

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

**TOBIAS VILLALOBOS, *Applicant***

**vs.**

**I HEARTMEDIA; XL INSURANCE AMERICA,  
administered by CORVEL CORPORATION, *Defendants***

**Adjudication Number: ADJ10868847  
Los Angeles District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Cost Petitioner Citywide Scanning Service, Inc. has petitioned for reconsideration of the Findings of Fact and Orders issued and served by the workers' compensation administrative law judge (WCJ) in this matter on April 12, 2024. In that decision, the WCJ found that 1) cost petitioner Citywide Scanning Service, Inc. has not sustained their burden of demonstrating that any of the services they ostensibly provided or did in fact provide are compensable pursuant to applicable legal standards, 2) due to repeated false declarations under penalty of perjury in the within case that the subpoena documents served by cost petitioner were "true cop[ies]" of the original subpoenas served, sanctions of \$500.00 are properly paid by cost petitioner to the California General Fund pursuant to Labor Code section 5811 and rule 10421(b)(5), 3) no other costs, sanctions or attorney's fees are properly paid by Citywide Scanning, Inc. for any acts or omissions to date, and 4) no costs, sanctions or attorney's fees are paid by defendant herein or any of their representatives or agents for any acts or omissions to date.

The WCJ Ordered cost petitioner take nothing further, and further ordered Citywide Scanning Service, Inc. pay \$500.00 in sanctions to the State of California General Fund.

Petitioner contends that the evidence does not support the findings of fact, and that the WCJ acted without or in excess of its powers. Further alleged is that the WCJ abused his discretion in raising and deciding an issue regarding who ordered the subpoenaed records in applicant's office, and that such issue had not been raised by the parties at trial. Petitioner asserts that by doing

so, there was a violation of their due process rights to review and present evidence regarding same. Finally, petitioner alleges that the WCJ has surpassed his legal authority and in doing so, has raised concerns regarding impartiality in this matter. Petitioner requests that their petition be granted and a finding be made that they have met their burdens of proof and thus defendant is liable for petitioner's services plus applicable penalties and interest, or that the matter be remanded by to the trial level for further proceedings before a different WCJ.

Defendant filed an answer to the Petition.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We have considered the Petition for Reconsideration (Petition), the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant cost petitioner's Petition for Reconsideration. Our order granting the Petition is not a final order, and we will 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. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

#### I.

Preliminarily, we note the following in our review:

The WCJ stated in both his Opinion on Decision (Opinion) and Report the following:

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The within case which generated pleadings and documents that, by my estimation, exceeded 1,000 pages and led to an astounding [18] hearings before [four] different judges solely involving the participants herein.

The underlying issue revolved entirely over photocopy expenses totaling \$2,605.52, together with a multitude of added claims by both sides for penalties, attorney's fees, and other collateral costs.

I am sure no one would dispute that, in a system burdened by chronic staffing shortages, ongoing challenges posed by the COVID pandemic, and challenges involved in meeting injured workers' own expectations of timely resolution of their disputed claims, the reasonable value of the time devoted to this case by both sides and the WCAB itself exceeded the amount in dispute by an exponential amount.

After a multitude of hearings as noted above, the matter was submitted before the undersigned without testimony. Some 75 exhibits were placed in evidence, together with pleadings, petitions and other court documents that ran into the hundreds of pages. The matter was submitted on a series of issues, including the amounts due to cost petitioner for their underlying claimed services (which were disputed by defendant in their entirety) as well as claims for costs and sanctions brought by both sides and claims for interest brought by the cost petitioner.

**Discussion of the Law Pertaining to Cost Petition Claims:**

It is undisputed that photocopy costs, when reasonable and necessary and meeting other requirements of the law, are properly borne by defendants in our workers' compensation system as medical-legal expenses.

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First, the cost petitioner bears the burden of proving both that there was a "contested claim" within the meaning of section 4620(b) and that the expenses were "reasonably, actually and necessarily incurred" at the time the services were rendered pursuant to section 4621(a). (Report, p. 9.)

Petitioner asserts in their pleading the following:

Defendant Issued a Notice of Denial on 03/03/2017 (CSS. Exh. 40). On 05/17/2017 Applicant's Attorney (hereafter, AA) filed an Application for Adjudication of claim listing all matters of liability as contested (*eams doc id: 22017971*).

On 12/06/2021 Defendant issued another Notice of Denial (CSS Exh. 41). On 07/31/2017 Defendant provided AA with a couple of medical reports (Def. Exh. K). On 09/19/2017 Defendant served AA with various medical reports up to the date of the service (Def. Exh.L).

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Citywide Scanning Service, Inc. provided services from 09/03/2019 through 11/06/2019 (*eams doc ids: 39262964 through 39262975*). From 09/03/2019 through 11/06/2019 Citywide Scanning Service, Inc. provided Defendant with Notice to Parties of copying records (*eams doc ids: 39262976 through 39262979*). Upon completion of its services Citywide billed Defendant according to the copy service fee schedule (*eams doc ids: 39262980 through 39262990*).

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On 04/06/2020 the case resolved by way of Compromise and Release (hereafter, C&R) listing multiple issues as having been contested and resolved by way of said C&R (*eams doc id: 36391071*).

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As stated in *In Ashley Colamonico v. Secure Transportation* (2019) 84 Cal. Comp. Cases 1059, 1061 [2019 Cal. Wrk. Comp. P.D. LEXIS 388 (Appeals Board en banc)]:

[A] determination of whether a purported medical-legal expense involves a “contested claim” is a fact-driven inquiry. The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal. App. 4th 654, 663 [84 Cal. Rptr. 2d 915, 64 Cal.Comp.Cases 624].) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases.

Assuming a lien claimant has met its burden of proof pursuant to section 4620(a), it has a second hurdle to overcome; the purported medical-legal expense must be reasonably, actually, and necessarily incurred. (§ 4621(a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Colamonico, at p. 1063.*)

## II.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313].)

Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra*, 68 Cal.2d at pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion

does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based). (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

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.

### III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483,

491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

“No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...”

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

#### IV.

Accordingly, we grant cost petitioner’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 cost petitioner's Petition for Reconsideration of the Findings of Fact and Orders issued on April 12, 2024 by a workers' compensation administrative law judge 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/ JOSE RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR  
CONCURRING NOT SIGNING



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

**July 5, 2024**

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

**CITYWIDE SCANNING SERVICES, INC.  
GREENUP HARTSTON & ROSENFELD, LLP**

**LAS/abs**

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