WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DENNIS MURDERS, ***Applicant***

vs.

EBM CONSTRUCTION, INC.;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ15058453
Oakland District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted the Petition for Reconsideration filed by lien claimant Stanford/Valley Care Health Systems (lien claimant) on August 14, 2023 to issue a notice of intention to dismiss (NIT) and to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Lien claimant seeks reconsideration of the Findings of Fact issued by a workers' compensation administrative law judge (WCJ) on April 20, 2023. The WCJ found that there was an express agreement between lien claimant and defendant, the existence of which precluded the jurisdiction of the Workers' Compensation Appeals Board (WCAB) over the billing dispute.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration, recommending that the Petition be denied.

Our NIT ordered lien claimant to produce documentation showing the date and time of the filing of the petition for reconsideration with the Workers' Compensation Appeals Board (WCAB), or in the Electronic Adjudication Management System (EAMS), including the EAMS batch ID information and/or any other documentation demonstrating that the petition was timely filed. We provided notice of our intention to dismiss lien claimant's Petition unless lien claimant could demonstrate that the petition for reconsideration was timely filed. (NIT, p. 3.)

On August 29, 2023, we received lien claimant's Response to our Order Granting Petition for Reconsideration (Response).

We have reviewed the record and have considered the allegations in the Petition for Reconsideration, the Answer, the Response to the NIT, and the contents of the Report. Based on our review of the record and for the reasons discussed below, as our decision after reconsideration we will affirm the Findings of Fact.

To be timely, a petition for reconsideration must be filed and received by the Appeals Board within twenty days of the service of the final order, plus an additional five days if service of the decision is by any method other than personal service, including by mail and email, upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a).) Here, the Findings of Fact and Opinion on Decision was served on April 20, 2023. The last day for a party to file a Petition for Reconsideration was therefore twenty days plus five days per WCAB Rule 10605, or May 15, 2023. (Cal. Code Regs., tit. 8, § 10605(a)(1).)

Lien claimant's Response avers the Petition for Reconsideration was drafted on May 10, 2023, but that lien claimant's office had no one available to file the document. (Response, at p. 2:1.) Thereafter, lien claimant "proceeded to print the Recon and mail it to the Recon Board." (*Id.* at 2:4.) The Response states that on May 11, 2023, "an email from Judge Howell was received, advising that the WCJ should not have been included on said email and the attached Recon Must be uploaded to FileNet." (*Id.* at 2:6.)

Our review of the Electronic Adjudication Management System (EAMS) FileNet reveals a document filed on May 18, 2023 with the title "E-Form of Submission of Petition for Recon on 5.10.23 at 3.38.39PM." The document reflects an EAMS Batch submission on May 10, 2023 at 3:38PM, with a notation that "Submission of this eform through EAMS constitutes service upon any internal DWC unit." Given the inherent limitations in EAMS, including the fact that notice of the filing of a Petition for Reconsideration is not automatically provided to the WCAB (see, e.g., *Ja'Chim Scheuing v. Lawrence Livermore National Laboratory* (2024) 89 Cal.Comp.Cases 325 [2024 Cal. Wrk. Comp. LEXIS 11]), we have previously treated the EAMS Batch ID confirmation as evidence relevant to the timeliness of a petition. (See *Harrison v. Texas Rangers* (May 26, 2023, ADJ13604193) [2023 Cal. Wrk. Comp. P.D. LEXIS 151]; *Breshears v. The Kroger Co.* (October 22, 2013, ADJ2023756 (SAC 0323234), ADJ2900558 (SAC 0358707)) [2013 Cal. Wrk. Comp. P.D. LEXIS 533].) Following our review of the entire record, and the EAMS Batch ID, it is unclear if lien claimant's petition was timely filed. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10507(a)(1).)

Former Labor Code[1] section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within sixty days of filing. (Lab. Code, § 5909.) However, "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice…." (*Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493]; see *Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635 fn. 22 [70 Cal.Comp.Cases 312].) ["irregularity which deprives reconsideration under the statutory scheme denies due process"].) The Court of Appeal reversed the Appeals Board, holding that the time to act on the petition was tolled during the period the file was misplaced. (*Shipley, supra*, 7 Cal.App.4th at p. 1107.) The Court emphasized that "Shipley's file was lost or misplaced through no fault of his own and due to circumstances entirely beyond his control." (*Shipley, supra*, 7 Cal.App.4th at p. 1107.) "Shipley's right to reconsideration by the board is likewise statutorily provided and cannot be denied him without due process. Any other result offends not only elementary due process principles but common sensibilities." (*Id*., at p. 1108.) In *Shipley*, applicant sought a writ of review of a decision of the Appeals Board denying his petition for reconsideration by operation of law (Lab. Code, § 5909). The Court there granted a writ of review, stating that while the "language appears mandatory and jurisdictional, the time periods must be based on a presumption that a claimant's file will be available to the board; any other result deprives a claimant of due process and the right to a review by the board." (*Shipley, supra*, 7 Cal.App.4th at pp. 1107-1108, italics added.) In *Shipley*, the Court of Appeal reversed the Appeals Board, holding that the time to act on the petition was tolled during the period the file was misplaced and unavailable to the Appeals Board. (*Shipley, supra*, 7 Cal.App.4th at p. 1007.) "Shipley's right to reconsideration by the board is likewise statutorily provided and cannot be denied him without due process. Any other result offends not only elementary due process principles but common sensibilities. Shipley is entitled to the board's review of his petition and its decision on its merits." (*Id*., at p. 1108.) The Court stated that its finding was also compelled by the fundamental principle that the Appeals Board "accomplish substantial justice in all cases..." (Cal. Const., art. XIV, § 4), and the policies enunciated by section 3202 "to construe the act liberally 'with the purpose of extending their benefits for the protection of person injured in the course of their employment.'" (*Id*., at p. 1107.) The Court in *Shipley* properly recognized that in workers' compensation, deprivation of reconsideration without due process – without this full de

[1] All further references are to the Labor Code unless otherwise noted.

novo review of the record in the case – "offends" the fundamental right of due process, as well as the Appeals Board's mandate to "accomplish substantial justice in all cases..." (*Shipley, supra*, 7 Cal.App.4th at p. 1107-1108.)

We note that all timely petitions for reconsideration filed and received by the Appeals Board are "acted upon within 60 days from the date of filing" pursuant to section 5909, by either denying or granting the petition. The exception to this rule are those petitions not received by the Appeals Board within 60 days due to irregularities outside the petitioner's control. (See *Rea, supra*, 127 Cal.App.4th at p. 635, fn. 22.) Pursuant to the holding in *Shipley* allowing tolling of the 60-day time period in section 5909, the Appeals Board acts to grant or deny such petitions for reconsideration within 60 days of receipt of any such petition, and thereafter to issue a decision on the merits. By doing so, the Appeals Board also preserves the parties' ability to seek meaningful appellate review. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra,* 68 Cal.2d at p. 753.)

Assuming that lien claimant's petition was filed on May 10, 2023, a response by the Appeals Board was due on July 10, 2023, which was the next business day after the 60th day following the filing of the petition. However, due to the unusual circumstances, the petition was not in FileNet until June 15, 2023, the case was not transmitted to the WCAB until June 15, 2023, and the petition was not available for review by the Appeals Board until then. It is unclear whether this irregularity was the fault of either party. Thus, pursuant to *Shipley*, the time within which the Appeals Board was to act on the petition for reconsideration was arguably tolled until the petition became available to the Appeals Board.

Whether or not the petition was timely, as discussed below, we will not disturb the WCJ's decision. We begin our discussion of the merits of lien claimant's petition by noting that the California Workers' Compensation system was intended by the legislature to be a complete system, as described in Divisions 4 and 5 of the Labor Code. These divisions represent an expression of the police power and are intended to make effective and apply to a complete system of workers' compensation the provisions of Section 4 of Article XIV of the California Constitution.

Article XIV provides in relevant part that "administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character…." (Cal.Const., art XIV, § 4.) Thus, under the grant of authority in the California Constitution, the Appeals Board operates as an appellate court of limited jurisdiction that reviews and decides appeals from decisions issued by workers' compensation administrative law

judges. (Cal. Const., art. XIV, § 4; §§ 111-116, 133-134, 3201, 5300-5302, 5900 et seq.; *Bankers Indemnity Ins. Co. v. Industrial Acc. Com.* (1935) 4 Cal.2d 89; *Fremont Indemnity v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965 [49 Cal.Comp.Cases 288]; *Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 376 [57 Cal.Comp.Cases 391] ["[t]he WCAB . . . is a constitutional court"].)

In *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1087-1088 [80 Cal.Comp.Cases 1262], the Court of Appeal explained that: "The state Constitution gives the Legislature 'plenary power … to create … and enforce a complete system of workers' compensation.' (Cal. Const., art. XIV, § 4.) Acting under this power, the Legislature enacted the workers' compensation law to govern compensation to California workers who are injured in the course of their employment. (§ 3201 et seq.)." The right to workers' compensation benefits is "wholly statutory," "exclusive of all other statutory and common law remedies, and substitutes a new system of rights and obligations for the common law rules governing liability of employers for injuries to their employees." (*Castellanos v. State of California* (2024) 16 Cal.5th 588, 605 [89 Cal.Comp.Cases 744], citing *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002, 1003 [229 Cal. Rptr. 494].)

In discussing Article XIV, section 4 of the California Constitution, the court in *Stevens* noted that:

> [S]ection 4 "affirms the legislative prerogative in the workers' compensation realm in broad and sweeping language" and confers on the Legislature "the power to 'fix and control the method and manner of trial of any … dispute[s over compensation for injury] [and] the rules of evidence [applicable to] the tribunal or tribunals designated by it.'" ([*City and County of San Francisco v. Workers' Comp. Appeals Bd.* (*Wiebe*) (1978) 22 Cal.3d 103, 115 [148 Cal. Rptr. 626, 583 P.2d 151]], at p. 115.) The Legislature's broad power over workers' compensation matters has been repeatedly affirmed. (See, e.g., *Bautista, supra,* 201 Cal.App.4th at p. 725 ["The grant of 'plenary power …' gives the Legislature complete, absolute, and unqualified power to create and enact the workers' compensation system."]; *Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 650 [77 Cal. Rptr. 3d 731] [intent behind Cal. Const., art. XIV, § 4 "was … to endow [the Legislature] expressly with exclusive and 'plenary' authority to determine the contours and content of our state's workers' compensation system"].) These cases confirm that nearly any exercise of the Legislature's plenary powers over workers' compensation is permissible so long as the Legislature finds its action to be "necessary to the effectiveness of the system of workers' compensation." (*Greener v. Workers' Comp. Appeals Bd.*, *supra*, 6 Cal.4th at p. 1038, fn. 8.)

(Id. at pp. 1094-1095.)

Section 5304 is an expression of the legislature's plenary power to enact and enforce a complete system of workers' compensation, and to limit that system as is deemed necessary. Originally enacted in 1937, and remaining virtually unchanged since then, section 5304 provides:

> The appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer.

(Lab. Code, § 5304.)

The legislature has determined that in the event of any controversy arising out of medical treatment provided pursuant to sections 4600 to 4605 inclusive, where the controversy is between two or more parties to an express agreement fixing the amount to be paid the WCAB lacks jurisdiction to decide the issue. This is consistent with the principle that the Appeals Board has exclusive jurisdiction over proceedings concerning the right to compensation and should address issues of contract interpretation between parties only when necessary to determine issues over which it has exclusive jurisdiction. (*Victor Valley Transit Authority v. Workers' Comp. Appeals Bd.* (*Sophy*) (2000) 83 Cal.App.4th 1068 [65 Cal.Comp.Cases 1018].)

Here, there is no dispute that lien claimant entered a "Facility Agreement" with Anthem Blue Cross on May 3, 2013. (Ex. H, Anthem Blue Cross Facility Agreement with ValleyCare Medical Center, dated May 3, 2013.) As is noted by the WCJ in her Opinion on Decision, the agreement specifically provides that "[t]he Managed Care Network may be sold, leased, transferred or conveyed to Other Payors, which may include workers' compensation insurers...." (*Id.* at p. 9, para. 2.22.)

Nor is there a dispute that SCIF entered into a Managed Care Services Agreement with Bue Cross Life and Health on May 1, 1998. (Ex. K.) The Opinion on Decision also notes that pursuant to the October 1, 2023 newsletter issued by Blue Cross, a Network Leasing Arrangement Disclosure lists defendant as among the "Other Payors" for workers' compensation treatment. (Ex. I, Network Leasing Arrangements Disclosure by Anthem, dated October 1, 2021, at p. 82.)

In *Tri-City Medical Center v. Workers' Comp. Appeals Bd.* (*Streeter*) (2010) 75 Cal.Comp.Cases 790 [2010 Cal. Wrk. Comp. LEXIS 97], lien claimant Tri-City Medical Center

provided medical treatment pursuant to section 4600 to applicant who had sustained an admitted industrial injury. Tri-City Medical had a contract with Blue Cross, and affiliate Blue Cross Life and Health Insurance Company had an agreement with SCIF. Because a chain of contracts existed between the provider, Tri-City Medical Center, and the payor, SCIF, we held that there was an express agreement that obviated WCAB jurisdiction. We noted:

> In the law of contracts, "express" means only that the agreement be "stated in words," (Civil Code section 1620), rather than implied by the conduct of the parties. (See Witkin, Calif. Law, Contracts, § 11.) Section 5304 does not require that the agreement of the parties be expressed within the four corners of a single contract. Rather, it is entirely appropriate to review the terms of several inter-related contracts to determine whether there was an agreement to fix the amounts to be paid for medical treatment between Tri-City and SCIF as an "other payor."
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> (*Id.* at p. 794.)

Having concluded that an express agreement existed between Tri-City and SCIF, we affirmed the WCJ's determination that pursuant to section 5304 the WCAB lacked jurisdiction over the dispute.

In response to lien claimant's Petition for Writ of Review, the Court of Appeal noted:

> Substantial evidence supports the WCAB's finding the contract between Tri-City and Blue Cross read in conjunction with the contract between Blue Cross Life and Health and State Fund formed a chain of contracts resulting in an express agreement between Tri-City and State Fund within the meaning of section 5304, divesting the WCAB of jurisdiction. As the WCAB noted in its decision, the evidence shows Tri-City and Blue Cross entered into an agreement to channel patients to Tri-City, including individuals entitled to treatment under worker's compensation insurance policies such as that provided by State Fund; and an agreement between Blue Cross Life and Health and State Fund provided State Fund access to the Blue Cross managed care services program. The agreements between Blue Cross Life and Health and State Fund entitled State Fund to use Tri-City's hospital services as an other payor at the preferred rates negotiated by Blue Cross. The WCAB did not err by finding Blue Cross met disclosure requirements of section 4609, subdivision (a) in that the contract between Tri-City and Blue Cross states additional other payors who may participate in the managed care network may be added by agreement, and Blue Cross provided adequate notification of the addition of other payors such as State Fund.
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> *(Id.* at pp. 795-796.)

Lien claimant contends, however, that the analysis in *Streeter* is inapplicable because the decision predated the reform legislation enacted by SB863 in 2013. (Petition, at p. 4:8.) Lien claimant also asserts that defendant should be estopped from arguing a lack of WCAB jurisdiction over this dispute because defendant tendered the dispute to the Bill Review process, and erroneously claimed to have paid per the Official Medical Fee Schedule rather than at contracted rates. (*Id.* at p. 4:18.) Lien claimant concludes that the EORs were issued in error and were sufficiently irregular as to invalidate the selling or leasing of lien claimant's contract with Blue Cross to defendant and payor SCIF. (*Id.* at p. 6:1.)

However, lien claimant's Petition offers no substantive discussion of why the defendant's erroneous resort to the bill review process would obviate the operation of section 5304 and confer WCAB jurisdiction over this dispute. To the extent that lien claimant appears to contend that SCIF should be estopped from asserting a lack of jurisdiction based on its conduct in this matter, we note that "[a] party may invoke equitable estoppel to prevent his opponent from changing positions if (1) he was an adverse party in the prior proceeding (2) he detrimentally relied upon his opponent's prior position and (3) he would now be prejudiced if a court permitted his opponent to change positions … [e]quitable estoppel focuses on the relationship between the parties,[] and is designed to protect litigants from injury caused by 'less than scrupulous opponents.'" (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171 [62 Cal.Comp.Cases 1670, 1678].) Here, however, lien claimant's petition fails to substantively address *any* of the requirements for equitable estoppel, including detrimental reliance or prejudice. Neither does the petition offer any citation to the record or any statutory or caselaw authority to support its argument for jurisdiction by estoppel.

Accordingly, we concur with the WCJ's conclusion that the WCAB lacks jurisdiction over this dispute because the reimbursement issues herein arose out of treatment rendered pursuant to sections 4600 to 4605 inclusive, and there is an express agreement between lien claimant and defendant fixing the amounts to be paid for medical, surgical or hospital treatment. In so finding, we offer no opinion as to the merits of lien claimant's assertions with respect to reimbursement for services provided to the applicant. The parties remain free to pursue any remedy afforded under the law in an appropriate forum. We will affirm the Findings of Fact, accordingly.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 20, 2023 Findings of Fact is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 9, 2024

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

CEZAR TORREZ CARMICHAEL
DENNIS MURDERS
EBM CONSTRUCTION
GETEXHEALTH PUYALLUP
STATE COMPENSATION INSURANCE FUND
VALLEYCARE HEALTH SYSTEMS

SAR/abs

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