

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

MASHAN REED, *Applicant*

vs.

**CRUNCH TIME LOGISTICS, LLC; OLD REPUBLIC INSURANCE COMPANY,
Administered By SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. *Defendants***

**Adjudication Number: 13700405
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERTION**

Lien claimant Spectrum Medical Group seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact of June 24, 2024, wherein it was found that lien claimant had been fully paid for its settlement agreement with defendant and was not entitled to penalties, interest, costs or fees.¹

Lien claimant contends that the WCJ erred in finding that it had been fully paid for its settlement agreement and in finding that it was not entitled to penalties, interests, costs, or fees. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). Lien claimant has also requested permission to file a supplemental pleading pursuant to Appeals Board Rule 10964. We accept this supplemental pleading for filing and have reviewed and considered it. (Cal. Code Regs., tit. 8, § 10964.)

As explained below, we will deny lien claimant's Petition for the reasons stated in the Report quoted below.

Preliminarily, we note that former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days

¹ Previously, in an Opinion and Decision of October 30, 2023, we granted lien claimant's previous Petition for Reconsideration, rescinded a Findings of Fact of August 7, 2023, and returned this matter to the trial level for further development of the record and decision. Since issuing our Opinion and Decision of October 30, 2023, Commissioner Natalie Palugyai, who participated in the prior decision, has left the Appeals Board. Commissioner Katherine Williams Dodd has been substituted in her place.

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.”

Here, according to Events, the case was transmitted to the Appeals Board on July 30, 2024 and 60 days from the date of transmission is Saturday, September 28, 2024. The next business day that is 60 days from the date of transmission is Monday, September 30, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday September 30, 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 July 30, 2024, and the case was

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.

transmitted to the Appeals Board on July 30, 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 July 30, 2024.

Turning to the merits, as noted above, we will deny lien claimant’s Petition for the reasons stated in the WCJ’s Report, quoted below. We have omitted a portion of the Report which incorrectly states that the Petition was not properly verified. We have also omitted footnotes.

**REPORT AND RECOMMENDATION OF
WORKERS’ COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

- | | | | |
|----|---|--|------------------------|
| 1. | Applicant’s occupation | : | Delivery Associate |
| | Applicant’s Age | : | 45 |
| | Date of Injury | : | December 1, 2019 |
| | Parts of Body Injured | : | Left Knee |
| | Manner in which it occurred | : | Specific Incident |
| 2. | Identity of Petitioner | : | Spectrum Medical Group |
| | Timeliness | : | Petition is timely |
| | [Verification status omitted] | | |
| 3. | Date of Order | : | June 24, 2024 |
| 4. | Petitioner contends that the WCJ erred in finding that: | | |
| | a) | The defendant issued payment timely; and | |
| | b) | Spectrum Medical is not entitled to penalties, interest, costs, or fees. | |

**II.
BACKGROUND**

On January 12, 2023, the parties entered into a settlement agreement, resolving the lien of Spectrum Medical for \$5,750.00. The settlement agreement included “Resolves any and all DOS and any potential claim for P&I, cost, fees and sanctions if paid within 30 days.”

The defendant issued a check, number 133475642, to Spectrum Medical on

January 17, 2023. The check was addressed to Spectrum Medical at 5211 E Washington Blvd. Ste.18 Commerce Ca 90040, for \$2,069.72. The check referenced the wrong dates of service. However, the check did have the correct date of loss of December 1, 2019, and Claim Number 4021049F9B7-0001.

The defendant issued a second check, check number 133478926, to Spectrum Medical on February 1, 2023. The check was addressed to Spectrum Medical at 5211 E Washington Blvd. Ste.18 Commerce Ca 90040, for \$3,680.28. Again, the check referenced the wrong dates of service. However, the check did have the correct date of loss of December 1, 2019, and Claim Number 4021049F9B7-0001.

As of February 7, 2023, Spectrum Medical acknowledged receipt of check number 133475642 for \$2,069.72. On February 7, 2023, Spectrum Medical also acknowledged receipt of check number 133478926 for \$3,680.28.

Spectrum Medical advised the defendant on February 7, 2023, that they applied check number 133475642 for \$2,069.72 to a different account based on information contained in the check and asserted that the defendant had not paid the total amount of the settlement.

On February 7, 2023, Defendant advised Spectrum Medical that the two checks covered the settlement amount and requested that Spectrum Medical apply both checks toward the settlement.

On February 7, 2023, Spectrum Medical advised the defendant that it would apply both checks toward the settlement but requested that the defendant issue a second check with the corrected information.

On February 7, 2023, Spectrum Medical advised the defendant that check number 133475642, for \$2,069.72, was applied to a different account and that the defendant needed to issue another check to Spectrum Medical to cover the \$2,069.72 deficit in the payment per the January 12, 2023 agreement.

Spectrum Medical filed a Declaration of Readiness To Proceed to a lien conference, asserting that the defendant failed to pay the settlement agreement's total amount and sought penalties, interest, and costs.

The issue of the timeliness of payment on the settlement agreement went to trial on June 19, 2023, and the undersigned issued a Findings of Fact on August 7, 2023, finding that Spectrum Medical had received payment within 30 days of the settlement and that Spectrum Medical was not entitled to penalties interest and costs.

Spectrum Medical filed a Petition for Reconsideration, which was granted, and the matter was returned to the Undersigned Judge for development of the record.

The matter was placed on the Undersigned Judge's trial calendar, and the Judge took additional evidence, including the testimony of Allen Haghghinia of Spectrum Medical Group, Inc., who participated in the processing of the payments received.

The Undersigned Judge issued his second Findings of Fact on June 24, 2024, finding that: Spectrum Medical and the defendant entered into an informal agreement to resolve the lien of Spectrum Medical on January 12, 2023; The settlement agreement was never submitted to the Workers' Compensation Appeals Board for approval; Payments for lien settlement were issued and received by February 7, 2023; The defendant issued payment timely; and Spectrum Medical was not entitled to penalties, interest, costs, or fees.

Spectrum Medical has filed a Petition for Reconsideration to the June 24, 2024, Findings of Fact.

[Discussion of verification omitted.]

PENALTIES AND INTEREST

Spectrum Medical has asserted that it is entitled to further payment and penalties and interest for the defendant's alleged failure to make payment pursuant to the January 12, 2023, informal, non-court approved settlement agreement, resolving the lien of Spectrum Medical for \$5,750.00.

Pursuant to California Labor Code section 5001, "[n]o release of liability or compromise agreement is valid unless it is approved by the appeals board or referee."

Here, the January 12, 2023, informal settlement agreement was not approved by the Court in accordance with Labor Code section 5001. Furthermore, the settlement agreement was never submitted to the WCAB until May 4, 2023, when it was submitted as an exhibit at trial.

As such, the defendant's obligation to pay, and the Undersigned Judge's authority to enforce said agreement, would not have been triggered until the settlement was submitted and approved by the Court.

As a settlement agreement only becomes enforceable upon approval by the WCAB, Spectrum Medical is incorrect in its contention that it would be entitled to further payment and penalties and interest for the defendant's alleged failure to issue payment within 30 days of when the informal, non-court approved settlement agreement, was executed.

As such, the Undersigned Judge was not in error in finding that Spectrum Medical was not entitled to penalties, interest, costs, or fees.

As Cal. Code Regs., tit. 8, § 10872(a) provides that a lien is resolved when payment in accordance with an order or an informal agreement has been made. The lien is considered to have been resolved on February 7, 2023, the time the payment of the agreed-upon sum was received.

As of February 7, 2023, Spectrum Medical acknowledged receipt of check number 133475642 for \$2,069.72. On February 7, 2023, Spectrum Medical also acknowledged receipt of check number 133478926 for \$3,680.28.

Based on the above, the Court finds that Spectrum Medical is not entitled to penalties, interest, costs, or fees.

TIMELINESS OF PAYMENT

Spectrum Medical acknowledged receipt of the payments issued by the defendant for the January 12, 2023, settlement agreement. However, Spectrum Medical asserts the funds were correctly applied to a different account.

The evidence submitted shows that the defendant issued two checks to Spectrum Medical in connection to the January 12, 2023, informal, non-court-approved settlement agreement. The first was on January 17, 2023, and the second on February 7, 2023. Though the checks referenced different dates of service, the checks did have the correct date of loss of December 1, 2019, and Claim Number 4021049F9B7-0001.

At trial, Allen Haghghinia of Spectrum Medical Group, Inc., who participated in the processing of the payments received, testified that the checks received had the Sedgwick claim number and date of injury. However, when a check is received, it is applied based solely on the date of service.

Mr. Haghghinia also testified that Spectrum Medical advised the defendant of the problem and asked that they issue another check. Spectrum Medical advised the defendant that once the check has been applied, it cannot be undone.

The evidence shows that as of February 7, 2023, Spectrum Medical knew that both check number 133475642, for \$2,069.72, and check number 133478926, for \$3,680.28, were issued as payment on the January 12, 2023, settlement agreement.

It is Spectrum Medical's assertion that though the checks in question had the correct claim number and date of injury, the single check with Scribner's error providing an incorrect date of service made Spectrum Medical incapable of

applying the payment to any account other than one in which they had a corresponding date of service.

The Undersigned Judge was unpersuaded by the lien claimant's assertion that even though it knew for which case the payment was received, it could only apply the payment to the date of service identified in the check despite that date of service being in a different case.

Based on the evidence submitted, payment had been issued and received for the January 12, 2023, Lien Settlement as of February 7, 2023.

As to the lien claimant's assertion that the defendant is seeking credit against the lien of the lien claimant in the applicant's other claim, ADJ16480316, this is asserted for the first time in its Petition for Reconsideration. No evidence was submitted by either party on this issue.

A review of the EAMS file for case number ADJ16480316 shows that it has not been resolved either by Stipulation with Request for Award or by Compromise and Release. As such, the litigation of liens in that matter has not commenced.

The application of check number 133475642, for \$2,069.72, to the January 12, 2023, settlement agreement, as the defendant intended, would not create a windfall for the defendant. If Spectrum Medical's lien is unresolved at the time of the resolution of case number ADJ16480316, Spectrum Medical would be able to rightly assert that no payment had been received for the November 15, 2022, date of service and would have the determination and settlement agreement in this matter to support its assertion.

As such, there is a sufficient remedy available to the lien claimant should the defendant assert that the November 15, 2022, date of service in case number ADJ16480316, had been resolved by payment in the form of check number 133475642.

As such, the Undersigned Judge was not in error in finding the defendant timely issued payment on the January 12, 2023, settlement agreement.

IV. RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Spectrum Medical's Petition for reconsideration be denied.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant Spectrum Medical Group's Petition for Reconsideration of the Findings of Fact of June 24, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 30, 2024

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

**MASHAN REED
AVANDI LAW GROUP
GALE SUTOW & ASSOCIATES
SPECTRUM MEDICAL GROUP, INC.**

DW/oo

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