

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

LORENZO TERRY, *Applicant*

vs.

CITY OF LOS ANGELES; *permissibly self-insured, Defendants*

**Adjudication Number: ADJ10011393
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Reconsideration has been sought with regard to the Findings, Orders and Award (F&A) issued on April 18, 2024 by a workers' compensation arbitrator (WCA).

Lien claimant, County of Los Angeles Child Support Department seeks reconsideration of the Findings and Award in which the WCA found that applicant sustained permanent disability of 41%, and awarded lien claimant the sum of \$1,527.48 in full satisfaction of its lien, payable from the additional temporary disability awarded applicant.

Lien claimant asserts that the WCJ in failing to honor their child support liens that had been filed in the case in the Electronic Adjudication Management System (EAMS) listing the County as a lien claimant. Petitioner requests that the WCAB vacate the decision of the WCA and set a hearing so that the child support liens can be considered and deducted from applicant's settlement proceeds.

We did not receive an answer from applicant or defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we deny reconsideration, and/or consider the issue for further study as a possible en banc decision.

At this time, taking into account the statutory time constraints for acting on the petition(s), and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe

that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

I.

WCAB Rule 10990 provides that if the arbitrator does not rescind the entire order, decision or award within 15 days of receiving the petition for reconsideration per WCAB Rule 10990(f)(1) or 10990(f)(2), WCAB Rule 10990(f)(3) requires the arbitrator to submit to the Appeals Board an electric copy of the complete record of proceedings including:

- (A) The transcript of proceedings, if any;
- (B) A summary of testimony if the proceedings were not transcribed;
- (C) The documentary evidence submitted by each of the parties;
- (D) An opinion that sets forth the rationale for the decision; and
- (E) A report on the petition for reconsideration, consistent with the provisions of rule 10962. The original arbitration record shall not be filed.

(Cal. Code Regs., tit. 8, § 10990(f)(3)(A)-(E); see also Lab. Code, §§ 3201.5(a)(1), 3201.7(a)(3)(A).)

Here, while it appears we may have received the complete rerecord of proceedings, we note that several issues will require further review and consideration.

Preliminarily, we note the following:

The transcript of arbitration proceedings (TOP) held on April 15, 2024, states that there was no appearance at the arbitration by lien claimant Los Angeles County Child Support Services (LACCSS) Department (TOP, p. 5:20-23.), even though their lien was specifically raised as an issue. As stated by lien claimant in their Petition:

The arbitration hearing occurred on April 15, 2024. Applicant's attorney, Mr. Fong, had emailed the County a letter to his client regarding the hearing, but the County received no other formal notice of the hearing. The County failed to appear at the arbitration. The parties were aware that the County had filed formal liens against permanent disability because there had many contacts over the years. In November 2023, the County had notified both parties that it would demand the standard fifty percent of applicant's net to resolve the large child support liens - based on discussions at the time, it was clear that the combined lien balance would exceed the gross settlement amount.

The County, the local child support agency, is enforcing multiple child support cases against applicant. The County filed liens for these cases in this compensation matter and all documentation is viewable on FileNet. Based upon a cursory review of FileNet, the following liens were filed by the County, totaling \$80,141.06: lien #1 filed July 10, 2015 (document no. 15337697) for \$3,922.05; lien #2 filed July 22, 2016 (document no. 19036762) for \$5,932.20, lien #3 filed November 5, 2019 (document no. 30790745) for \$24,447.79; and lien #4 filed November 5, 2019 (document no. 30793636) for \$45,839.02. The \$80,141.06 total does not include additional principal and interest that have accrued since the filing dates. (Petition, p. 4.)

In his Report, the WCA addresses the lien of LACCSS as follows:

...due process requires that Petitioner's lien applies only to *TD payable at the time notice of assignment order was given by the lien claimant to the City*, in this case July 11, 2-17 (according to Petitioner's Proof of Service attached to its Exhibit A). (Report, p. 3.)

The Petitioner/lien claimant did not appear at the arbitration of April 15. However, Petitioner was served by the ADR Program with the Minutes of Hearing and Summary of Evidence (hereafter "MOH") of that arbitration on April 17, 2024, noting its nonappearance, and that all issues were submitted on the record made that date.

Upon receipt of the Petition for Reconsideration, this arbitrator reviewed the Notice of Video Arbitration contained in the Arbitration Record. Petitioner is correct that the City's ADR Program did not include service upon Petitioner. Had it received such notice, it could have offered into evidence the alleged four lien claims filed with the *Board*, and *not* the *ADR Program*. Hence, Petitioner's contention that there was a failure of notice of the April 15 arbitration to Petitioner appears well-taken to this arbitrator. (Report, p. 4.)

However, the only lien from Petitioner which the ADR Program made available to the arbitrator was Petitioner's Exhibit A, a lien claim dated 6/26/2017, in the sum of \$28,067.27 (p. 1, Exhibit A). That lien was *not* among the four liens they allegedly filed *with the Board* (as alleged at page 4 of the Petition for Reconsideration). From those facts, arbitrator draws the reasonable inference that Petitioner *never filed those 4 liens with the ADR Program*, which had jurisdiction at the times of their filings, but only the one that arbitrator received on Petitioner's behalf. The gravamen of Petitioner's argument is apparently that failure notify it of the April 15 arbitration denied it due process. This arbitrator believes that his receipt of Petitioner's Exhibits A and B on Petitioner's behalf, in its absence, obviates its due process argument, based upon lack of notice of the April 15 arbitration.

The arbitrator would have made the same decision had the City's ADR Program received the other 4 alleged liens and arbitrator had taken them into evidence, for the reasons set forth hereafter, *and* in his Opinion on Decision. That is because he was not ignoring Petitioner's known lien, but was appropriately limiting its allowance to the sum of \$1,527.48, for the reasons set forth in the Opinion on Decision and herein. (Report, p. 4.)

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["essence of due process is . . . notice and the opportunity to be heard"]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case *de novo* with a well-reasoned decision based on the evidentiary record and the relevant law.

As with a workers' compensation administrative law judge (WCJ), an arbitrator's decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Meaningful review of an arbitrator's decision requires that the "decision be based on an ascertainable and adequate record," including "an *orderly identification* in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission.*" (*Lewis v. Arlie*

Rogers & Sons (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) “An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal.” (*Id.*; see also *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above.

II.

Accordingly, we grant lien claimant’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.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings, Order and Award issued on April 18, 2024 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2024

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

**LORENZO TERRY
COUNTY OF LOS ANGELES – CHILD SUPPORT SERVICES
CITY OF LOS ANGELES
FRED FONG
GILBERT KATEN, ARBITRATOR**

LAS/oo

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