

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

CARLOS MORALES GOMEZ, *Applicant*

vs.

**AA COURIERS, INC.; REDWOOD FIRE AND CASUALTY INSURANCE COMPANY
dba BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11177259
Marina del Rey District Office**

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

Cost petitioner DocCentral, Inc., seeks reconsideration of the April 23, 2024 Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that defendant's notice of delay was timely and that it delayed applicant's claim from least from January 26, 2018 to April 25, 2018; that, during this 90-day delay period, the claim was not accepted or denied and was thus not a "contested claim;" that cost petitioner's expenses at issue were incurred from March 23, 2018¹ through April 16, 2018, during the delay period; that cost petitioner failed to prove that a contested claim existed during the time the medical-legal expenses were incurred; and that cost petitioner is not entitled to medical-legal expenses, costs, penalties, interest or attorney fees. Based on these findings, the WCJ ordered that cost petitioner take nothing.

Cost petitioner contends that the WCJ erred in failing to find that applicant's claim was a contested claim.

We have considered the allegations in the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, we will grant cost petitioner's petition, rescind the WCJ's

¹ We note that cost petitioner's expenses were incurred starting on March 26, 2018 not March 23, 2018. (Petitioner's Exhibit 6.)

decision, substitute it with new Findings of Fact finding a contested claim, deferring all other issues, and return this matter to the trial level.

FACTS

The WCJ's Opinion on Decision provides the following factual background:

Applicant, Carlos Morales Gomez, born [], while employed during the period January 20, 2017 to January 22, 2018, as a Delivery Driver, Occupational Group Number 250, at Los Angeles, California, by AAA Couriers, Inc., claims to have sustained injury arising out of and in the course of employment to his abdomen, back, shoulders, leg, foot, and toe.

At the time of injury, the Employer's Workers' Compensation Carrier was Redwood Fire and Casualty Company dba Berkshire Hathaway Homestate Companies.

...

Petitioner DocCentral filed a Petition to Resolve Non-IBR Medical-Legal Dispute dated 06/09/2022. In said Petition, Petitioner DocCentral, a Professional Photocopier, alleged that they provided services to applicant's attorneys consisting of production of copies of medical and business records, and served Subpoena Duces Tucums to several locations.

Petitioner argues that defendants failed to serve a valid and timely Explanation of Reviews within 60 days of service of their invoices and failed to comply with Labor Code Sections §4622, §4603.3 and Title 8, California Code of Regulations Sections 9794 (c), and Section 10786.

As a result, petitioner alleges that this unreasonably delay by defendants resulted in bad faith actions and tactics, and thus defendants are liable for penalties, interest, costs, sanctions and attorney's fees.

Defendants filed their Objection to DocCentral's Non-IBR petition dated 05/02/2023. In said Objection, defendants argued that they paid for the Subpoena Duces Tecum for records to the Employer Classic Couriers Inc, and that the invoices they received for Cardinal Medical Group and Beverly Tower Los Angeles Imaging Center had a balance of \$279.23.

Moreover, defendants claimed that there was no contested claim at the time the Subpoenas were issued, and that petitioner had the burden of proving a contested claim existed at the time the expenses were incurred.

Defendants further stated that since the claim was timely delayed, petitioner's medical-legal costs and expenses were not reasonable, necessarily or actually incurred, under Labor Code Section §4621, and thus, petitioner has not shown sufficient evidence to establish that petitioner met its burden of proof to its entitlement of medical-legal expenses and reimbursement, inter alia.

It is from this Petition that petitioner seeks payment of medical-legal expenses, penalties, costs, interest and attorney's fees against defendants.

(Opinion on Decision, at pp. 1-2.)

DISCUSSION

Labor Code² section 4622 requires that a defendant pay “[a]ll medical-legal expenses for which the employer is liable.” As provided in section 4620(a), “a medical-legal expense means any costs and expenses incurred by or on behalf of any party,... which expenses may include ... medical records,... for the purpose of proving or disproving a contested claim.” Copy service fees incurred to obtain medical and other records are considered medical-legal expenses under section 4620(a) that may be recovered by the filing of a lien claim. (*Cornejo v. Yonique Cafe, Inc.* (2015) 81 Cal. Comp. Cases 48 (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444 (Appeals Board en banc).)

A medical-legal provider seeking reimbursement has a dual remedy available to them. The provider may file a lien pursuant to section 4900 et seq., or the provider may file a petition for reimbursement of medical-legal expenses pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10786(b). (Title 8, Cal. Code Regs., § 10786(b).)

If the provider chooses to file a petition pursuant to WCAB Rule 10786(b), the provider has the initial burden of proof that: 1) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to section 4620; and 2) its medical-legal services were reasonably, actually, and necessarily incurred pursuant to section 4621(a). (*Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Board en banc).)

We also observe that a contested claim is not limited to those instances where the claims administrator has rejected all liability for a claim. A contested claim includes instances where the claims administrator has rejected liability for a specific claimed benefit, or has not timely accepted

² All further statutory references are to the Labor Code, unless otherwise noted.

liability for claim, or where the claims administrator has admitted liability for the claim and a disputed medical fact exists, e.g., a dispute regarding the nature and extent of the injury. (Lab. Code § 4620(b); Cal. Code Reg., tit. 8, § 9793(b).)

In this case, applicant's attorney sent a January 25, 2018 letter to the employer regarding applicant's industrial injury and stating that "Applicant is in need of medical treatment. Failure to comply will result in a denial of medical treatment." (Petitioner's Exhibit 12.) On January 26, 2018, applicant's attorney filed an Application for Adjudication of Claim. Defendant then issued a Notice of Delay on February 7, 2018 (defendant's Exhibit C) and, on April 27, 2018, denied the claim. (Defendant's Exhibit D.)

Cost petitioner's expenses for copy services were incurred from March 26, 2018 through April 16, 2018 during the delay period when defendant was not paying temporary disability or providing medical care. (Petitioner's Exhibit 6.) We take judicial notice that applicant and defendant subsequently settled the claim by way of Compromise and Release for \$55,000.00, including a separate agreement to settle the lien of Employment Development Department (EDD) for benefits it paid from February 2, 2018 to February 1, 2019. (Petitioner's Exhibit 10.) An Order Approving Compromise and Release issued on July 17, 2019.

Settlement of EDD's lien for benefits paid during the delay period is evidence that a contested claim existed at the time cost petitioner incurred the expenses at issue. Accordingly, we will rescind the WCJ's decision and substitute it with Findings of Fact finding that a contested claim existed at the time cost petitioner's expenses were incurred and deferring all other issues. We will return this matter to the trial level for the WCJ to conduct further proceedings as he deems necessary to complete an analysis of the remaining issues pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Board en banc)) and to issue a decision on those issues in the first instance.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 23, 2024 Findings of Fact and Order is **RESCINDED** and **SUBSTITUTED** with new Findings of Fact, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

FINDINGS OF FACT

- 1. Applicant, Carlos Morales Gomez, while employed during the period January 20, 2017 to January 22, 2018, as a Delivery Driver, Occupational Group Number 250, at Los Angeles, California, by AAA Couriers, Inc., claims to have sustained injury arising out of and in the course of employment to his abdomen, back, shoulders, leg, foot, and toe.
- 2. At the time of injury, the Employer’s Workers’ Compensation Carrier was Redwood Fire and Casualty Company dba Berkshire Hathaway Homestake Companies.
- 3. A contested claim existed at the time cost petitioner incurred expenses from March 26, 2018 through April 16, 2018.
- 4. The issues of unreasonable delay, the reasonable value of services, penalties, interest, and attorney fees are deferred.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 15, 2024

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

**CARLOS MORALES GOMEZ
THE JIN LAW FIRM
PEATMAN LAW GROUP**

PAG/cs

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