

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MANJIT KAUR, *Applicant*

vs.

**SUNRISE SENIOR LIVING;
HARTFORD; SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ7054681, ADJ19524108
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Lien claimant interpreter Nidrosh Gill seeks reconsideration, or in the alternative removal, of the Order Approving Compromise and Release (OAC&R) issued by the workers' compensation administrative law judge (WCJ) on July 11, 2024. Lien claimant contends that they are aggrieved by the OAC&R because it is not clear from the language of the Compromise and Release (C&R) whether defendant agreed that the lien could still proceed, and they did not learn of the C&R until after it was approved, so that their due process rights were violated.

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

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will dismiss the Petition.

BACKGROUND

The Report provides the following:

An Application for Adjudication was originally filed for this case in 2009 in ADJ7054681. On 1/15/2015 a Finding of Fact and Opinion on Decision issued finding that applicant sustained injury to her lumbar spine and psyche; the Opinion on Decision notes that applicant speaks Punjabi and does not speak

English. An Award of permanent disability issued on 12/14/2017. Nirdosh Gill filed a Petition for Costs for interpreting services on 12/18/2023; defendant filed an objection thereto on 2/28/2024. On 2/29/2024 the matter was set for hearing regarding the Petition for Costs and went off calendar so that Cost Petitioner could file a lien for interpreting services related to medical treatment. A lien for Nirdosh Gill was filed on 3/28/2024. On 7/10/2024 a Compromise & Release was filed settling out applicant's right to future medical treatment; the Compromise & Release was served on all parties of record including Nirdosh Gill. ADJ19524108 was created via Compromise & Release on 7/10/2024. There are no liens or Petition for Costs filed under this case number and therefore the Petition for Reconsideration/Removal should only pertain to ADJ7054681. An Order Approving Compromise & Release issued on 7/11/2024; Petitioner filed a Reconsideration/Removal based upon this order.

DISCUSSION

I.

Former Labor Code section 5909¹ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

¹ All statutory references are to the Labor Code unless otherwise stated.

Here, according to Events, the case was transmitted to the Appeals Board on August 7, 2024 and 60 days from the date of transmission is Sunday, October 6, 2024. The next business day that is 60 days from the date of transmission is Monday, October 7, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, October 7, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 7, 2024, and the case was transmitted to the Appeals Board on August 7, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 7, 2024.

II.

Pursuant to Labor Code section 5900(a):

Any person aggrieved directly or indirectly by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration.

As noted by the WCJ in the Report, the C&R only addresses and resolves the issues of applicant's entitlement to benefits owed to him by defendant. Lien claimant was not a party to the C&R and any issues regarding the right to compensation for interpreting services for medical/legal evaluations, hearings, or medical treatment provided to applicant were reserved. A lien claimant

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

is not an aggrieved party for the purpose of filing a petition for reconsideration of an OAC&R, if the C&R, between the employer/carrier and the employee, does not include a final resolution of the lien claim. (*The Permanente Medical Group v. Workers' Comp. Appeals Bd. (Williams)* (1977) 73 Cal.App.3d [42 Cal.Comp.Cases 745]; *Oliver and Winston Inc. v. Workers' Comp. Appeals Bd. (Gregg)* (writ denied, 1983) 48 Cal.Comp.Cases 814.)

As quoted above, the C&R at issue clearly states that:

Unpaid medical expenses to be paid by defendants to the date of the order approving this compromise and release with the defendants retaining the right to adjust, pay, or litigate. [D]efense will pay, litigate or adjust all liens of record for medical treatment related to the alleged work injury with the exception of treatment outside defendant's MPN and child support liens, and liens for funds advanced to the applicant by third parties. (Executed C&R p.6, para. 8)

Thus, lien claimant is not “aggrieved directly or indirectly” by the OAC&R and therefore, the Petition is dismissed. We also note that we are not ruling on or otherwise addressing the merits of the lien claim. When lien claimant is ready to litigate their claims, they can file a declaration of readiness to proceed at the trial level.

Accordingly, we dismiss the Petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration/Removal of the Order issued by the WCJ on July 11, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 7, 2024

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

**MANJIT KAUR
SAMRA DHILLON ASSOCIATES
TESTAN LAW**

LN/md

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