

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

MIGUEL DAMIAN, *Applicant*

vs.

**MERCURIO TRUCK BODY, INC.; STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Numbers: ADJ8866704; ADJ9030274
Los Angeles District Office**

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

Supreme Copy Service, Inc. (cost petitioner), seeks reconsideration of the Joint Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on March 19, 2026, wherein the WCJ found in relevant part that cost petitioner did not meet its burden of proof to establish a contested claim, and therefore is not entitled to reimbursement for its claimed medical-legal expenses. Then the WCJ ordered that cost petitioner shall take nothing in this matter.

Cost petitioner contends in relevant part that it met its burden to prove that there was a contested claim at the time of its services and its services were for the purpose of proving or disproving a contested claim.

We have not 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, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will rescind the WCJ's F&O and substitute a new F&O that finds that cost petitioner did meet its burden of proof to establish a contested claim. We defer all other issues.

BACKGROUND

We will briefly review the relevant facts.

In ADJ9030274, applicant claimed injury to ear while employed by defendant as a mechanic, during the period from January 6, 2013 through March 16, 2013. On his Application for Adjudication of Claim (Application), in Paragraph No. 9, filed on July 30, 2013, applicant indicated there was a disagreement regarding liability for all issues.

In ADJ8866704, applicant claimed injury to left hand and fingers while employed by defendant as a mechanic on March 14, 2013. On his Application, in Paragraph No. 9, filed on April 16, 2013, applicant indicated there was a disagreement regarding liability for all issues including temporary disability indemnity.

On April 25, 2013, in ADJ8866704, a dispute arose regarding temporary disability. Defendant noticed applicant as follows:

Although liability for your workers' compensation injury has been accepted, you are not eligible for temporary disability benefits because modified work was available with your employer starting on March 14, 2013.

(Exhibit A, at p. 1.)

In ADJ8866704, on May 30, 2013 and May 31, 2013, applicant's attorney caused subpoenas to issue for Mercurio Truck Body, State Compensation Insurance Fund, White Memorial Medical Center and the WCAB. (Exhibits 2-5.)

On September 12, 2013, the parties submitted a Compromise & Release (C&R) for both cases. In Paragraph 1, they identify hand and thumb as the claimed body parts in ADJ8866704 they identify ear as the claimed body parts in ADJ9030274. In Paragraph 9, it states that:

NOTE THAT THIS CLAIM INCLUDES THE ACCEPTED LEFT THUMB INJURY OP 3/14/2013 AS WELL AS THE DISPUTED INJURY OF CT 1/06/2013 - 3/16/2013 TO THE EAR. DEFENDANTS NOTE THAT THE MEDICAL REPORTS OF DR. ROCCA PALUMBO/ SO.CA. IMMEDIATE MEDICAL CENTER AND DR. ARTHUR HARRIS MAKE NO MENTION OF A EAR INJURY. (All capitals in original.)

The WCJ issued an Order Approving the C&R (OACR). According to the record in EAMS, there were no medical records submitted with the C&R.

On March 28, 2025, cost petitioner filed a petition for costs.

On December 23, 2025, the parties proceeded to trial on the issue of cost petitioner's petition for costs. Notably, defendant did not stipulate to injury arising out of and in the course of

employment (AOE/COE) for either injury. (Minutes of Hearing/Summary of Evidence, December 23, 2025, p. 2.) Defendant raised the issue of “Whether the petitioner can show that a contested claim existed at the time of the expense under Labor Code section 4620(b).” (*Id.* at p. 3.) Despite its stipulation that the two injuries were only claimed and not admitted, defendant submitted evidence regarding payment of temporary disability benefits (Exhibits A and B), apparently to show that the claim was not contested.

DISCUSSION

I.

Former Labor Code section¹ 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.

(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 April 29, 2026, and 60 days from the date of transmission is Sunday, June 28, 2026. The next business day that is 60 days from the date of transmission is Monday, June 29, 2026. (See Cal. Code Regs., tit.

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

8, § 10600(b).)² This decision is issued by or on June 29, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on April 29, 2026, and the case was transmitted to the Appeals Board on April 29, 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 April 29, 2026.

II.

Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof pursuant under sections 4620 and 4621: that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its services were reasonably, actually, and necessarily incurred. We stated that:

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs “for the purpose of proving or disproving a contested claim.” (§ 4620(a).) Copy service fees are considered medical-legal expenses under section 4620(a). (Citations) Lien claimant’s initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a “contested claim” existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee’s claim for workers’ compensation benefits; and 2) the employer denies the

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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.

employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).)

. . . [W]e note that a determination of whether a purported medical-legal expense involves a “contested claim” is a fact-driven inquiry. The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal. App. 4th 654, 663 [84 Cal. Rptr. 2d 915, 64 Cal.Comp.Cases 624].) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases.

(*Id.* at p. 1062; see *Cornejo v. Yunique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 [2015 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 [2013 Cal. Wrk. Comp. LEXIS 69] (Appeals Board en banc).)

Here, the WCJ did not find that a contested claim existed as of May 30, 2013 or May 31, 2013, when the subpoenas were issued because the claim associated with ADJ8866704 was accepted with benefits paid on May 22, 2013. (Report, at p. 2.) As is demonstrated by the C&R and the WCJ's OACR, defendant only accepted liability for injury to the left thumb, even though applicant's hand was identified as a claimed body part. Notably, no medical records have ever been submitted. Defendant disputed liability for temporary disability indemnity benefits throughout the pendency of ADJ8866704, and as evidenced by the Application, temporary disability indemnity was a contested issue in ADJ8866704, and it was not resolved until the settlement of the case-in-chief. Accordingly, we disagree with the WCJ's finding as to whether a contested claim existed because the WCJ appears to construe the meaning of “for the purpose of proving or disproving a contested claim” very narrowly.

As indicated on an Application, at a minimum, potential contested issues include temporary disability indemnity, reimbursement for medical expenses, medical treatment, compensation at proper rate, “other” to be stated with specificity, permanent disability indemnity, rehabilitation and supplemental job displacement/return to work. Additionally, the records subpoenaed: Mercurio Truck Body, State Compensation Insurance Fund, White Memorial Medical Center and the WCAB would be equally germane in both cases. There is nothing in the statutory language that requires that the copy services lien claimant demonstrate a reason for each individual subpoena as part of its burden of proof because as explained in *Allison, supra*, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Id.* at p. 663.)

Finally, as is demonstrated by the C&R and the WCJ's OACR, defendant disputed all liability throughout the pendency of applicant's case ADJ9030274. Applicant's choice to issue the subpoenas in his accepted claim, ADJ8866704, appears to be clerical in nature as no case number existed in ADJ9030274 until after July 30, 2013, when the Application was filed even though applicant executed it on March 29, 2013. Thus, cost petitioner met its burden that a contested claim existed in ADJ8866704 pursuant to section 4620.

Accordingly, we grant cost petitioner's Petition for Reconsideration, rescind the F&O and substitute a new F&O that finds that a contested claim existed at the time the services were rendered. We defer all other issues.

For the foregoing reasons,

IT IS ORDERED that the cost petitioner's Petition for Reconsideration of the Joint Findings and Order of March 19, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 19, 2026 Joint Findings and Order is **RESCINDED** and the following is **SUBSTITUTED** therefor.

JOINT FINDINGS OF FACT

1. Cost Petitioner did meet its burden of proof under Labor Code section 4620 to establish a contested claim.
2. All other issues are deferred.

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

June 29, 2026

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

**SUPREME COPY SERVICE
STATE COMPENSATION INSURANCE FUND**

SL/abs

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