

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

**NIDIA MURILLO SANTILLAN, *Applicant***

**vs.**

**TEMPO INDUSTRIES, INC.;;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10354823; ADJ10354724; ADJ13230298  
Van Nuys District Office**

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

Lien claimant Prime Physical Therapy, by and through its lien representative Innovative Medical Management, Inc., petitions for reconsideration of the Order Reducing Lien and Order to Pay Lien Claimant (Order) issued by the workers' compensation administrative law judge (WCJ) on January 20, 2021, in cases ADJ10354823, ADJ10354724, and ADJ13230298.

Lien claimant contends that the record is silent as to the WCJ's justification for the reduction in the lien claim.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (R&R) recommending that we deny reconsideration. We have not received an Answer from any party.

We have considered the allegations of lien claimant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the Order and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**BACKGROUND**

Applicant alleged injury to various body parts while employed as a seamstress for defendant, during the period from September 12, 1976 to July 10, 2015.

On June 3, 2020, a Joint Order Approving Compromise and Release issued. Lien claimant Prime Physical Therapy, by and through its lien representative Innovative Medical Management, Inc., filed a Notice and Request for Allowance of Lien, dated August 25, 2020. On January 20, 2021, defendant and several lien claimants, including petitioner, appeared at a lien conference.

The WCJ issued the Order reducing the lien amount based upon “discussion of the merits with the parties, informal review of the lien, exhibits, and medicals filed herein ...” (Order, p. 2.) The WCJ served the Order by way of email on January 20, 2021. The lien claimant filed a timely Petition for Reconsideration on February 16, 2021. The WCJ recommended that we deny reconsideration, as follows:

“Instead of filing its Petition for Reconsideration within 20 days as verbally noted and directed, lien claimant waited 27 days to do so. Regardless of the merits or the lack of a Hamilton record, regardless of the fact this WCJ would ordinarily rescind the Order had the petition been filed timely, the lack of filing within the mandated time frames deprives the WCAB of jurisdiction.” (R&R, p. 2.)

## **DISCUSSION**

When any document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California. (Cal. Code Regs., tit. 8, former § 10507, now § 10605 (eff. Jan. 1, 2020).)

A petition for reconsideration of a final decision by a WCJ or the Appeals Board must be filed within 20 days of service of the decision, plus the applicable period for mailing. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a), now § 10605(a) (eff. Jan. 1, 2020).) However, if the last day for the performance of any act required by law to be performed within a specified period of time is a holiday, then that period is extended to and included the next day that is not a holiday. (Code Civ. Proc., §§ 12, 12a(a).)

The WCJ served the Order on Wednesday January 20, 2021, by way of email. Because the Order was served by a method other than personal service, the deadline to respond is extended by five calendar days. Thus, the deadline to file a petition for reconsideration fell on Sunday, February 14, 2021. Because February 14 and February 15, 2021, inclusive, were court holidays for the purpose of computing time to file a petition for reconsideration, the deadline to file a

petition for reconsideration was extended to February 16, 2021. (Code Civ. Proc., §§ 12a, 12b, 135; Gov. Code, § 6700.) Thus, the petition for reconsideration was timely.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*)<sup>1</sup>).

Here, it appears that the WCJ believed that a record was unnecessary because his Order was issued at a conference as opposed to hearing or trial. Labor Code section 5313 makes no distinction as to the type of proceeding so if, as here, a conference results in an order, finding, or award, a summary of evidence relied on and the grounds upon which the determination was made is required. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, former § 10541, now § 10761 (eff. Jan. 1, 2020).) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).) Moreover, the WCJ may, in their discretion, convert a conference to a hearing or a type of proceeding other than that requested. (Cal. Code Regs., tit. 8, former § 10420, now § 10745 (eff. Jan. 1, 2020); Cal. Code Regs., tit. 8, former § 10353, now § 10759 (eff. Jan. 1, 2020).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475.)

The Order reflects that the WCJ conducted an “informal review of the lien, exhibits, and medicals” and discussed the merits with the parties. However, the Order does not describe what evidence was considered, nor was any evidence admitted into the record, and the Order does not set forth the reasons for the decision made on the issue. The absence of an evidentiary record bars meaningful review of whether the WCJ's Order is supported by substantial evidence admitted in the record and is in accordance with the applicable statutory and regulatory laws. Accordingly, we

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<sup>1</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, former § 10341, now § 10325(a) (eff. Jan. 1, 2020); *City of Long Beach v. Workers' Comp. Appeals Bd.* (Garcia) (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

grant reconsideration, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the January 20, 2021 Order Reducing Lien and Order to Pay Lien Claimant is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order Reducing Lien and Order to Pay Lien Claimant is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**/s/ KATHERINE ZALEWSKI, CHAIR**



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

**April 19, 2021**

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

**INNOVATIVE MEDICAL MANAGEMENT, INC.  
PRIME PHYSICAL THERAPY  
STATE COMPENSATION INSURANCE FUND**

**JB/abs**

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