

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

DERRICK LANGFORD, *Applicant*

vs.

**ARIZONA DIAMONDBACKS; FAIRMONT PREMIER INSURANCE COMPANY,
Administered by ZENITH INSURANCE COMPANY; ATLANTA BRAVES;
ALLIANZ INSURANCE, *Defendants***

**Adjudication Number: ADJ8671084
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings and Order of December 8, 2020, the Workers' Compensation Administrative Law Judge ("WCJ") found that applicant Derrick Langford, while employed as a professional baseball player by the Arizona Diamondbacks and Atlanta Braves from November 1, 1995 to December 31, 1997, claimed to have sustained injury arising out of and in the course of employment to his brain, face, head, neck, and "multiple," that the employer's workers' compensation carriers were Allianz Insurance and Fairmont Premier Insurance Company c/o Zenith Insurance Company, and that the Workers' Compensation Appeals Board ("WCAB") approved a Compromise and Release of applicant's case-in-chief on June 20, 2018. The WCJ also found that the dispute over the medical-legal expense of the cost petitioner, Dr. Myron Nathan ("Dr. Nathan") is subject to a "non-IBR [Independent Bill Review]" determination under 8 Cal. Code Regs. section 10451.1(c), because Dr. Nathan asserted that Zenith Insurance Company ("defendant") waived objection to his billing. In addition, the WCJ found, in relevant part, that Dr. Nathan appropriately billed his May 23, 2018 report as a ML-104, that defendant's Explanations of Review ("EORs") did not comply with Labor Code section 4603.3, and that defendant owes Dr. Nathan the difference between the amount paid and the amount billed, plus 10% penalty and 7% interest. Pursuant to these findings, the WCJ ordered defendant to pay Dr.

Nathan's billing for his medical-legal report in full, less amounts previously paid, plus a 10% penalty on the delayed payment and 7% interest. The WCJ deferred the issue of attorney's fees and sanctions against defendant, pending receipt of an itemized attorney's bill.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends that the WCAB lacks jurisdiction over this dispute because it involves the reasonable value of Dr. Nathan's services, that defendant paid Dr. Nathan's bill within the timeframes of Labor Code section 4622, that defendant's EORs complied with the requirements of Labor Code section 4603.3, that Dr. Nathan's claim is barred by his failure to request Independent Bill Review ("IBR") following defendant's response his request for second bill review, that Dr. Nathan's claim is barred by his failure to object within ninety days to defendant's initial EOR, that Dr. Nathan's claim is barred by the Statute of Limitations for lien claimants per Labor Code sections 4903(b) 4903.5, and that defendant is not liable for penalties, interest, sanctions, costs or attorney's fees.

Dr. Nathan filed a 34-page answer. Dr. Nathan's attorney, William Tappin, is admonished for exceeding the ten-page limit for an answer and for failing to file a separate petition pursuant to WCAB Rule 10940(d), made under penalty of perjury, requesting permission to exceed the ten-page limit. (Cal. Code Regs., tit. 8, § 10940(d).) Mr. Tappin should abide by the Board's rules of practice and procedure in all future matters or risk the imposition of sanctions. (Lab. Code, § 5813.)

The WCJ submitted a Report and Recommendation ("Report"). We adopt and incorporate the Report's recitation of facts as set forth below. Unless otherwise specified within this opinion, we do not adopt or incorporate the remainder of the Report.

Based on our review of the record and applicable law, we find merit in defendant's contention that the WCAB lacks jurisdiction over this dispute because its essence is the reasonable value of Dr. Nathan's services, not coding or the rectitude of defendant's EORs as suggested by the WCJ. We also conclude that it is appropriate to allow this matter to proceed to IBR. Accordingly, we will rescind the WCJ's decision and replace it with a decision reflecting the above conclusions.

FACTUAL BACKGROUND

In his Report, the WCJ describes the relevant factual chronology as follows:

1. The Applicant, Derrick Langford, while employed during the period January 1, 1995 to December 31, 1997, as a professional baseball player, by the Arizona Diamondbacks and Atlanta Braves, claims to have sustained injury

arising out of and in the course of employment to the brain, face, head, neck, and multiple.

2. The Zenith Insurance Company (Zenith) retained Dr. Myron L. Nathan as its Qualified Medical Evaluator in psychiatry. The defense counsel's cover letter to the doctor states, "thank you for agreeing to evaluate the applicant in your capacity as a defense Qualified Medical Evaluator." The letter indicates Dr. Nathan should consider it "authorization to perform a complete medical evaluation," The letter requests Dr. Nathan address numerous issues, including AOE/COE and apportionment. (Correspondence from Chernow & Lieb dated March 23, 2018, [medical-legal provider's Exh. 1])
3. Dr. Nathan wrote his report and served it on March 27, 2018. (medical-legal provider's Exh. 2) On April 27, 2018, the Defendant date stamped its receipt of the doctor's itemized billing statement. (Defendant's Exh. G)
4. Defendant generated three EORs...related to the payment of Dr. Nathan's report. The first EOR dated May 7, 2018, recommended no reimbursement to the doctor (Zenith EOR dated May 9, 2018 [Defense Exh. F]). The second EOR, dated May 23, 2018, reduced the PQME report's charges in psychiatry from \$4,687.50 to \$62.50. (Zenith EOR dated May 23, 2018 [medical-legal provider's Exh. 3])
5. Dr. Nathan filed a Provider's Request for Second Bill Review on June 12, 2018, objecting to the payment and explaining why the report is payable under the ML 104 code. (Provider's Request for Second Bill Review, June 12, 2018 [medical-legal provider's Exh. 4])
6. The third EOR, dated June 26, 2018, authorized an additional payment of \$875 under the ML 103 code. (Zenith EOR dated June 26, 2018 [medical-legal provider's Exh. 5])
7. On August 7, 2019, the medical-legal provider filed [with the WCAB] a Petition to Resolve Medical-Legal Dispute, Non-IBR.
8. [In the decision disputed upon reconsideration], the WCJ directed the Defendant to pay the medical-legal provider, with penalties, interest, and costs. It is to this Findings and Order that [defendant] objects.

With the above factual chronology mind, we note the WCJ's Opinion on Decision explains the basis for asserting the jurisdiction of the WCAB over this medical-legal dispute, as follows:

A matter is [not] subject to [IBR] if the medical-legal provider asserts that the defendant has waived any objection to the amount of the bill because the defendant did not comply with the "relevant requirements, timelines, and procedures set forth in Labor Code section 4622, 4603.3, and 4603.6 and the

related Rules of the Administrative Director.” (8 CCR Section 10451.1(c)(1).) Cost Petitioner [Dr. Nathan] contends, among other things, that the defendant’s Explanations of Review do not comply with Labor Code Section 4603.3.

A defendant is said to waive all objections to the medical-legal provider’s billing if the defendant either “(I) failed to serve explanation of review (Explanation of Review) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director and/or (II) failed to make payment consistent with that Explanation of Review.” (8 CCR Section 10451.1(f)(1)(A)(i).) The [WCJ] finds that since the defendant did not serve any [EORs] that complied with Labor Code Section 4603.3, [defendant] waived all objection to the billing and that the matter is subject to the non-IBR process under 8 CCCR Section 10451.1(c)(1). The WCAB has jurisdiction over non-IBR disputes.

The dispute at bar is not limited to the reasonable value of services. It is over whether the Explanations of Reviews fail to provide the basis for the bill’s adjustment or change. Under 8 CCR Section 9794(f), if an employer denies liability for a medical-legal expense for any reason other than the amount to be paid per fee schedule, the denial must explain the legal, medical, or factual basis of the decision in the explanation of review. The Explanations of Review failed to comply with the above requirement.

DISCUSSION

In his sixth Finding within the Findings and Order of December 8, 2020, the WCJ found that defendant’s EORs did not comply with Labor Code section 4603.3. In his Report (pp. 5-6), the WCJ concludes that with its third EOR of June 26, 2018, defendant timely paid Dr. Nathan’s bill 60 days after receiving it on April 27, 2018, as required by Labor Code section 4622(a)(2)(A). Based on this conclusion, the WCJ recommends in his Report that his sixth Finding should be amended to state that defendant paid Dr. Nathan’s billing within 60 days as required under Labor Code section 4622(a)(2)(A).

We agree that defendant’s payment of June 26, 2018 was timely. If we were to follow the WCJ’s recommendation, it also would require rescission of the WCJ’s seventh Finding, which imposed a ten percent penalty and seven percent interest on the balance of Dr. Nathan’s bill. This is because Labor Code section 4622(a) authorizes the ten percent penalty and seven percent interest if a defendant does *not* timely pay the medical-legal bill within 60 days.

Moreover, the WCJ’s recommended amendment of his sixth Finding would require deletion of that Finding’s original conclusion that defendant’s EORs did not comply with Labor Code section 4603.3. As further discussed below, we disagree with the original conclusion. In

addition, we are persuaded the WCJ erred in finding that this matter involves anything other than a dispute over the reasonable value of Dr. Nathan's medical-legal report. Therefore, we will rescind the WCJ's decision in its entirety and allow this matter to proceed to IBR.

As noted before, the WCJ stated in his Opinion on Decision: "The dispute at bar is not limited to the reasonable value of services. It is over whether the Explanations of Reviews fail to provide the basis for the bill's adjustment or change."

We disagree. The WCJ's factual chronology shows that defendant generated three EORs related to reimbursement of Dr. Nathan's report. The first EOR, dated May 7, 2018, recommended no reimbursement to the doctor. The second EOR, dated May 23, 2018, reduced the charges for Dr. Nathan's report in psychiatry from \$4,687.50 to \$62.50. Then, after Dr. Nathan filed a Provider's Request for Second Bill Review on June 12, 2018, which objected to the payment and explained why the report is payable under the ML 104 code, defendant issued a third EOR, dated June 26, 2018, authorizing an additional payment of \$875.00 under the ML 103 code.

In our view, the above chronology shows that regardless of the quality of defendant's EORs, the essence of the dispute between defendant and Dr. Nathan was the reasonable value of his services, for which he billed defendant \$4,687.50. In its first EOR, defendant recommended that nothing be paid. The second EOR pried open defendant's wallet to the tune of \$62.50. The third EOR was the relative charm, with defendant authorizing an additional payment of \$875.00, for a total of \$937.50 - the amount then payable under the ML 103 code for a complex evaluation. (Administrative Director Rule 9795, Cal. Code Regs., tit. 8, § 9795.)¹

Even though defendant's third EOR continued to maintain that Dr. Nathan had provided a complex evaluation, not an extraordinary evaluation (ML 104) per the doctor's request for second review, a neutral observer would conclude that defendant's third EOR demonstrated a continuing objection to the reasonable value of Dr. Nathan's report - defendant would pay only 20% of his original bill for \$4,687.50. Accordingly, we conclude that defendant's EORs substantially complied with applicable statutory and regulatory requirements, in that defendant attempted to firmly communicate to Dr. Nathan that the amount of reimbursement was the essence of the dispute. (See *Martinez v. Sun Valley Group* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 573

¹ The reasonable value of medical-legal services has been updated since the time of Dr. Nathan's 2018 report and the WCJ's 2020 decision. Effective April 1, 2021, a comprehensive medical-legal evaluation, coded ML 201, is worth \$2,015.00.

[Consistent with Labor Code section 4603.3, defendant’s EORs provided “sufficient guidance” to trigger lien claimant’s duty to request second review.]

We further note that Dr. Nathan did not respond to defendant’s third EOR of June 26, 2018 until August 7, 2019, when he filed his Petition for Determination of Non-IBR Medical-Legal Dispute with the WCAB. The introduction to this Petition states, in relevant part, that Dr. Nathan requests a Mandatory Settlement Conference “with respect to his *underpaid billing* related to his Qualified Medical Examination Report of March 27, 2018 in the field of Psychiatry,” and that “this Petition is for *payment for the Qualified Medical Examination billing in full*... [.]”

Dr. Nathan’s own introduction to his “non-IBR” petition contradicts the statement in the WCJ’s Opinion on Decision that “[t]he dispute at bar is not limited to the reasonable value of services. It is over whether the Explanations of Reviews fail to provide the basis for the bill’s adjustment or change.” In fact, it appears that the reverse is true. That is, defendant’s repeated EORs with substantial underpayment of Dr. Nathan’s original bill demonstrate that the essence of this matter is a dispute over the reasonable value of the doctor’s services, not whether his report was correctly coded at ML 103 or ML 104. (See *Bailey v. California Dept. of Corrections & Rehabilitation* (2023) 2023 Cal. Wrk. Comp. P.D. LEXIS 371 [The only dispute is the amount of payment though the amount of payment depends on the procedure code.]; *Green v. Mountain Shadows Support Group* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 347 [An issue regarding the amount of the reimbursement is a bill review issue subject to IBR, not a legal issue for the WCAB.]

In addition, we note that subdivision (f) of section 4063.6 provides:

The determination of the independent bill reviewer shall be deemed a determination and order of the administrative director. The determination is final and binding on all parties unless an aggrieved party files with the appeals board a verified appeal from the medical bill review determination of the administrative director within 20 days of the service of the determination. The medical bill review determination of the administrative director shall be presumed to be correct and shall be set aside only upon clear and convincing evidence of one or more of the following grounds for appeal: (1) The administrative director acted without or in excess of his or her powers. (2) The determination of the administrative director was procured by fraud. (3) The independent bill reviewer was subject to a material conflict of interest that is in violation of Section 139.5. (4) The determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. (5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a

matter of ordinary knowledge based on the information submitted for review and not a matter that is subject to expert opinion.

In our view, by making an IBR determination presumptively correct and by authorizing appeal to the WCAB only on limited grounds with clear and convincing evidence, subdivision (f) of section 4063.6 demonstrates a clear legislative intent to significantly narrow the WCAB's jurisdiction over medical-legal bill disputes. (See *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal. 4th 382, 387 (58 Cal.Comp.Cases 286, 289) [The fundamental rule of statutory construction is to effectuate the Legislature's intent.])

However, we do not end our analysis with the conclusion that the WCAB does not have jurisdiction to resolve the instant dispute between defendant and Dr. Nathan. We conclude that Dr. Nathan still should have the opportunity to pursue IBR for additional payment.

Labor Code section 4603.6(a) states:

If the only dispute is the amount of payment and the provider has received a second review that did not resolve the dispute, the provider may request an independent bill review within 30 calendar days of service of the second review pursuant to Section 4603.2 or 4622. If the provider fails to request an independent bill review within 30 days, the bill shall be deemed satisfied, and neither the employer nor the employee shall be liable for any further payment. If the employer has contested liability for any issue other than the reasonable amount payable for services, that issue shall be resolved prior to filing a request for independent bill review, and the time limit for requesting independent bill review shall not begin to run until the resolution of that issue becomes final, except as provided for in Section 4622.

In this case, the evidence admitted by the WCJ does not show that Dr. Nathan requested IBR within 30 days of receiving defendant's EOR of June 26, 2018. Under the first two sentences of section 4603.6(a), Dr. Nathan's bill of \$4,687.50 could be deemed finally satisfied after defendant's ultimate payment of \$937.50, which followed Dr. Nathan's request for second review. However, the first two sentences of section 4603.6(a) authorize such a result where "the only dispute is the amount of payment [.]". Here, although the only dispute *is* the amount of payment due Dr. Nathan, it bears repeating that the third sentence of section 4603.6(a) states:

"If the employer has contested liability for any issue other than the reasonable amount payable for services, that issue shall be resolved prior to filing a request for independent bill review, and the time limit for requesting independent bill review shall not begin to run until the resolution of that issue becomes final, except as provided for in Section 4622."

In this case, after Dr. Nathan received the last of defendant’s EORs on June 26, 2018, he could reasonably believe – albeit mistakenly - that defendant actually disputed the complexity/code, i.e., ML 103 versus ML 104. Dr. Nathan also could reasonably believe that the issue was subject to a “non-IBR” petition to the WCAB. In that case, the third sentence of 4603.6(a) indicates that the issue required resolution before a request for IBR, and the time limit for requesting IBR did not begin to run until the resolution of the issue became final. Accordingly, we conclude that the time limit for Dr. Nathan to request IBR runs from the time of our Decision After Reconsideration herein.

Finally, we note that Dr. Nathan filed a supplemental petition on March 12, 2024, requesting that this matter be returned to the trial level “for further disposition at this time.” In the supplemental petition, Dr. Nathan cites *Zurich American Ins. Co. v. Workers’ Comp. Appeals Bd.* (2023) 97 Cal.App.5th 1213 [89 Cal.Comp.Cases 1] and claims that after sixty days, defendant’s petition for reconsideration herein was denied by operation of law pursuant to Labor Code section 5909.

We reject Dr. Nathan’s supplemental petition pursuant to WCAB Rule 10964, which forbids such petitions. (Cal. Code Regs., tit. 8, § 10964.) Even if we had accepted the supplemental petition, we would have denied it because there is no WCAB jurisdiction for “further disposition at this time” and because the Appeals Board does not deny petitions for reconsideration by operation of law under Labor Code section 5909. (*Ja’Chim Scheuing (Sandra) v. Lawrence Livermore National Laboratory* (2024) 89 Cal.Comp.Cases 325 [Significant Panel Decision].)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the Findings and Order of December 8, 2020 is **RESCINDED**, and the following Finding and Order is **SUBSTITUTED** in its place:

FINDING

1. The dispute between defendant and Dr. Nathan concerns the amount of payment for the doctor’s medical-legal report and therefore is subject to Independent Bill Review, not WCAB jurisdiction except as provided in Labor Code section 4063.6(f).

ORDER

IT IS ORDERED that Dr. Nathan retains the right to pursue Independent Bill Review consistent with the third sentence of Labor Code section 4603.6(a) and the right of appeal to the WCAB only as provided in Labor Code section 4603.6(f).

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 31, 2024

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

**MYRON L. NATHAN, M.D.
LAW OFFICES OF TAPPIN & ASSOCIATES
CHERNOW AND LIEB
DERRICK LANGFORD**

JTL/ara

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