

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

ARSHAVER KOUYOUMDJIAN, *Applicant*

vs.

**EL DORADO ENTERPRISES, INCORPORATED
DBA HUSTLER CASINO; permissibly self-insured
and administered by CORVEL CORPORATION, *Defendants***

**Adjudication Numbers: ADJ11016356; ADJ11609604
Long Beach District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ Having completed our review, we now issue our Decision After Reconsideration.

Cost petitioner Med-Legal Photocopy seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 29, 2021, wherein the WCJ found in pertinent part, "...that the issues raised in MED LEGAL LLC's Petition for dates of service where defendant provided a timely Final Determination are actually Fee Schedule disputes, and the parties should have deferred to Independent Bill Review for same. The Court does not find that MED LEGAL LLC is entitled to costs under Labor Code §5813 and Cal. Code Regs §10786. The Court does not find that sanctions are applicable against the defendant based on the evidence presented and the exhibits attached to the Petition filed September 25, 2020."

Cost petitioner contends that since the billings that were denied do not involve a disputed amount of payment, it is not necessary to go through Independent Bill Review (IBR) or that it is not barred from pursuing reimbursement for its expenses.

We have not received an Answer from defendant.

¹ Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

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 upon our review of the record, and for the reasons discussed below, we will rescind the WCJ's F&O, and return this matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

We will briefly review the relevant facts.

Applicant, while employed by defendant on January 23, 2013, as a foreman, claimed injury to his neck and back (ADJ11016356), and while employed by defendant during the period from July 19, 2000, through October 18, 2013, as a foreman, sustained injury to his neck and back (ADJ11609604).

On August 22, 2017, applicant's attorney issued a letter to applicant's employer informing it of the representation and the industrial injury of January 23, 2013. The letter demands the name and address of their claims administrator and claim number assigned to the injury. (Exhibit 8, 8/22/2017.)

On September 13, 2017, 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 except for Supplemental Job Displacement/Return to Work.

On October 31, 2017, defendant denied applicant's claim. (Exhibit 9, 10/31/2017.)

On August 21, 2018, the case in chief settled by way of a Compromise & Release (C&R), and an Order Approving issued, dated October 22, 2018. Pursuant to Paragraph 9, they agreed that:

THE SETTLEMENT IS BASED ON THE QME REPORT OF DR. LAWRENCE BORELLI DATED 04/19/2018. DR. BORELLI FOUND THE APPLICANT TO HAVE 0% WHOLE PERSON IMPAIRMENT BUT DID FIND A NEED FOR FUTURE MEDICAL CARE. THE PARTIES TO THIS SETTLEMENT HAVE CONSIDERED MEDICARE'S INTERESTS. THE AMOUNT OF THE SETTLEMENT DOES NOT MEET THE THRESHOLD ESTABLISHED BY CMS FOR AN MSA.

On October 24, 2019, cost petitioner/lien claimant filed a medical-legal lien for its services.

On May 28, 2020, cost petitioner filed a Petition for Determination of Non-IBR-Medical-Legal Dispute. In the petition, cost petitioner alleged that they provided copying services and

issued subpoenas at applicant's attorneys' request during the period from September 27, 2017 to March 30, 2018.

On December 16, 2020, the matter came on for lien trial. The WCJ ordered that Case Nos. ADJ11016356 and ADJ11609604 be consolidated for hearing. The issues were: "1. Cost Petition filed by Med-Legal Photocopy for medical-legal expenses in the amount of \$347.85 for the principal with penalties of \$34.78, plus interest. 2. Whether Med-Legal Photocopy is entitled to costs under Labor Code section 5813 and Labor Code section 10786. 3. Whether sanctions are applicable." (Minutes of Hearing/Order of Consolidation, 12/16/2020.)

On January 29, 2021, the WCJ issued the F&O.

DISCUSSION

We briefly review the relevant law:

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).)

AD Rule 9983 (Cal. Code Regs., tit. 8, § 9983) sets forth the rates for copy services that were provided prior to July 15, 2022. Subdivision (a) specifies the rate for an initial set of records; cancellation of a subpoena or a certificate of no records; records from the Employment Development Department; and records from the Workers' Compensation Insurance Rating Bureau. Subdivision (b) allows additional separate rates for paper copies of documents over 500 pages; additional sets of records; x-rays and scans; and applicable sales tax.

In the Opinion on Decision the WCJ stated that: "In summary, by virtue of the parties timely issuing EORs and invoking Requests for Second Bill Review many if not all of the disputes should have gone to IBR." In its Petition for Reconsideration, cost petitioner asserts that additional copies are allowed under AD Rule 9983. We note that if the matter was reviewed under IBR, then the above copy fee schedule pursuant to AD Rule 9983 should apply.

Unfortunately, while documentation was attached to the petition for IBR, that documentation, *including the subpoenas*, was never admitted into evidence. Thus, we are unable to consider the matter on the merits.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

Upon return, all of the evidence, including the subpoenas should be admitted into the record. Then, the WCJ can consider whether cost petitioner is entitled to additional reimbursement.

Accordingly, we rescind the WCJ’s decision, and return this matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 29, 2021 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 17, 2025

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

**ARSHAVER KOUYOUMDJIAN
ALCALA & ASSOCIATES
LAW OFFICES OF SACKS & ZOLONZ
MED LEGAL PHOTOCOPY**

DLM/oo

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