

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

**FLAVIO SANCHEZ *Applicant***

**vs.**

**REHRIG PACIFIC COMPANY; U. S. FIRE INSURANCE,  
administered by ZENITH INSURANCE, *Defendants***

**Adjudication Number: ADJ7966725  
Van Nuys District Office**

**OPINION AND ORDER GRANTING  
PETITION FOR RECONSIDERATION**

Platinum Copy, Inc. (PCI) seeks reconsideration of the Findings, Award and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on May 30, 2024. In that decision, the WCJ found that PCI was entitled to payment plus penalties and interest for their services in obtaining records from Yanigahara & Sons and Foundation Medical Group, but denied payment for the subpoenaed records from Robin Jacobs, Esq. on the basis that the subpoena for the prior attorney's file was not issued to prove or disprove a medical-legal dispute.

Petitioner contends the WCJ erred, as these records were potentially relevant to issues in the case, and that there is no requirement by applicant's new attorney to first seek to obtain such records by way of written release. Petitioner requests that the decision of the WCJ be amended to find the additional copy services reimbursable, or that the matter be remanded back to the trial level for further proceedings.

We have received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

Based upon our preliminary review of the record, we will grant PCI's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the

applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

## I.

Preliminarily, we note the following, which may be relevant to our review:

The Opinion of the WCJ states in pertinent part:

\*\*\*

A Medical-legal cost can only be allowed if the cost was incurred to prove or disprove a medical-legal dispute. Unless the prior Applicant's attorney (Robin Jacobs) had somehow refused to hand over their file to new counsel, there is no valid medical-legal issue pending that is addressed by a subpoena of the prior attorney's records. As Platinum pointed out, the attorney is required to turn over the file. Obtaining that file is the responsibility of the new attorney. Getting those records would be an office expense, not a medical-legal cost.

(Opinion, p. 6.)

Petitioner addresses this issue as follows:

...Platinum Copy, Inc. is not aware of any legislation or cases, nor has the Honorable WCALJ mentioned any legislation or cases, which mandates that a new attorney first seek to obtain records from the prior attorney informally prior to subpoenaing said record formally. The Honorable WCALJ has not referenced any legislation supporting his statement that "Getting those records would be an office expense."

In the case of *Ronald Lopez v. Lauramark Enterprises, Inc.* 2016 Cal.Wrk. Comp. P.D. LEXIS 644 "Applicant's new attorney utilized lien claimant to subpoena records from six locations including medical providers, the WCAB, and applicant's former attorney." (emphasis added)

The Appeals Board held in *Lopez*, *ibid* that "It is not necessary that the attorney first seek to obtain copies of documents by way of written release, before seeking them by subpoena, in order for there to be a valid lien for photocopying the documents. (Cal. Code Regs., tit, 8, § 10530)," and found that "In this case there is no evidence that applicant's attorney abused his discretion in obtaining documents by way of subpoena" because "Applicant's attorney's decision to obtain records by subpoena rather than written request was within the attorney's discretion and the WCJ incorrectly determined that the expenses were not reasonably and necessarily incurred based on potential alternative methods for obtaining the documents."

Accordingly, although the prior attorney is required to provide records to the Applicant upon request, there is no requirement for Applicant to make any informal request from their prior attorney before subpoenaing their own records

from the same, which is within the Applicant's (and his Attorney's) discretion to decide how best to obtain the records for the best representation of the Applicant.

(Petition, p. 6.)

A party's ability to subpoena records is governed by the Labor Code and the WCAB Rules of Practice and Procedure which generally provide "adequate tools to the practitioner for liberal discovery." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [84 Cal. Rptr. 2d 915, 64 Cal.Comp.Cases 624].)

The public policy of liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison, supra*, at 663.) Labor Code 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. Younique 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).)

## II

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] [“The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims.”]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, it is unclear from our preliminary review whether the legal issues have been properly identified; whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary with respect to the issues noted above.

### III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal. pp.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation

proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

“No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...”

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

#### IV.

Accordingly, we grant PCI’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to [WCABmediation@dir.ca.gov](mailto:WCABmediation@dir.ca.gov) .

For the foregoing reasons,

**IT IS ORDERED** that PCI’s Petition for Reconsideration of the Findings, Award, and Order issued on May 30, 2024 by a workers’ compensation administrative law judge is **GRANTED**.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 22, 2024**

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

**PLATINUM COPY, INC.  
CHERNOW, PINE & WILLIAMS**

**LAS/abs**

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