

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

REMONIA WATKINS BULLOCK, *Applicant*

vs.

**DEPARTMENT OF STATE HOSPITALS – PATTON, legally uninsured; administered by
STATE COMPENSATION INSURANCE FUND, STATE EMPLOYEES RIVERSIDE,
*Defendants***

**Adjudication Number: ADJ4637058 (RIV 0076511)
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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 in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Preliminarily, we note that former Labor Code¹ section 5909 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, 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.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Under 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 September 11, 2024 and 60 days from the date of transmission is Sunday, November 10, 2024. The next business day that is 60 days from the date of transmission is Monday, November 12, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, November 12, 2024, so that we have timely acted on the petition as required by section 5909(a).

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. 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 September 11, 2024, and the case was transmitted to the Appeals Board on September 11, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 11, 2024.

Lastly, we have given the WCJ’s credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determination. (*Id.*)

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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

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

I CONCUR,

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

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 12, 2024

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

**ALAN LAW
KINDRED HOSPITAL
STATE COMPENSATION INSURANCE FUND**

PAG/oo

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

Date of injury: Specific injury 05/30/2004 to low back, both knees, and feet.

Hearings set: None set.

Age on date of injury: Age 49 on [XX XX XXXX].

Identity of Petitioner: Alex Kauffman, hearing representative for Alan Law Calabasas, in-house counsel for Grant & Weber for Kindred Hospital Rancho.

Parts of body injured: The applicant sustained and injury to low back, both knees, and feet.

Occupation: Psyche Tech.

Date of Decision: 08/12/2024

Petition for Reconsideration filing: Filed 08/30/2024 and served 09/03/2024

Timeliness: The petition was timely.

Verification: The petition was verified by a hearing representative.

Petitioner's Contentions: Petitioner contends that the evidence does not justify the Findings of Fact and by the order, decision, or award, the Board acted without or in excess of its powers, and the Findings of Fact do not support the Order, Decision or Award.

Lien claimant Kindred Hospital Rancho, by and through its attorney of record, has filed a timely Petition for Reconsideration (EAMS DOC ID 53660085) challenging the Findings of Fact, Orders, and Opinion on Decision dated 08/12/2024 (EAMS DOC ID 78252971; 78252967). The defendant has not filed an answer or response.

It is recommended that reconsideration be denied.

II.

FACTS AND PROCEDURAL HISTORY

The application for adjudication was filed before documents were scanned into EAMS.

Reid Steinfeld filed a lien in the amount of \$87,697.39 on March 5, 2012. The applicant was admitted to Vista Rancho Specialty Hospital in Rancho Cucamonga from 01/19/2011-01/24/2011. The applicant had a total knee replacement.

The case in chief settled by stipulations with request for award including lower back, knees, and feet on 11/22/2023. Lien claimant herein filed a declaration of readiness on 12/15/2023. Kindred Hospital Rancho also filed a substitution of attorney of Alan D. Wilner/Alan Law Calabasas in place of Reid L. Steinfeld/Reid Law Calabasas on 12/15/2023.

The case proceeded to lien trial in person on June 12, 2024. Only one witness testified, Amanda Laguna, an employee of State Compensation Insurance Fund (Herein after SCIF). The lien claimant had no witness but called defense witness pursuant to California Evidence Code 776.

Findings and Orders and Opinion on Decision issued on 08/12/2024 in which Kindred Hospital Rancho was found to take nothing for failing to prove reasonable value of lien. Kindred Hospital Ranch filed a timely Petition for Reconsideration on August 30, 2024 (EAMS DOC ID 53660085).

The lien claimant filed a proof of service on 09/03/2024 and only served the WCAB local office in Riverside and State Compensation Insurance Fund. It appears that the petitioner failed to comply with Labor Code 5905 as it was not served on all lien claimants and parties.

III.

DISCUSSION

The undersigned concluded that Kindred Hospital Rancho failed to carry the burden of proving reasonable value of lien and as a result takes nothing further after there was payment by defendant.

The petitioner (lien claimant Kindred Hospital Rancho) appears to contend the following:

1. That the WCJ erred in finding that lien claimant exhibits 2 & 3 are not admissible (Reconsideration, p. 6, lines 7-8).
2. The witness for State Compensation Insurance Fund provided no specifics during testimony, allowing the WCJ to conclude that the witness was credible (Reconsideration, p. 2, lines 11-14).
3. The Official Medical Fee Schedule should not be applied when the facility is exempt from the Official Medical Fee Schedule (Reconsideration, p. 2, lines 24-26).
4. Was the Judge prejudicial for not considering whether Kindred Hospital Rancho is exempt from the Official Medical Fee Schedule?
5. Petitioner argues that one the lien claimant provided SCIF evidence in exhibits 2, 3, and 10 then the burden shifts to SCIF to rebut evidence presented (Reconsideration, p. 6, lines 7-8).

6. Kindred is exempt from Official Medical Fee Schedule and is entitled to a fair, reasonable value for same or similar services provided by same exempt status and applied according to Kunz and Tapia cases (Reconsideration p. 3, lines 10-14).

ADMISSABILITY OF EXHIBITS 2 & 3

The defendant objected to admissibility of exhibits 2 and 3 from lien claimant as to foundation and relevance. It was explained in Opinion on Decision the following:

According to California Evidence Code 1400: Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law. It is difficult to determine information that exhibits 2 & 3 are based on and they are completely self-serving documents that do not explain how, what, why of any amount included. They are just conclusory and do not tend to prove reasonableness of charges. Exhibits 2 & 3 are inadmissible as they are documents that are not authenticated and not explained in any detail to make them reliable.

Exhibit 2 is a state allowance calculator from IQ Review. Exhibit 3 is something labeled UCR calculator from IQ Review. The petitioner argued that the documents are self-explanatory and provide for values of reasonable reimbursement. This WCJ found that they were not self-explanatory, self-serving, and did not show exactly how the calculations were made. The petitioner argued that the community standard is 80% and there is no more explanation of this and why it would be considered reasonable.

The petitioner did not sufficiently lay a foundation and it would not be problematic if a stipulation regarding the accuracy of the program or a witness explained or laid foundation for the documents to explain how, what, who, where, and why.

The documents should be found inadmissible. Even if they were admissible, they do not appear to constitute reliable verifiable substantial evidence regarding reasonable value of lien.

WHETHER WITNESS FOR DEFENDANT WAS CREDIBLE

Amanda Laguna testified for SCIF. There was no witness for lien claimant. Amanda Laguna was called as an adverse witness by petitioner lien claimant (Summary of Evidence Page 5, line 20 and Page 6, line 14). She testified to her experience, performing bill reviews since 2009, and taking classes. She certifies herself as an adjuster and she received training through CEU classes from the California Education Unit. She has testified hundreds of times.

The witness testified that SCIF paid \$17,797.86 on approximately 05/16/2011 and that was based on in-patient fee schedule. The comparison was San Antonio Valley Hospital (SOE, P. 6, lines 23-25). The hospital is 2.5 miles away from Kindred (SOE P. 7, lines 1-2).

Amanda Laguna testified that Kindred Hospital Rancho was paid a reasonable amount and she did calculate the fee to determine they were paid a reasonable amount. She multiplied \$7,107.99 by 2.0866 DRG and multiplied the result by 1.2 (SOE, P. 9, lines 8-12).

There was no rebuttal of the testimony of Amanda Laguna and it appears there was no objection to the testimony that the amount paid was equivalent to the official medical fee schedule. The testimony of Amanda Laguna was credible.

OFFICIAL MEDICAL FEE SCHEDULE AND EXEMPT STATUS AND WHETHER THE WCALJ MADE PREJUDICIAL ERROR

It appears that the lien claimant produced evidence of having an exempt status but it is unclear the relationship between the billing entity Rancho Specialty Hospital included in billing from the entity who performed surgery and Kindred Hospital Rancho and Rancho Cucamonga Community Hospital LLC dba Rancho Specialty Hospital (as contained in exhibit 10) but it appears that SCIF acknowledged that the entity is exempt from the OMFS.

The petitioner did not prove and provide evidence of a reasonable value for the services provided, even though the lien claimant has an exempt status.

Labor Code 4603.2(b) (2) requires payment for medical treatment at reasonable maximum amounts pursuant to the fee schedule in effect on the date of service. California Code of Regulations 9789.22(k) exempts some entities such as long-term acute care facilities from the OMFS and allows a reasonable cost basis.

The reasonableness of a fee is determined by considering the medical provider's usual fee, the usual fee of other medical providers in the geographical area in which the services were rendered, and other factors that may tend to prove reasonableness such as costs, overhead, and usual fees paid and accepted (*Gutierrez v. Advance Paper Box*, 2016 Cal. Wrk. Comp. P.D. LEXIS 42; *Reyes v. Leegin Creative Leather Products*, 2017 Cal. Wrk. Comp. P.D. LEXIS 45; *Collazo v. Meco-Nag Corp.* (2017) 82 CCC 623 (panel decision); *Cardenas v. Costa View Farms*, 2019 Cal. Wrk. Comp. P.D. LEXIS 323).

The lien claimant still has the burden of proving reasonable value of services provided (*Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 CCC 1588; *Tapia v. Skill Master Staffing* (2008) 73 CCC 1338 (appeals board en banc).

The Kunz case dealt with an outpatient surgery lien in which there was no OMFS. The en banc commissioners concluded the following:

That is, to obtain a fee in excess of the reasonable maximum, the “medical service” provider must submit an itemization and (1) show that the requested fee is reasonable and is not in excess of the provider’s usual fee; and (2) explain the extraordinary circumstances, related to the unusual nature of the services rendered. (Lab. Code, §§5307.1(b), 5307.6(b); Cal. Code Regs., tit. 8, §§9792(c), 9792.5(c).).

Kindred did not provide evidence of reasonable value and did not establish a reasonable basis for reimbursement over what was paid. The bill review from SCIF did state that the provider should obtain a composite factor from the administrative director.

The outpatient surgery center in *Tapia v. Skill Master Staffing* (2008) 73 CCC 1338 (appeals board en banc) had the affirmative burden of proving that its lien is reasonable, and it was

required to carry this burden by a preponderance of the evidence pursuant to Labor Code 5705. Similarly, the petitioner herein had the burden of proving by a preponderance of evidence and failed to carry that burden.

THE OFFICIAL MEDICAL FEE SCHEDULE SHOULD NOT BE APPLIED WHEN THE FACILITY IS EXEMPT FROM THE OFFICIAL MEDICAL FEE SCHEDULE

The Official Medical Fee Schedule (OMFS) may be applied to show reasonable value of a lien even when the lien claimant is exempt from the Official Medical Fee Schedule as it is one of the factors to consider. Here the lien claimant did not provide persuasive reliable evidence and therefore the OMFS may be used to show reasonable value.

In the Kunz case the WCAB stated that there may be consideration of a number of factors, including but not limited to the medical provider's usual fee, the usual fee of other medical providers in the geographical area in which the services were rendered, other aspects of the economics of the medical provider's practice that are relevant, and any unusual circumstances in the case.

Here the lien claimant failed to provide the necessary evidence and defendant did provide evidence. The OMFS is one of the factors that may be considered and was the only credible evidence of value presented in this case.

WHETHER THE BURDEN SHIFTED TO STATE COMPENSATION INSURANCE FUND

The burden did not shift to defendant based on the lien claimant providing what it described as Exhibits 2, 3, and 10. Providing evidence of being exempt from the OMFS is the beginning of the process.

The lien claimant still has the burden of proving reasonableness pursuant to Labor Code 3202.5 and Labor Code 5705. The lien claimant had the burden of proof. The evidence that SCIF provided in testimony, exhibits, and bill review and showing a benefit paid based on a reasonable comparison was superior compared to the evidence that the lien claimant provided.

WHETHER KUNZ AND TAPIA CASES REQUIRE THAT THE LIEN CLAIMANT IS ENTITLED TO A FAIR AND REASONABLE VALUE FOR SAME OF SIMILAR SERVICES

It would appear that the petitioner is appealing to equity by stating the lien claimant is entitled to a fair and reasonable value. There is no basis for making a decision based on equity, as there are no circumstances here requiring equity such as gross and obvious underpayment, illegal activity, windfalls to any party, double recovery or fundamental unfair treatment.

The undersigned agrees that the Kunz and Tapia cases are relevant to the lien discussion in this case. In Tapia, the WCAB stated:

Imposing the burden of proving the reasonableness of its charges upon the outpatient surgery center is consistent with the well-established general principle that a lien claimant

has the burden of proving all of the elements necessary to the establishment of its lien. It cited several cases including Kunz.

In the Kunz case the WCAB stated that there may be consideration of a number of factors, including but not limited to the medical provider's usual fee, the usual fee of other medical providers in the geographical area in which the services were rendered, other aspects of the economics of the medical provider's practice that are relevant, and any unusual circumstances in the case. Here the lien claimant failed to provide the necessary evidence and defendant did provide evidence.

The petitioner lien claimant is not entitled to more than has already paid.

IV

RECOMMENDATION

It is respectfully recommended that the applicant's Petition for Reconsideration be denied.

DATE: 09/11/2024

Eric Thompson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE