

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

**ALBERTO JIMENEZ, *Applicant***

**vs.**

**MILLAN'S RANCHITO, JAVIER LOMELI;  
EMPLOYERS COMPENSATION INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11166186  
Pomona District Office**

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

Cost petitioner Citywide Scanning Service, Inc., seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) in this matter on November 7, 2024. In that decision, the WCJ found in pertinent part that: the subpoena to Millan's Ranchito is an invalid subpoena; the subpoenas to "Bicorp Clinical Labl [*sic*] and Los Reyes Clinica [Medica]" are valid subpoenas; defendant did not respond timely to the demand by applicant's counsel; the matter is subject to Independent Bill Review (IBR); and the court has no jurisdiction to determine the amounts owed, if any.

Cost petitioner contends that the WCIRB service request is valid and reimbursable; that the subpoena to Millan's Ranchito is valid and reimbursable; and that this matter is a non-IBR matter that is not subject to IBR.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, and the contents of the Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant the Petition, amend the F&O to find that the subpoena to Millan's Ranchito and the service request to WCIRB are valid (Finding of Fact 4), to find that the WCAB has jurisdiction to decide

the issue of the amount of payment owed (Finding of Fact 7), to order that defendant is liable for payment to cost petitioner (Order), and otherwise affirm the F&O.

### **BACKGROUND**

We will briefly review the relevant facts.

Applicant claimed to have sustained a cumulative injury arising out of and occurring in the course of employment to his eye, arm, hand, fingers, and back while employed by defendant as a cook, during the period from September 1, 2016 to September 1, 2017.

On December 20, 2017, applicant's attorney issued a Notice of Representation letter to defendant regarding applicant's workers' compensation claim and requested all records in its possession pursuant to AD Rule (Cal. Code Regs., § 9982 (d)). (Exhibits A, 17, 12/20/2017.)

On December 20, 2017, applicant's attorney submitted an Order Referral to Citywide Scanning requesting a records only request for Workers' Compensation Insurance Rating Bureau (WCIRB) during the period of September 1, 2016 through September 1, 2017 for applicant's employer, Millan's Ranchito. (Joint Exhibit 1, 12/20/2017.)

On December 28, 2017, applicant's attorney submitted an Order Referral to Citywide Scanning requesting records from Millan's Ranchito, Los Reyes Medical Clinic, and Bicorp Clinical Lab Inc. (Joint Exhibit 2, 12/28/2017.)

On January 4, 2018, cost petitioner ran a request for WCIRB information to obtain and confirm insurance coverage information regarding defendant for applicant's case. (Exhibit 8, 1/5/2018.)

On January 5, 2018, cost petitioner issued an invoice to defendant for its copying services for the WCIRB Records for year 2016. (Exhibit 8, 1/5/2018.)

On January 17, 2018, applicant's attorney filed an Application for Adjudication of Claim (Application). Paragraph 9 of the Application states that it was filed because of a disagreement regarding liability for all benefits. The Application identifies Employers Preferred Company as defendant employer's insurance carrier.

On January 23, 2018, at the request of applicant's attorney, cost petitioner issued subpoena duces tecums (SDTs) requesting records pertaining to applicant from Millan's Ranchito, Los Reyes Clinica Medica and Biocorp Clinical Laboratory. (Exhibits 3, 4, 5, 1/23/2018.)

On January 24, 2018, cost petitioner issued a Notice to Interested Parties of Copying and Additional Set Order Forms to Millan's Ranchito, Los Reyes Clinica Medica, and BioCorp Clinical Laboratory. (Exhibit 6, 1/24/2018.)

On February 1, 2018, cost petitioner issued an invoice to defendant for its copying services for the records from BioCorp Clinical Laboratory. (Exhibit 10, 2/1/2018.)

On February 2, 2018, defendant issued a letter to applicant denying all liability for his claim of injury. (Exhibit B, 2/2/2018.)

On February 20, 2018, defendant filed an Answer dated January 31, 2018, denying liability for applicant's injury and all benefits.

On February 27, 2018, cost petitioner issued an invoice to defendant for its copying services for the records from Los Reyes Clinica Medica. (Exhibit 9, 2/27/2018.)

On March 8, 2018, cost petitioner issued an invoice to defendant for its copying services for the records from Millan's Ranchito. (Exhibit 7, 3/8/2018.)

The case in chief resolved via a Compromise & Release (C&R). Notably, defendant agreed to pay all medical expense "through date of Order Approving Compromise & Release." (§ 6). An Order Approving Compromise and Release (OACR) issued on January 22, 2019.

On June 11, 2021, cost petitioner filed a Non-IBR Petition for Costs, seeking payment of \$590.00 and costs. On June 27, 2022, cost petitioner filed an Amended Petition for Costs, also seeking sanctions.

On August 13, 2024, the matter came on for lien trial on the lien of Citywide Scanning. Defendant raised the following issues:

- (a) Whether Citywide's services were med-legal in nature?
- (b) Whether Citywide's services were reasonable and necessary?
- (c) Whether Citywide acted in bad faith?
- (d) Whether the subpoenas were validly served?

Cost Petitioner raised the following issues:

- (e) Is the Provider Citywide entitled to medical-legal reimbursement?
- (f) Did the defendant timely issue objections and explanations of review?
- (g) Did the defendant timely issue final written determinations?
- (h) did the defendant file a petition for medical-legal reimbursement?
- (i) has defendant waived any objections?
- (j) is the provider entitled to penalties and interest?
- (k) is the defendant liable for costs and sanctions?
- (l) whether there was a timely request from applicant's attorney to insurer or defendant for records prior to the issuance of the subpoena duces tecum? (MOH, 8/13/2024.)

The WCJ continued the matter for testimony.

On October 17, 2024, the matter came to lien trial. Defendant witness Angela Pulido, adjustor at Employers Assurance Company, testified. (MOH/SOE, 2:15-2:18, 10/17/2024.)

On November 7, 2024, the WCJ issued the F&O.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> 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.

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 December 5, 2024, and 60 days from the date of transmission is February 3, 2025. This decision is issued by or on February 3, 2025, 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

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

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 December 5, 2024, and the case was transmitted to the Appeals Board on December 5, 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 December 5, 2024.

## II.

A lien claimant/cost petitioner holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See Lab. Code, §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant/cost petitioner is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico v. Secure Transport*, (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc).)

An Application was filed by applicant's attorney on January 17, 2018, alleging that liability for all benefits was disputed. Thus, here applicant's claim was a contested claim as of January 17, 2018, satisfying the first prong of the *Colamonico* analysis pursuant to section 4620.

Once a lien claimant/cost petitioner 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. (Lab. Code, § 4621(a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Id.*)

Here, the WCJ correctly found that the subpoenas for Biocorp Clinical Laboratory and Los Reyes Clinica Medica were valid subpoenas. The issue then is whether the subpoena from applicant's employer Millian's Ranchito was valid.

We note that the WCJ states in her Opinion on Decision that, "CCP 2020.010, under which authority the Subpoena was issued, specifically delineates that the discovery method is to be used

‘to obtain discovery within the state from a person **who is not a party to the action.**’ (emphasis added in original) As such, the subpoena to Millan’s Ranchito [Exhibit 3] is invalid.”

We disagree. The WCJ’s assertion above is incorrect. Section 130 grants the WCAB broad authority to issue subpoenas “for the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.” There is nothing in the Labor Code that limits subpoenas to non-party witnesses. (See Cal. Code Regs., tit. 8, § 10640.) Indeed, it has been a long standing practice in workers’ compensation cases to use a subpoena duces tecum such as the one issued in this matter by cost petitioner to obtain the employer records from an employer such as Millan’s Ranchito. The subpoena for the records from applicant’s employer, Millan’s Ranchito was reasonable and necessary since defendant in its Answer disputed applicant’s employment. Thus, cost petitioner met its burden by satisfying both prongs of 4620 and 4621.

Next, we examine the WCJ’s determination that the parties must proceed to IBR. We disagree.

A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1); 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant’s burden. If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider’s billing. (Cal. Code Regs., tit. 8, § 10786(e); see *Colamonico, supra*.) A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest.

WCAB Rule 10786(b) states in relevant part that:

(b) If a defendant has failed to file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness in compliance with subdivision (a), a medical-legal provider may file and serve a petition for reimbursement of medical-legal expenses and a Declaration of Readiness to Proceed. Upon filing of a petition for reimbursement of medical-legal expenses and a Declaration of

Readiness to Proceed, the medical-legal provider shall be added to the official address record.

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(e) A defendant shall be deemed to have waived all objections to a medical-legal provider's billing, other than compliance with Labor Code sections 4620 and 4621, if:

- (1) The provider submitted a properly documented billing to the defendant and, within 60 days thereafter, the defendant failed to serve an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or
- (2) The defendant failed to make payment consistent with an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director; or
- (3) The provider submitted a timely and proper request for a second review to the defendant and, within 14 days thereafter, the defendant failed to serve a final written determination that complies with any applicable regulations adopted by the Administrative Director; or
- (4) The defendant failed to make payment consistent with a final written determination that complies with any applicable regulations adopted by the Administrative Director.

(f) A defendant shall be deemed to have waived any objections to a medical-legal provider's billing, other than the amount payable pursuant to the fee schedule(s) in effect on the date the services were rendered and compliance with Labor Code sections 4620 and 4621, if the provider submitted a timely objection to the defendant's EOR regarding a dispute other than the amount payable and the defendant failed to file and serve a petition for determination of medical-legal expenses and a Declaration of Readiness as required by Labor Code section 4622 and subdivision (a) of this rule.

(Cal. Code Regs., tit. 8, § 10786(b)(e)(f).)

In effect, when defendant does not comply, this rule shifts the burden to defendant to show that it complied with the statutory provisions because it allows the filing of a cost petition and allows the WCAB to determine the amount of payment. We note that here defendant submitted no evidence that it paid cost petitioner or that it responded to cost petitioner's requests for a second review. (See Exhibits 13, 14.) Thus, defendant has waived its objections, and cost petitioner is not required to proceed to IBR.

Cost petitioner has met its burden of proof pursuant to sections 4620 and 4621, and the only issue is the reasonable value of the invoices pursuant to section 4622. In addition, it appears

that defendant unreasonably delayed in providing records in their possession from December to May, and unreasonably delayed in paying the invoices for the subpoenas, thus, defendants should be liable for the fee schedule billing with a 10% penalty and 7% annual interest. Finally, with respect to the WCIRB, the issue of the service request was raised at trial, although the WCJ made no finding on it. Applicant requested the identity of defendant's workers' compensation insurance carrier and then filed with the Application with the correct information as to the carrier. Defendant submitted no evidence of an objection to the invoice, and we conclude that defendant is liable for the cost of that invoice.

The WCJ in her Opinion on Decision states,

No payment is required for copy services that are provided within 30 days of a written request to the claim's administrator by an injured worker for copies of records in the claims administrator's possession under Labor Code §5307.9. Defendant appears to be stuck on the date of the FILING of the Application of Adjudication (January 17, 2018) and the Answer (January 31, 2018) for their understanding of the date from which the thirty days ran. It's not.

The operative date is the date upon Applicant's Counsel made a demand on the Defendant Employer/Insurance Company for records. Under CCR8 §9982(d)(1) the demand letter from Edward Figaredo's office was sent on, or about, December 20, 2017, which started the 30-day clock. Exhibit 17. Defendant's response was due on, or about, January 19, 2018. The first indication that there was a response was May 1, 2018. Exhibit D and Testimony of Angela Pulido, Senior Adjuster, MOH/Summary October 17, 2024, pg. 3, ln. 13-17. Thus, there was no timely compliance with Applicant's demand.

We disagree.

Section 5307.9 states,

On or before December 31, 2013, the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt, after public hearings, a schedule of reasonable maximum fees payable for copy and related services, including, but not limited to, records or documents that have been reproduced or recorded in paper, electronic, film, digital, or other format. The schedule shall specify the services allowed and shall require specificity in billing for these services, and ***shall not allow for payment for services provided within 30 days of a request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's, claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim.*** The schedule shall be applicable regardless of whether payments of copy service costs are claimed



under the authority of Section 4600, 4620, or 5811, or any other authority except a contract between the employer and the copy service provider.

(§ 5307.9 (italics and bold added for emphasis).)

AD Rule 9982(d) states in pertinent part that: . . . . There will be no payment for copy and related services that are: (1) Provided within 30 days of a written request by an injured worker or his or her authorized representative to an employer, claims administrator, or workers' compensation insurer for copies of records in the employer's claims administrator's, or workers' compensation insurer's possession that are relevant to the employee's claim. . . .

(Cal. Code Regs., tit. 8, § 9982(d)(1).)

Although the above statute and regulation does not allow for payment of a subpoena duces tecum served within 30 days of a request for records, it does not state that a request for records must be requested before they can be subpoenaed. In other words, there is no mandate or requirement that an applicant or their attorney must make a request for records from the employer or the insurer prior to requesting that a subpoena issue for records. Thus, a failure to make such a request is immaterial.

Accordingly, we grant the Petition, amend the F&O to find that the subpoena to Millan's Ranchito and the service request to WCIRB are valid (Finding of Fact 4), to find that the WCAB has jurisdiction to the issue of the amount of payment owed (Finding of Fact 7), to order that cost petitioner is entitled to payment (Order), and otherwise affirm the F&O.

For the foregoing reasons,

**IT IS ORDERED** that cost petitioner's Petition for Reconsideration of the of November 7, 2024 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** that as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the November 7, 2024 Findings and Order is **AFFIRMED** except that it is **AMENDED** as provided below.

#### **FINDINGS OF FACT**

4. The subpoena to Millian's Ranchito and the service request to WCIRB are valid.

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7. The WCAB has jurisdiction to determine the issue of the amount to be paid, and cost petitioner is entitled to payment. The issue of the amount to be paid is deferred, including the issue of the 10% penalty and 7% annual interest.

**ORDER**

Cost petitioner is entitled to payment for the reasonable value of medical-legal services for subpoenas to Los Reyes Clinica Medica, Clinical Laboratory Biocorp, Millian Ranchito and the service request to WCIRB. The parties shall adjust the amount of payment, with jurisdiction reserved to the WCJ in the event of a dispute.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**February 3, 2025**

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

**TOBIN LUCKS  
CITYWIDE SCANNING SERVICE**

**DLM/oo**

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