

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

BRIGITTE PAIGE, *Applicant*

vs.

**COUNTY OF RIVERSIDE; permissibly self-insured,
*Defendant***

**Adjudication Number: ADJ9613492
Riverside 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 San Diego Imaging, Inc., dba California Imaging Solutions (cost petitioner) seeks reconsideration of the Findings and Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on December 21, 2020, wherein the WCJ found in pertinent part that defendant's objection to the Order Allowing Costs of March 6, 2019 was timely; and that cost petitioner shall take nothing because the services provided were prior to the filing of the Application for Adjudication of Claim (Application), "were in relation in an attempt to confirm the status of the case filing [*sic*]," or were obtained without a prior demand pursuant to Labor Code section 5307.9.

Cost petitioner contends that it should be reimbursed for the medical-legal services it provided at the request of applicant's attorney, and it should be awarded costs and sanctions.

We 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, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will

¹ Commissioners Sweeney and Lowe, who were previously panelists in this matter, no longer serve on the Appeals Board. Other panelists have been assigned in their place.

rescind the F&O and substitute a new F&O that finds that defendant is liable for payment based on the Order that was effective on April 2, 2019, and that the issue of whether additional interest and penalties are owed shall be adjusted by the parties, with jurisdiction at the trial level in the event of a dispute. We will defer the issue of costs and sanctions, and return the matter to the trial level for further proceedings consistent with this decision, including adjudication of the issue of costs and sanctions.

BACKGROUND

We will briefly review the relevant facts.

Applicant sustained injury to her lumbar spine and claims to have sustained injury to her hip and psyche on July 9, 2014, while employed by defendant as an office assistant II.

On September 4, 2014², applicant's attorney filed an Application. Paragraph 9 states that, "This application is filed because of a disagreement regarding liability for: Temporary disability indemnity, Permanent disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Supplemental Job Displacement/ Return to Work, Compensation at proper rate, and Other (Specify) PEN & INT."

Between August 18, 2014 through December 11, 2014, cost petitioner issued nine subpoena duces tecum (SDT) requesting applicant's medical and employment records from County of Riverside Workers' Compensation (September 9, 2014); County of Riverside HR (August 4, 2014); County of Riverside Payroll (August 4, 2014); San Jacinto Imaging (August 4, 2014); Beaver Medical Clinic (August 4, 2014); Redlands Yucaipa Medical Group (October 16, 2014); Keystone Medical Group (October 16, 2014); Parkview Community Hospital (October 16, 2014); and San Geronio Memorial Hospital (October 16, 2024). (Exhibit 4, 8/19/2014-12/11/2014.)

On March 9, 2016, defendant filed an Answer to the Application for Adjudication of Claim. In its Answer, defendant denied the allegations of the Application as indicated, Occupation, Per Job Description, Injury AOE/COE as to nervous system, hips, lower extremities as noticed in Amended Application. Liability for self-procured treatment, Liability for future medical treatment, Medical-legal costs, Earnings, Periods of disability, Rehabilitation, Supplemental job displacement/return to work, and Permanent disability. (Exhibit 9, 3/9/2016.)

² The WCJ's Findings and Orders state the Application for Adjudication of claim was filed on 9/14/2014. It was received by the WCAB on 9/4/2014.

On August 30, 2017, the parties entered into a Compromise and Release (C&R) for applicant's denied psyche claim only, and an order approving the C&R issued on September 5, 2017. In the C&R, no other body parts were listed or settled, and defendant continued to deny the claim of injury of psyche. They also entered into Stipulations with Request for Award, stipulating to injury to the lumbar spine only, and an Award issued on September 5, 2017.

On March 6, 2019, the WCJ issued an Order on cost petitioner's Petition for Determination of Medical-Legal Expense Dispute (Order Allowing Costs) awarding payment of \$4,051.02 for the outstanding invoices and \$1,722.41 in penalties and interest, for a total of \$5,773.43, with costs and sanctions deferred. Above the WCJ's signature it states, "SO ORDERED. A timely objection within 15 days showing good cause will void this order and cause the matter to be set for hearing on the issue." Cost petitioner was designated to serve the Order, and according to the proof of service, it served the Order on March 13, 2019.

Defendant issued an Objection to Order and Answer to: Order on Petition for Determination of Non-IBR Medical-Legal Provider (Objection). Although the Objection is dated March 26, 2019, it is date stamped received by the WCAB on April 5, 2019.

On August 26, 2019, cost petitioner filed and served a Petition for costs and sanctions against defendant due to its frivolous actions and tactics in avoiding payment of cost petitioner's medical-legal services.

The matter was set for a MSC on January 27, 2020, and the parties proceeded to trial on June 3, 2020. The Minutes of Hearing identify the following issues:

1. Lien of cost petitioner California Imaging Solutions in the amount of \$6,049.47 for which no payment has previously been made, including the reasonableness and necessity of said services and charges; and cost petitioner's petition for penalties and interest thereon.
2. Timeliness of defendant's objection for the Non-IBR Order of 3/6/2019.
3. Cost petitioner's claim for costs and sanctions.

The case was submitted.

On June 17, 2020, WCJ issued an Order Vacating Submission and setting the matter back for trial for further review of the record, "to include specifically the compliance with Labor Code

Section 5307.9 and whether the currently submitted exhibits and arguments address said issue.” (Order Vacating Submission, 6/17/2020.)

On October 22, 2020, cost petitioner and defendant proceeded to trial, and the parties were ordered to file briefs with points and authorities, specifically addressing Labor Code section 5307.9 and if necessary, to include a motion to reopen the record for purposes of taking additional evidence on that issue. (Minutes of Hearing, 10/22/2020.)

On December 21, 2020, the WCJ issued the Findings & Orders.

DISCUSSION

Former WCAB Rule 10349 stated that: “[a]n order with a clause rendering the order null and void if an objection showing good cause is filed within ten (10) days shall be deemed equivalent to a ten (10) day notice of intention.” (Former Cal. Code Regs., tit. 8, § 10349 [self-destruct order].) We observe that in 2020, when the Appeals Board issued a complete overhaul of the Rules of Practice and Procedure, former WCAB Rule 10349 was rescinded.³ One of the bases for its rescission is the very problem posed here: how does the WCAB determine when an order self-destructed; said another way: when is a self-destruct order effective?

Here, the WCJ issued the self-destruct Order providing that cost petitioner’s petition for costs was granted if there was no objection within 15 days. The Order is dated March 6, 2019, and service was designated to cost petitioner. The Order was served by mail on March 13, 2019, and March 13, 2019 is the effective date of issue. Under former WCAB Rules 10507 and 10508 (former Cal. Code Regs., tit. 8, §§ 10507, 10508), an objection had to be filed within 20 days, or no later than April 2, 2019. (See former Cal. Code Regs., tit. 8, § 10301(t) [definition of filing].)

The Objection is dated March 26, 2019, but it was not date stamped as received until April 5, 2019. (See former Cal. Code Regs., tit. 8, § 10392 [filing is effective upon receipt by the WCAB].) Despite the WCJ’s apparent conclusion that service of the Objection was enough to defeat the Order, the Order was issued by the WCAB, and it was legally impossible for the Objection to be effective until it was filed with the WCAB. Thus, because no timely objection was received by April 2, 2019, the Order did not self-destruct, and it was effective on April 2, 2019. The record reflects that defendant did not seek reconsideration, so that the Order is enforceable,

³ Current WCAB Rule 10832(e) states that “[a]n order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers’ Compensation Appeals Board.” (Cal. Code Regs., tit. 8, § 10832(e).)

and defendant is liable for payment based on that Order. We emphasize that the Order resolves the issue of payment for cost petitioner's services. However, we leave the issue of whether additional interest and penalties are owed to be adjusted by the parties, with jurisdiction at the trial level in the event of a dispute. Therefore, the only remaining issue to be adjudicated with respect to cost petitioner is the outstanding petition for costs and sanctions.

While we have already established that the April 2, 2019 Order is enforceable, we note the following with respect to Labor Code section 5307.9. The WCJ based his denial of payment for the subpoenas that issued after the Application was filed because they "were obtained without prior demand for same pursuant to Labor Code Section 5307.9." Labor Code 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.

(Lab. Code, § 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. Here, there is no evidence that applicant's attorney made such a request. Therefore, Labor Code section 5307.9 does not apply.

Accordingly, we rescind the F&O and substitute a new F&O that finds that defendant is liable for payment based on the Order that was effective on April 2, 2019, and that the issue of whether additional interest and penalties are owed shall be adjusted by the parties, with jurisdiction at the trial level in the event of a dispute. The issue of costs and sanctions is deferred, and we return the matter to the trial level for further proceedings consistent with this decision, including adjudication of the issue of costs and sanctions.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on December 21, 2020 is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

1. Brigitte Paige, age 50 at the time of injury, while employed on July 9, 2014, as an office assistant II, at Banning Mental Health, California by the County of Riverside, sustained injury to her lumbar spine and claims to have sustained injury to her hip and psyche.
2. The Order Allowing Costs issued on March 13, 2019, and defendant had 20 days to object, or no later than April 2, 2019.
3. Defendant's Objection to the Order Allowing Costs was filed on April 5, 2019.
3. The Order Allowing Costs was effective on April 2, 2019, and defendant is liable for payment pursuant to the Order Allowing Costs. The issue of whether additional interest and penalties are owed shall be adjusted by the parties, with jurisdiction at the trial level in the event of a dispute.

4. The issue of cost petitioner's claim for costs and sanctions is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 5, 2025

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

**BRIGITTE PAIGE
HANNA BROPHY
CALIFORNIA IMAGING SOLUTIONS**

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*