

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

GLORIA NEGRETE, *Applicant*

vs.

**LAUREL WELNESS & NURSING CENTER;
AMERICAN CASUALTY COMPANY of Redding Pennsylvania, *Defendants***

**Adjudication Number: ADJ9947955
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Cost petitioner Citywide Scanning Service (cost petitioner) seeks reconsideration of the June 30, 2022 Findings & Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found in relevant part that cost petitioner is entitled to \$3,894.20 in costs for services less previous payments and \$13.73 in penalties and interest and disallowed the remaining costs for services.

Cost petitioner contends that the WCJ was correct in finding that applicant's claim was contested at the time it performed its services, but he erred by not finding that all of the services it performed were reasonable and necessary, and that it should be reimbursed for all services it performed.

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

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we affirm the amounts awarded to cost petitioner but defer the issues regarding the subpoenas that the WCJ disallowed, and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

We will briefly review the relevant facts.

Applicant's completed DWC-1 claim form dated January 29, 2015, was filed on April 29, 2021. (Exhibit 1, 1/29/2015.)

The first Application for Adjudication was filed on May 6, 2015, by applicant's former attorneys, Law Offices of Fari Rezai, claiming applicant sustained injury arising out of and in the course of employment to her neck, upper extremity, shoulders, lower extremities, back, arm, knees, ankles, legs, and right middle finger while employed by defendant as a nurse assistant on January 26, 2015.

Defendant sent applicant a letter dated March 27, 2015, titled, Notice Regarding Temporary Disability Benefits Denial, which states, "Although liability for your workers' compensation injury has been accepted, I cannot pay you temporary disability benefits because you have been released to modified duties and modified duties are available with your employer." (Exhibit E, 3/27/2015.)

On April 4, 2015, applicant's attorney was substituted out by applicant. (Exhibit A, 4/4/2015.)

On July 6, 2015, defendant's attorneys filed a Notice of Representation.

On October 14, 2016, applicant filed a Notice of Dismissal of Attorney, dated October 12, 2016, dismissing Fari Rezai as her attorney of record and substituting herself in Pro Per.

On October 14, 2016, applicant filed a Substitution of Attorney, substituting in the Law Offices of Solov Teitell as her attorney of record.

Between October 27, 2016 through November 17, 2017, applicant's attorney submitted order referrals for various sources from cost petitioner at various locations. (Exhibits 2-13, 10/27/2016-11/17/2017.)

Between October 28, 2016, through September 27, 2017, at the request of applicant's attorney, cost petitioner issued several Notices to Interested Parties of Copying and Additional Set Order Forms. (Exhibits 53-64, 10/28/2016-9/27/2017.)

From November 3, 2016, through November 17, 2017, cost petitioner issued several subpoenas duces tecum at the request of applicant's attorney. (Exhibits 16-52, Various Subpoena Duces Tecum, 11/3/2016-11/20/2017.)

During the period from November 9, 2016 to November 30, 2017, cost petitioner issued numerous invoices for its copy services. (Exhibits 89-104, Various Invoices, 11/9/2016-11/30/2017.)

On September 27, 2018, the Law Offices of Carl A. Feldman, sent a letter with a Substitution of Attorneys form signed by applicant, and a request for her file to Solov Teitell, applicant's previous attorney because he was substituting in as her attorney. (Exhibit B, 9/24/2018.)

On April 10, 2019, applicant filed a Substitution of Attorneys, substituting herself as in pro per.

On April 22, 2019, applicant filed a Substitution of Attorney, substituting in the Law Offices of Solov Teitell as her attorney of record. Also on April 22, 2019, applicant filed a Notice of Dismissal of Attorney, dismissing Collinson Daenkhe as her attorneys.

On April 30, 2019, applicant filed a Notice of Dismissal of Attorney, dismissing Carl Feldman as her attorney.

On January 7, 2020, defendant objected to cost petitioner's Petition for Determination of Medical-Legal Expense Dispute.

On December 18, 2020, cost petitioner filed a Petition for Determination of Medical-Legal Expense Dispute (Petition for Costs).

On February 9, 2021, the WCJ held a status conference in response to cost petitioner's declaration of readiness (DOR) seeking assistance in resolving its Petition for Costs. It contended that defendant failed to comply with Labor Code section 4622.

On March 17, 2022, cost petitioner and defendant proceeded to trial. The issues raised for trial were:

1. The petition filed by Citywide Scanning Service. The amount paid is \$180.00. The unpaid claim amount is \$8,327.99.
2. Other issues raised were:
 - a) Defendant violated [*sic*] of Labor Code 4622;
 - b) Defendant did not send timely or compliant EORs per Labor Code 4603.3;
 - c) Cost and sanctions Under Labor Code 5813, CCR 10786(i), and CCR 10421;
 - d) Whether or not defendant is precluded from the Doctrine of Judicial Estoppel to assert no contested claim existed;
 - e) Defense exhibits are not admissible per CCR 10875;

- f) Latches [*sic*];
- g) No Motion to Quash of objections to Subpoenas; [*sic*]
- i) Defendant is raising the issue that no consistent [*sic*] claim existed at the time of the subpoena.

(Minutes of Hearing, March 17, 2022.)

On June 30, 2022, the WCJ issued the F&A. In relevant part, it was found that the present case **was contested as early as October 28, 2015**. The WCJ awarded cost petitioner \$3,907.93 for services it performed less previous payments and penalties and interest in the amount of \$13.73.

The WCJ disallowed the following invoices:

12160-1 and 12160-1A for Records of Laurel Wellness and Nursing Center;
12160-2, 12160-2A, 12160-36 for the Records of Gallagher Basset [*sic*];
12160-4 and 12160-4A for the records of the Law Office of Fari Rezai;
12160-8 and 12160-9 for records of Arrowhead Regional Medical Center;
12160-15 for the records of Pacifica Orthopedics;
12160-37, 12160-38, 1260-38A, 1260-39, 1260-40, 1260-41, and 1260-41(A) of Healthpoint Medical Group, Daydream Acupuncture, Downtown LA Ambulatory Surgical Center, Accident Injury & Family Therapy, and Southern California Diagnostic Medical Group.

(Findings and Award, 6/30/2022.)

In his Opinion on Decision, the WCJ stated that:

The issue presently before the Court is the Petition for Costs filed by Citywide Scanning for subpoena costs associated with the case.

In reviewing the file, the undersigned determined that all Exhibits should be admitted due to the nature of the dispute and to provide factual guidance to the timeline of the services provided that are the subject of this matter. As such, the Court will admit into evidence the entirety of exhibits submitted by the parties.

In regards to the billing submitted by Cost Petitioner, the Court finds as follows: Invoices 12160-1 and 12160-1A for Records of Laurel Wellness and Nursing Center, 12160-2, 12160-2A, and 12160-36 for the Records of Gallagher Basset are found to be non-compensable under Labor Code 3507.9 and 8 CCR 9982(d)(1). No evidence was submitted that any request was made directly to the parties and it appears that the subpoenas were issued without any prior request which could have been procured directly from the parties at a lower cost. The record does not reveal that any request was made to allow either the employer or their insurer to provide any requested documents.

Invoices 12160-4 and 12160-4A are for the records of the Law Office of Fari Rezai. This subpoena is also unreasonable in light of the facts. The record contains no request that Applicant's Counsel turn over Applicant's file or any documents; furthermore, the record does not reflect that any attempt was made to contact Applicant's prior counsel for the records or that said records were requested and refused or ignored. The charges are also unreasonable in that Applicant could have requested his file to deliver to his new attorney and no request was made to the Court to order that Applicant's prior counsel release Applicant's file to his new attorney.

Invoices 12160-7, 12160-8, and 12160-9 are all subpoenas to Arrowhead Regional Medical Center, directed to the medical, radiological, and billing department. The issuance of three subpoenas to the same facility is excessive and could have been accomplished under one subpoena. As such, the Court will allow for one subpoena charge of invoice 12160-7 and finds the other two subpoenas unreasonable. The Court further finds that the request for billing documents is unreasonable, as defendant is responsible for medical costs and no good cause is shown as to why such documentation would be needed by Applicant's counsel.

Invoice 12160-15 for the subpoena to Pacifica Orthopedics billing department is found to also be unreasonable as no good cause was shown why Applicant's counsel would require the billing statement, and could have been included in subpoena 12160-14 which was directed to the same entity.

It is also found that Invoices 12160-37, 12160-38, 1260-38A, 1260-39, 1260-40, 1260-41, and 1260-41(A) for the records of Healthpoint Medical Group, Daydream Acupuncture, Downtown LA Ambulatory Surgical Center, Accident Injury & Family Therapy, and Southern California Diagnostic Medical Group are unreasonable in that subpoenas for records to these facilities were requested approximately six months prior. Any new records issued from the date of the prior subpoena could have been obtained from Applicant's prior counsel or been requested from the facility by Applicant or from defendant.

(Opinion On Decision, 6/30/2022, pp. 6-7.)

DISCUSSION

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (§§ 4620, 4621, 4622(f); *Colamonico v. Secure Transport*, (2019) 84

Cal.Comp.Cases 1059 (Appeals Board en banc.) Here, the WCJ found that a contested claim existed as of October 28, 2015, and the first subpoena issued as on October 28, 2016. (Exhibit 17.) Thus, lien claimant met its burden that a contested claim existed pursuant to section 4620, and we will not disturb the WCJ's finding.

Once a lien claimant has met its burden of proof pursuant to section 4620(a), it has a second hurdle to overcome; the purported medical-legal expense must be reasonably, actually, and necessarily incurred. (§ 4621(a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Id.*)

Section 5307.9 states,

On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and ***shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim.*** The schedule shall be applicable regardless of whether payments of copy service costs are claimed under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(§ 5307.9 [italics and bold added for emphasis].)

AD Rule 9982(d) states in pertinent part that:

. . . . There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. . . .

(Cal. Code Regs., tit. 8, § 9982(d)(1).)

Although the above statute and regulation does not allow for payment of a subpoena duces tecum served within 30 days of a request for records, it does not state that a request for records must be requested before they can be subpoenaed. In other words, there is no mandate or requirement that an applicant or their attorney must make a request for records from the employer

or the insurer prior to requesting that a subpoena issue for records. Thus, a failure to make such a request is immaterial.

Here, the WCJ found that the subpoenas for records of Laurel Wellness and Nursing Center and the records of Gallagher Basset were non-compensable under section 5307.9 and Rule 9982(d)(1). He concluded that cost petitioner did not submit evidence that a prior request to the employer or their insurer was made with respect to those records. As explained above, requesting the records from the employer or the claims administrator prior to issuing a subpoena duces tecum is not required prior to issuing a subpoena duces tecum. Thus, the fact that the subpoena duces tecum issued without first requesting records from the employer and claims administrator is immaterial, and cost petitioner is entitled to payment for the services it provided.

Next, we consider the subpoenas for records from the Law Office of Fari Rezai, applicant's former attorney. The WCJ concluded that there was no evidence that a request to applicant's prior counsel for the records and no request was made to the Court to order that applicant's prior counsel release applicant's file to his new attorney.

In the panel decision in *Ronald Lopez v. Lauramark Enterprises, Inc.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 644, the Appeals Board concluded that it was 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), because “[a]pplicant’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.” (*Ronald Lopez v. Lauramark Enterprises, Inc.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 644.)

The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers’ compensation cases. (*Allison v. Workers’ Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers’ compensation cases.

Here, there is no requirement that an applicant’s attorney informally request records from the prior attorney before subpoenaing them. The decision about how best to proceed in a case is a matter of the attorney’s discretion. In addition, we believe that seeking the WCAB’s intervention

to obtain a prior attorney's records should be a last resort, and applicant's attorney's decision to use a subpoena duces tecum to obtain the records file is a reasonable choice.

Turning to the subpoena duces tecum to Arrowhead Medical Center, the WCJ concluded that issuance of three subpoenas to Arrowhead Medical Center was excessive and allowed payment for one subpoena, and determined that the other two subpoena duces tecum were unreasonable. He also concluded that the subpoena for the billing records from Pacifica Orthopedics was unreasonable. However, the Order Referral from applicant's attorney (Exhibit 3) reflects that applicant's attorney requested records from all three locations and requested the billing records. Regarding the subpoenas for Healthpoint Medical Group, Daydream Acupuncture, Downtown LA Ambulatory Surgical Center, Accident Injury & Family Therapy, and Southern California Diagnostic Medical Group, it appears that the subpoenas were not duplicative. It also appears that the subsequent requests for records were narrowed to records after the date of the last production. (See Exhibits 10, 11, 12.) The WCJ seems to indicate that he believed that applicant's attorney should have sought the records from applicant's prior attorneys or defendant, or through a request by applicant. (Report, p. 3.) As explained above, there is no requirement that applicant's attorneys request records from the prior attorneys or from defendant, and there is no requirement that applicant request the records from the provider. Again, pre-trial discovery that may reasonably lead to relevant and admissible evidence is favored, and the decision about how best to proceed in a case is a matter of the attorney's discretion. It is unclear from our review of the record whether applicant's attorneys exceeded their discretion when they requested the records. Upon return, the WCJ can consider the issue in light of the statutory and decisional law.

Accordingly, we affirm the amounts awarded to cost petitioner but defer the issues regarding the subpoenas that the WCJ disallowed, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 30, 2022 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

2. The issue of whether Invoices 12160-1 and 12160-1A for Records of Laurel Wellness and Nursing Center, 12160-2, 12160-2A, 12160-36 for the Records of Gallagher Basset, 12160-4 and 12160-4A for the records of the Law Office of Fari Rezai, 12160-8 and 12160-9 for records of Arrowhead Regional Medical Center, 12160-15 for the records of Pacifica Orthopedics, and Invoices 12160-37, 12160-38, 1260-38A, 1260-39, 1260-40, 1260-41, and 1260-41(A) of Healthpoint Medical Group, Daydream Acupuncture, Downtown LA Ambulatory Surgical Center, Accident Injury & Family Therapy, and Southern California Diagnostic Medical Group are compensable is deferred.

AWARD

(a) The issue of whether the Invoices in Finding 2 are compensable is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 21, 2024

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

**CITYWIDE SCANNING
COLLINSON, DAEHNKE, INLOW & GRECO**

DLM/oo

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