

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

GONZALO CISNEROS, *Applicant*

vs.

**NEW LAKEVIEW FARMS, LLC.;
REDWOOD FIRE & CASUALTY INSURANCE COMPANY,
ADMINISTERED BY
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ10904847
Los Angeles District Office**

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

Cost petitioner Citywide Scanning Service seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of April 10, 2024, wherein the WCJ ordered that it take nothing by way of its petition for costs.

Cost petitioner contends in relevant part that it is entitled to recovery.

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

We have reviewed the record, and we have considered the allegations of the Petition and the Answer, and the contents of the Report. Based on our review and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further proceedings and a new decision.

I.

We will briefly review the relevant facts.

On March 21, 2024, cost petitioner and defendant proceeded to trial. The issue raised for trial was: "1. Lien of Citywide Scanning Copy Service. This type of lien is a copy service. The amount paid is \$180 and the balance asserted is \$598.83." Other issues raised were: "2. Whether

the services performed were for a contested claim; CCR 9982e; Labor Code section 4620 and 4621; Labor Code section 5813.; 3. Citywide Scanning is claiming a balance of \$598.83.; 4. Issue claimed by lien claimant med/legal entitlement per Labor Code 4620 through 4621 and whether Defendant complied with Labor Code 4622 and CCR 10786(a) and (e).; 5. Whether Defense sent timely or compliant EORs per Labor Code 4622 and 9794.; 6. Whether Defendant is liable for cost and sanctions under Labor Code 5813, per CCR 10786(i) and CCR 10421 for delay in payment, prolonged litigation.”

On April 10, 2024, the WCJ issued the F&O. In relevant part, it was found in pertinent part that cost petitioner failed to sustain its burden of proof that “it was entitled to any monies due” and that defendant was not liable for “any further monies owed.”

In her Opinion on Decision, the WCJ stated that:

The Application for Adjudication of Claim was filed on June 15, 2017.

Med-Legal Expense Petitioner, Citywide Scanning, is a copy service. At the request of Applicant’s Attorney, they issued two sets of Subpoena Duces Tecum to obtain records from Berkshire Hathaway Homestate Company on July 20, 2017 (Exhibit 3) and New Lakeview Farms, LLC on September 12, 2017 (Exhibit 4). Additionally, they obtained records from WCIRB for year 2017 on June 23, 2017 (Exhibit 9). As such, they issued three invoices. One is Invoice 14711-1 for Berkshire Hathaway Homestate Company (Exhibit 7). Another is Invoice 14711-2 for New Lakeview Farms, LLC (Exhibit 8). The third is Invoice 14711-5 for WCIRB Records for the year 2017 (Exhibit. 9).

At the time of trial, Citywide Scanning claimed it is owed \$598.83, plus 10% penalties and 7% interest, for records it obtained from June 23, 2017 (WCIRB), July 20, 2017 (BHHC), and September 12, 2017 (New Lakeview Farms).

The order for records was placed by Applicant’s Attorney on June 8, 2017 (Exhibit 1) and June 16, 2017 (Exhibit 2).

Defendant issued a Delay Notice on July 11, 2017 (Defendant’s Ex. A).

On September 15, 2017, Defendant issued a Denial Notice (Defendant’s Ex. B).

At the request of the Applicant, his attorney, Garrett Law, filed a Request for Dismissal on September 21, 2017. As a result, an Order for Dismissal of the case-in-chief issued on October 4, 2017 by Judge Barbosa.

On September 23, 2022, Citywide filed a Petition for Determination of Medical-Legal Expense dispute pursuant to Title 8 California Code of Reg. §10786(b).

In this case, Citywide Scanning has not proven that any of the conditions in Labor Code §4620(b) existed. The Application was filed on June 15, 2017. Per Labor Code §5402, Defendant has 90 days to accept or reject a claim. Defendant timely denied liability for this claim on September 15, 2017.

The subpoenas were issued by the copy service from June 23, 2017 to September 12, 2017, well before there was a contested claim. The dates of service all fall within the 90-day delay period per §5401, a time in which a contested claim did not exist per Labor Code §4620(b).

The expenses were not incurred for the purpose of proving or disproving a contested claim. At the time of service, this claim was not contested. Defendant did not issue the denial letter until after the subpoenas were issued.

Finally, the Medical-legal services were not reasonably, actually, and necessarily incurred pursuant to labor code §4621(a). These subpoenas were for records from the Defendant and in defendant's possession and control.

The parties provided the court with documentary and medical evidence. The court has reviewed and considered the entire evidence provided. Based upon such evidence, it is found

that the Medical-Legal Provider, Citywide Scanning Service, Inc. did not meet their burden of proof by preponderance of the evidence that its services were medical-legal expenses pursuant to Labor Code §4620(b).

(Opinion on Decision, pp. 5-9.)

II.

In its Petition for Reconsideration, cost petitioner raises the issue of whether the WCJ had jurisdiction to hear its case. However, the issue of jurisdiction was not raised at trial, the parties proceeded to trial on the merits before the WCJ, and the WCJ's decision was only as to the merits of the case. Thus, since defendant has apparently consented to jurisdiction by proceeding to trial on the merits, we need not consider that issue. (Lab. Code, § 5904.)

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.*

Turning to the merits here, we are unable to discern the basis for the WCJ’s reasoning that no contested claim existed. Moreover, despite the fact that copy services were apparently actually provided and all of the entities from which documents were sought apparently allowed the documents in possession to be copied, and that defendant’s insurer was served with the subpoenas and defendant provided at least partial reimbursement for the copying services, the WCJ denied the petition for costs.

Defendant’s first Delay Notice (Exhibit A) issued on April 11, 2017, and defendant’s second Delay Notice (Exhibit B) issued on September 15, 2017. The Delay Notice of April 11, 2017 stated in pertinent part that:

Workers’ compensation benefits are being delayed because based on the current available information, we are unable to determine whether or not you are eligible for benefits regarding your allegations of injury to your shoulders arms, back, waist, stress, anxiety, insomnia, neck and any other injuries claimed. In order to make a decision, we may need your medical records, an evaluation(s), a deposition(s) and/or a recorded statement. If you have not already done so, please complete and return the medical releases, DWC1 Claim Form and Statement of Fact Form we sent you. We will notify you of our decision on or before 09/15/17.

(Exhibit A, Delay Notice of April 11, 2017.)

Applicant filed an Application on June 15, 2017, and defendant filed an Answer on July 6, 2017. In its Answer, defendant checked all boxes, effectively denying all allegations, and asserted all affirmative defenses. It specifically noted in the space next to “Injury” that the matter was in “delay mode with decision date of September 18, 2017.”

Subpoenas were issued on June 27, 2017 (BBHC) (Exhibit 3) and July 26, 2017 (New Lakeview Farms) (Exhibit 4), which was after the Application was filed. Records were obtained from the WCIRB on June 23, 2017.

As we stated in our en banc opinion in *Colamonico*,

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs “for the purpose of proving or disproving a contested claim.” (§ 4620(a).)

Copy service fees are considered medical-legal expenses under section 4620(a). (*Cornejo v. Yunique Cafe, Inc.* (2015) 81 Cal. Comp. Cases 48, 55 [2015 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal. Comp. Cases 444, 449 [2013 Cal. Wrk. Comp. LEXIS 69] (Appeals Board en banc).) Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a “contested claim” existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).)

While the parties did not raise section 4620 as an issue at the lien trial, we note that a determination of whether a purported medical-legal expense involves a “contested claim” is a fact-driven inquiry. **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 [84 Cal. Rptr. 2d 915, 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.**

(*Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059, 1062 (Appeals Board en banc) (Bolding and underlining added).)

Here, it is clear that a contested claim existed at the time that the subpoenas issued and the records were requested from WCIRB. In defendant's Delay Notice they admitted that they were “*unable to determine* whether or not [applicant was] eligible for benefits. (Italics added.)” Moreover, defendant specifically referenced the Delay Notice in their Answer denying all allegations.

The relevant inquiry is whether cost petitioner's services were costs or expenses reasonably incurred on behalf of the applicant for the purpose of proving a contested claim. (Lab. Code, § 4620, subd. (a).) Indeed, in a case where an entity voluntarily allows an injured worker to copy their personal records without a subpoena, the injured worker would presumably be entitled to reimbursement for those costs so long as they were incurred for the purpose of proving a contested claim. (See *Perea v. Abbott Laboratories* (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 224 [Appeals Bd. panel]; Health & Saf. Code, § 123110.) In this case, copying services were actually performed, and defendant appears to have paid for some of those services. Thus, it appears that a contested claim existed, and that cost petitioner met its burden under Labor Code section 4620.

Accordingly, we will grant reconsideration, rescind the WCJ's decision, and return this matter for further proceedings and decision on all outstanding matters related to the cost petition. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

Due to the small amount that is at issue, we recommend that defendant and cost petitioner resolve their dispute forthwith so as to avoid further litigation in an already burdened workers' compensation system.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the April 10, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 10, 2024 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 7, 2024

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

**CITYWIDE SCANNING SERVICE LOS ANGELES
HEFLEY LAW, APC**

AS/mc

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