

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

**JOSE CASTILLO, *Applicant***

**vs.**

**KEPNER PLASTIC FABRICATORS, INC;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ2699367 (AHM 0109401)  
Anaheim District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Lien claimant Charles Schwarz, M.D., (lien claimant) seeks reconsideration of the Findings and Order (F&O) issued on April 16, 2024 and the Amended Findings and Orders (Amended F&O) issued on May 14, 2024 by a workers' compensation administrative law judge (WCJ). In the F&O issued on April 16, 2024, the WCJ found that 1) lien claimant's failure to file the declaration required by Labor Code section 4903.05 resulted in the dismissal of his lien by operation of law on July 3, 2017, and that 2) independent medical reviews filed before July 3, 2017 were irrelevant to the need for filing the required declaration. The WCJ dismissed lien claimant's lien with prejudice by operation of law pursuant to Labor Code section 4903.05(c)(3)<sup>1</sup>.

The WCJ issued an Amended Findings and Order on May 14, 2024, the WCJ found that 1. Lien claimant's failure to file the declaration required by Labor Code section 4903.05 resulted in the dismissal of his lien by operation of law on July 3, 2017, 2) independent medical reviews filed before July 3, 2017 were irrelevant to the need for filing the required declaration. The WCJ dismissed lien claimant's lien with prejudice by operation of law pursuant to Labor Code section 4903.05(c)(3), and 3) Lien claimant's exhibits 1 and 2 are not admissible. The WCJ ordered that 1. Lien claimants exhibits 1 and 2 are excluded from evidence and 2. Lien claimant's exhibits 3 through 7 are admitted into evidence.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

A petition for reconsideration (Petition) was filed by lien claimant on May 2, 2024 as to these findings and order. Thereafter, lien claimant filed a second petition on May 28, 2024, in response to the WCJ's Amended F&O which issued on May 14, 2024.

Lien claimant contends in its Petitions that the WCJ acted in excess of her powers and that the lien should not have been dismissed.

Defendant filed an Answer to each Petition (Answer), and the WCJ issued a Report and Recommendation on Petition (Report) recommending that the Petition be denied.

We have reviewed the record, the allegations of the Petitions and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

### **BACKGROUND**

Lien claimant was applicant's primary treating physician. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 3/5/2024, 2:9.)

On March 5, 2024, the WCJ held a lien trial. The issues at trial were: 1. Whether the lien claimant's failure to file a declaration pursuant to Labor Code section 4903.05 by July 3, 2017 resulted in the dismissal of the lien by operation of law, and 2. Whether Independent Medical Reviews filed before July 3, 2017 were relevant to the need for filing of the Labor Code section 4903.05 declaration. (MOH/SOE, 3/5/2024, 2:12-2:16.)

On April 16, 2024, the WCJ issued a F&O finding in relevant part that lien claimant's failure to file a declaration as required by Labor Code section 4903.05 by July 17, 2017 resulted in the dismissal of his lien by operation of law. Additionally, the WCJ ordered that the lien of Charles Schwarz is dismissed, with prejudice, by operation of law pursuant to Labor Code section 4903.05(c) (3). (F&O, 4/16/2024.)

On May 2, 2024, lien claimant filed a Petition asserting in essence that the lien at issue should not have been dismissed.

On May 14, 2024, the WCJ issued an amended F&O finding that lien claimant had not filed the declaration required by Labor Code section 4903.05 and that lien claimant's exhibits 1 and 2 are not admissible and lien claimant's exhibits 3 through 7 are admitted into evidence. (F &O, 5/14/2024.)

On May 28, 2024, lien claimant filed a second Petition and on June 10, 2024, defendant filed an Answer.

## DISCUSSION

Preliminarily, WCAB Rule 10961 states in pertinent part,

Within 15 days of the timely filing of a petition for reconsideration, a workers' compensation judge shall perform one of the following actions: (a) Prepare a Report and Recommendation on Petition for Reconsideration in accordance with rule 10962; (b) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or (c) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor code section 5903 will run from the filing date of the amended order, decision or award. (Cal. Code Regs., tit. 8, § 10961.)

Here, other than preparing a Report, the WCJ did not take any of the above actions and improperly left the initial decision intact, thereby causing confusion.

Section 4903.05 states in pertinent part:

(1) For liens filed on or after January 1, 2017, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

...  
(2) **Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) for any lien claim filed before January 1, 2017,** for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.<sup>2</sup>

**(3) The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law.** Filing of a

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<sup>2</sup> Paragraph (1) requires "a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following: (A) Is the employee's treating physician providing care through a medical provider network. (B) Is the agreed medical evaluator or qualified medical evaluator. (C) Has provided treatment authorized by the employer or claims administrator under Section 4610. (D) Has made a diligent search and determined that the employer does not have a medical provider network in place. (E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600. (F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code. (G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director." (Lab. Code, section 4903.05(c)(1).)

false declaration shall be grounds for dismissal with prejudice after notice. (Lab. Code, section 4903.05(c)(2)-(3), emphasis added.)

Here, a review of the record and exhibits<sup>3</sup> reflect that lien claimant did not file the required declaration pursuant to Labor Code section 4903.05. We agree with the WCJ as stated in her Report,

“The only exhibits offered were from the lien claimant and did not include a declaration pursuant to Labor Code section 4903.05. The court determined that the lien of Dr. Charles Schwartz had been dismissed by operation of law when he failed to file his declaration on or before July 3, 2017. *No declaration has been filed to date.*” (Report, 6/5/2024, p. 2.)

When the WCJ issued her second finding, she failed to order that the lien was dismissed. However, since it is by operation of law, we believe this is a harmless error. Thus, lien claimant failed to meet its burden of proof by failing to produce evidence which showed that lien claimant complied with Labor Code section 4903.05, therefore the lien was properly dismissed by operation of law.

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<sup>3</sup> The Orders in the Amended F&O issued on May 16, 2024, state that 1. Lien claimant’s exhibits 1 and 2 are excluded from evidence. And 2. Lien Claimant’s exhibits 3 through 7 are admitted into evidence.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the WCJ's Findings and Order of May 14, 2024 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSE H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**July 24, 2024**

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

**TEDS MEDICAL SERVICES  
STATE COMPENSATION INSURANCE FUND**

**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*