

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT BELANGER, *Applicant*

vs.

CITY OF SIMI VALLEY, permissibly self-insured, *Defendant*

**Adjudication Number: ADJ11788125
Oxnard District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Lien claimant, Los Robles Regional Medical Center (lien claimant), seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on June 30, 2022. In the F&O, the WCJ found that lien claimant failed to sustain its burden of proof to demonstrate that it timely made its request for second bill review. As a result, the WCJ ordered that lien claimant take nothing on its lien.

Lien claimant contends that it timely filed its request for second bill review within 90 days of its receipt of the explanation of review (EOB) and payment on March 13, 2019, maintaining that defendant mailed payment to an incorrect address. Lien claimant further contends that the emergency medical services provided are not subject to the Official Medical Fee Schedule (OMFS) and, consequently, the billing is not subject to second bill review or Independent Bill Review (IBR).

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

We have considered the allegations in the Petition for Reconsideration, defendant's Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will affirm the WCJ's decision.

BACKGROUND

Based on the stipulation of the parties, applicant, while employed as a crossing guard on October 12, 2018, sustained an industrial injury to his head, brain, ears, eyes, back, legs, arms, and internal system. (Minutes of Hearing (MOH), 05/27/2022, 2:19-22.)

On April 13, 2021, a WCJ issued an Order Approving Compromise & Release.

Lien claimant served defendant its itemized billing statement (UB-04 claim form) dated December 18, 2018 for \$1,518,464.53. (Lien Claimant's Ex. 1.) Defendant paid lien claimant the amount of \$214,482.49 by check dated February 5, 2019. (Lien Claimant's Ex. 3.) Lien claimant mailed its request for second bill review on June 8, 2019. (Lien Claimant's Ex. 2.)

On August 5, 2019, lien claimant filed its lien for medical services rendered to applicant.

At the trial, on the WCJ's own motion, he bifurcated all issues except the timeliness of second bill review and the mailbox rule. (MOH, 05/27/2022, 3:16-19.)

To establish the service date of the EOB and payment, defendant did not present live testimony but submitted instead a written business records affidavit from Jeffrey S. Thompson, the Workers' Compensation Supervisor for defendant. In his affidavit, Mr. Thompson detailed defendant's rigid weekly processing and auditing cycle for medical invoices. Based on his review of the internal voucher and check files, Mr. Thompson attested that defendant's bill review provider, MCMC LLC, mailed the check and EOB on February 6, 2019 to lien claimant's address at 215 Janss Road, Thousand Oaks, California 91360. (Def. Ex. F.)

To support its contention that it did not receive the payment until March 13, 2019, which would make its June 8, 2019 request for second bill review timely, lien claimant introduced two pieces of evidence. First, it submitted an Artiva Workstation transaction history showing the logging of the check into its database on March 13, 2019. (Lien Claimant's Ex. 5.) Second, it submitted a FedEx overnight tracking slip bearing the same date. The FedEx tracking slip showed shipping from 215 Janss Road, Thousand Oaks, California 91360 to 6000 Feldwood Road, College Park, Georgia 30349. (Lien Claimant's Ex. 4.)

On June 30, 2022, the WCJ issued the F&O disallowing lien claimant's balance of \$1,303,982.04. In the Opinion on Decision, the WCJ stated as follows:

The undersigned found the testimony in the 5/3/22 Affidavit of Mr. Thompson, W/C Supervisor for the City of Simi Valley, to be credible. Specifically, the undersigned found the testimony in the 5/3/22 Affidavit of Mr. Thompson, that the payment and EOB would have been mailed 2/6/19, to be credible. Based upon review of the entire record, including this credible testimony the undersigned found that the payment and EOB were mailed 2/6/19.

(Opinion on Decision, p. 3.)

It is from this F&O that lien claimant seeks reconsideration.

DISCUSSION

Pursuant to Labor Code section 4603.2, “[p]ayments shall be made by the employer with an explanation of review . . . within 45 days after receipt of each separate itemization of medical services provided.” (Lab. Code, § 4603.2(b)(2).)² However, if the employer is a governmental entity, payment “shall be made within 60 days after receipt of each separate itemization.” (Lab. Code, § 4603.2(b)(3).) If the itemization is contested, denied, or incomplete, the physician “shall be notified, in the explanation of review . . . within 30 days after receipt of the itemization by the employer.” (Lab. Code, § 4603.2(b)(2).)

If the dispute is regarding the payment amount, the provider “may request a second review within 90 days of service of the explanation of review.” (Lab. Code, § 4603.2(e)(1).) “If the only dispute is the amount of payment and the provider does not request a second review within 90 days, the bill shall be deemed satisfied and neither the employer nor the employee shall be liable for any further payment.” (Lab. Code, § 4603.2(e)(2).) Within 14 days of a request for second review, “the employer shall respond with a final written determination on each of the items or amounts in dispute.” (Lab. Code, § 4603.2(e)(3).)

If, after receipt of the second bill review, the provider still contests the amount paid, it “shall request an independent bill review as provided for in Section 4603.6.” (Lab. Code, § 4603.2(e)(4).) IBR “shall only be conducted if the only dispute between the provider and the claims administrator is the amount of payment owed” and the provider must request it “within 30 calendar days of . . . [t]he date of service of the final written determination.” (Cal. Code Regs.,

² Unless otherwise stated, all further statutory references are to the Labor Code.

tit. 8, § 9792.5.7(b), (c)(1).) With the exception of IBR requests outlined in that paragraph, “the appeals board shall have jurisdiction over disputes arising out of this section pursuant to Section 5304.” (Lab. Code, § 4603.2(f).)

Under the mailbox rule, “[a] letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.” (Evid. Code, § 641; see also *Hagner v. United States* (1932) 285 U.S. 427, 430 [76 L.Ed. 861, 52 S.Ct. 417] [“[t]he rule is well settled that proof that a letter properly directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed”]; *Minniear v. Mt. San Antonio Community College District* (1996) 61 Cal.Comp.Cases 1055, 1059 (Appeals Board en banc) [typical presumption affecting the burden of producing evidence “is the presumption that a mailed letter was received”].)

The Appeals Board addressed the mailbox rule as follows:

If the opposing party alleges that the information was not received, the WCJ may separately consider lack of receipt of the information by the opposing party in evaluating whether equitable relief is warranted . . . The presumption that a letter mailed was received is rebuttable. However, the trier of fact is obligated to “assume the existence of the presumed fact unless and until evidence is introduced to support a finding of its nonexistence.” A mere allegation that the recipient did not receive the mailed document has been found to be insufficient to rebut the presumption. If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce “believable contrary evidence” that it was not received. Once the recipient produces sufficient evidence showing non-receipt of the mailed item, “the presumption disappears” and the “trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received.”

(*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Board en banc) (citations omitted).)

Finally, all medical providers must complete the second bill review process, even if they believe the services are not subject to the OMFS. (Lab. Code, § 4603.2(e)(2); Cal. Code Regs., tit. 8, § 9792.5.5.) This process efficiently allows them to lodge formal objections to inform the employer of any issues or deficiencies in order to resolve them informally. (Lab. Code, § 4603.2(e)(1) [The request for a second review shall be submitted to the employer . . . and shall include all of the following: . . . The item and amount in dispute. . . . The additional payment requested and the reason therefor.”].)

In this case, the evidentiary record establishes that defendant issued a check and an EOB for \$214,482.50 in partial satisfaction of the billed amount of \$1,518,464.53 in accordance with OMFS. Defendant relied upon the written affidavit of Mr. Thompson to establish that its bill review provider mailed these documents on February 6, 2019. The lien claimant subsequently mailed its request for a second bill review on June 8, 2019.

In disallowing the lien balance, the WCJ explicitly based the decision on the “credibility” of Mr. Thompson’s affidavit. We must correct this legal reasoning. A trier of fact cannot properly base a credibility determination, such as those contemplated under *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500], on a written affidavit. Credibility findings inherently require live testimony. [*Johanson v. San Ramon Valley Unified Sch. Dist.* [2021 Cal. Wrk. Comp. P.D. LEXIS 22, *34] [“The WCJ’s credibility determinations are due great weight because the WCJ had the opportunity to hear the witness’ testimony and judge its veracity.”].)³

Despite the WCJ’s flawed reasoning regarding credibility, we affirm the ultimate disposition because lien claimant failed to meet its burden of proof on the existing evidentiary record. Ideally, defendant should have submitted a formal proof of service to unequivocally establish the mailing date and trigger the mailbox rule. However, lien claimant failed to object to the admission of defendant’s affidavit as proof of service at trial.

Furthermore, lien claimant failed to produce sufficient evidence to rebut the February 6, 2019 mailing date or establish a later receipt date that would render its June 8, 2019 request timely. Lien claimant relied upon a FedEx overnight tracking slip dated March 13, 2019 to establish a delayed receipt. However, a closer inspection of this tracking slip reveals that it does not document a mailing from defendant. Instead, it merely showed lien claimant evidenced mailing from its address to a location in Georgia. Consequently, lien claimant failed to sustain its burden of proving that it timely served its request for a second bill review within the 90-day statutory window.

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

Even incorporating statutory allowances for mailing times, the June 8, 2019 request remains definitively untimely.

Finally, lien claimant argues in its petition that the second bill review and IBR processes do not apply to its billing because the emergency medical services rendered are not payable pursuant to OMFS. We decline to entertain this argument. The WCJ specifically bifurcated the trial to address only the threshold issues of “Second Bill Review” and the “Mailbox Rule”. Lien claimant did not object to this bifurcation at trial. Therefore, raising the applicability of the OMFS or IBR processes on reconsideration lacks adequate legal justification.

Accordingly, because lien claimant failed to meet its burden of proof that it served a request for a second bill review within the 90-day period, we affirm the WCJ’s order that lien claimant take nothing.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on June 30, 2022, by the WCJ, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2026

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

**LOS ROBLES REGIONAL MEDICAL CENTER
ALAN LAW/GRANT & WEBER
GILSON DAUB, LLP**

DLP/md

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