarily, we note that a “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) There are 25 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail upon an address in California and 30 days allowed when service is made upon an address outside of California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].) In sum, once the time period has elapsed to seek reconsideration of a final order, and a person does not do so, the order is final and cannot be challenged. Here, the Order based on the NOI became final on May 16, 2019, and any aggrieved party would have had to seek reconsideration during the statutory time period. No person did so, and the Order is final.

While we need not reach the issue of whether a contested claim existed pursuant to section 4620 at the time that the subpoenas were served, we make the following observations to clarify any misapprehensions. In his Report, in support of his finding that no contested claim existed at the time when services were provided, the WCJ states that the claims were accepted at the time when services were provided. We disagree. The fact that the WCJ found that applicant sustained injury on September 30, 2016, arising out of and in the course of employment to her hips, knee, back and ankle and that temporary disability was provided does not change the fact that applicant’s claim was still contested when cost petitioner performed its services on October 1, 2018. Notably, defendant did not accept the cumulative injury claim to the claimed body part of psyche until March 1, 2019. More importantly, when the WCJ issued the Order awarding payment

to cost petitioner for its services on April 16, 2019, effective May 16, 2019, the issue of whether there was a contested claim was already decided because otherwise there would have been no basis to award payment.

Section 4622(a)(1) states that:

Except as provided in subdivision (b), within 60 days after receipt by the employer of each separate, written billing and report, and if payment is not made within this period, 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. If the employer, within the 60-day period, contests the reasonableness and necessity for incurring the fees, services, and expenses using the explanation of review required by Section 4603.3, payment shall be made within 20 days of the service of an order of the appeals board or the administrative director pursuant to Section 4603.6 directing payment.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813. WCAB Rule 10786(i)(1) states that:

If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines and procedures set forth in Labor Code sections 4622, 4603.3 and 4603.6 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs and for sanctions under Labor Code section 5813 and rule 10421. The amount of the attorney's fees, costs and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after October 23, 2013, the monetary sanctions shall not be less than \$500.00. These attorney's fees, costs and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code section 4622 or other applicable provisions of law, and in addition to any lien filing fee, lien activation fee or IBR fee that, by statute, the defendant might be obligated to reimburse to the medical-legal provider. (Cal. Code Regs., tit. 8, § 10786(i)(1).)

Here, the WCJ did not award costs, sanctions, or attorney's fees in the April 16, 2019 NOI. Cost petitioner did not challenge this lack of a finding by way of an objection to the NOI or by way of a petition for reconsideration after the Order became final. As pointed out by the WCJ, cost petitioner prepared the form and asked for specific amounts in the Non-IBR Petition, so that the WCJ was aware of the amounts sought. Moreover, while the WCJ did not provide any further explanation, cost petitioner would have had to have challenged that lack of explanation by way of a petition for reconsideration. Thus, under the circumstances here, we see no reason to disturb the

apparent conclusion that no costs, attorney's fees, or sanctions were owed up to the time that the WCJ issued the NOI.

Nonetheless, because the Order was silent, if defendant had failed to tender payment timely after the NOI became final on May 16, 2019, in violation of section 4622(a), we believe that an award of costs, sanctions and/or attorney's fees may still have been available for conduct occurring after the Order was final on May 16, 2019. But, as defendant stated in its Answer, the payment of the amount pursuant to the Order was promptly paid on May 15, 2019. Thus, we see no basis to find that costs, sanctions, and attorney's fees are appropriate on the record here.

Accordingly, as our Decision After Reconsideration, we rescind the F&O and substitute a new F&O, which finds that the Order became final on May 16, 2019; that defendant's and cost petitioner's claims for costs, attorney's fees, and sanctions are denied; that defendant did not act in bad faith after May 16, 2019; and that cost petitioner shall take nothing further.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Order by a WCJ issued on November 16, 2021 are **RESCINDED** and the following are **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. There was no objection to the Notice of Intention issued on April 16, 2019, and it became final on May 16, 2019.
2. Defendant's and cost petitioner's claims for costs, attorney's fees, and sanctions are denied.
3. Defendant did not act in bad faith after May 16, 2019.
4. Matrix Document Imaging and Litigation & Consulting Associates are not entitled to any further recovery.

ORDER

IT IS ORDERED that the Matrix Document Imaging and Litigation & Consulting Associates shall take nothing further on their petition filed herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 26, 2026

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

**LITIGATION & CONSULTING ASSOCIATES
MEDICAL COST REVIEW**

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*