

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

ALAN LOPEZ, *Applicant*

vs.

**GABRIEL VERON doing business as GLA ELECTRIC;
NORGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11228094
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

PCT Medical Services, Inc., (lien claimant) seeks reconsideration of the Findings of Fact and Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on December 14, 2020. As relevant herein, the WCJ found that lien claimant failed to submit its National Provider Identifier (NPI) number; and that lien claimant's billing evidence did not include a CMS 1500 Health Insurance Claim Form. The WCJ disallowed lien claimant's lien in its entirety.

Lien claimant contends that it served its CMS 1500 Health Insurance Claim Form, which included its NPI number, on November 29, 2018, and December 27, and 28, 2018. (See Ex. 9, Proofs of Service.)¹

NorGuard Insurance Company (defendant) filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

¹ We note that lien claimant attached a Declaration of Donald M. Lower in support of its Petition. We did not consider Mr. Lower's declaration as it was not admitted as evidence in the record.

FACTUAL BACKGROUND

Applicant, while employed on January 15, 2018, as an electrical apprentice by Gabriel Veron dba GLA Electric, claims to have sustained injury arising out of and in the course of employment to his legs, thighs, knees, lower extremities, nervous system, and psyche. (Minutes of Hearing (MOH), September 30, 2020, p. 2:9-11.)

Lien claimant provided six shock wave treatments in November and December 2018. (Ex. 3, Billing Ledger.)

On September 30, 2020, at the lien trial, the parties stipulated that lien claimant was seeking reimbursement for a treatment lien. (MOH, *supra*, at p. 2:14.) The parties raised four issues for the WCJ's consideration: "1) Injury arising out of and in the course of employment; 2) Parts of body injured; 3) Liability for self-procured medical treatment specifically treatment alleged to have been rendered by PCT Medical; [and] 4) compensability of the lien of PCT Medical." (*Id.* at p. 2:17-23.)

In the Report, the WCJ offered two rationales for denying lien claimant's lien: lien claimant did not provide its NPI number pursuant to Labor Code section 4603.2(b)(1)(C) (Lab. Code, § 4603.2(b)(1)(C)); and lien claimant did not submit its bills on a CMS 1500 Health Insurance Claim Form pursuant to Administrative Director (AD) Rule 9792.5.2(a).² (Cal. Code Regs., tit. 8, § 9792.5.2(a).)

DISCUSSION

As mentioned above, the WCJ denied lien claimant's lien, in part, because lien claimant failed to provide its NPI number pursuant to section 4603.2(b)(1)(C). Section 4603.2 was amended by stats. 2019, ch. 647, § 5 (SB 537), became effective on January 1, 2020, and provides:

The request for payment with an itemization of services provided and the charge for each service shall be submitted to the employer with the national provider identifier (NPI) number for the physician or provider who provided the service for which payment is sought in accordance with rules adopted by the administrative director pursuant to Section 4603.4. Failure to include the physician's or provider's NPI shall result in the request for payment being barred until the physician's or provider's NPI is submitted with the request for payment. This subparagraph does not preclude an employer, insurer, pharmacy benefit manager, or third-party claims administrator from requiring the physician's or provider's NPI at an earlier date. This subparagraph is declaratory of existing law.

² All further statutory references are to the Labor Code unless otherwise stated.

Prior to January 1, 2020, this requirement to provide a NPI number as part of a request for payment did not exist as part of section 4603.2.³

The six treatments at issue were provided in 2018 before amended section 4603.2(b)(1)(C) became effective. Thus, it is unclear how section 4603.2(b)(1)(C), as amended by stats. 2019, ch. 647, § 5 (SB 537) and effective January 1, 2020, is applicable to lien claimant's six treatments provided in 2018. Based on the record, this does not appear to be a viable argument.

The WCJ also denied lien claimant's lien, in part, because lien claimant did not provide a CMS 1500 Health Insurance Claim Form pursuant to AD Rule 9792.5.2(a). We note that this is an argument/objection that should have been raised by defendant. There is no record that defendant raised this objection/argument at the mandatory settlement conference or at trial. (See MOH, September 30, 2020.) An issue which is not timely raised may be deemed waived. (See *Travelers Inc. Co. v. Workers' Comp. Appeals Board (Coker)* (1980) 45 Cal.Comp.Cases 535, 536 (writ den.); *Hollingsworth v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 715, 716-17 (writ den.)) Furthermore, we note that lien claimant's right to due process may also be implicated as it does not appear that the issue of AD Rule 9792.5.2(a) and the claim form was mentioned or raised as an issue at trial.

Upon return to the trial level, we recommend that the WCJ address the merits of this lien as articulated in the trial briefs of lien claimant and defendant.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

³ Prior to January 1, 2020, section 4603.2(b)(1)(C) provided the following: "Notwithstanding the requirements of this paragraph, a copy of the prescription shall be required with a request for payment for pharmacy services, unless the provider of services has entered into a written agreement, as provided in this paragraph, that requires a copy of a prescription for a pharmacy service." (Stats. 2017, ch. 561, § 173 (AB 1516), effective January 1, 2018.) Former section 4603.2(b)(1)(C) was renumbered as 4603.2(b)(1)(D) effective January 1, 2020.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the December 14, 2020 Findings of Fact and Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 14, 2020 Findings of Fact and Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 5, 2021

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

**ALAN LOPEZ
GUARD INSURANCE
HANNA BROPHY
PCT MEDICAL SERVICES
PINNACLE LIEN SERVICES**

SS/abs

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