WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CARLOS ARTURO HERNANDEZ, ***Applicant***

vs.

JACOBELLIS SAUSAGE COMPANY, INC.;
OAK RIVER INSURANCE COMPANY dba
BERKSHIRE HATHAWAY HOMESTATE COMPANIES,
Defendants

Adjudication Number: ADJ14218571
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioner seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on June 26, 2025, wherein the WCJ found in pertinent part that: applicant while employed during the period of May 1, 2016 through January 22, 2021, as a general laborer/box maker by defendant, sustained injury to the left shoulder and left trapezius; and that the primary treating physician is Arbi Mirzaians, D.C. The WCJ ordered that defendant pay cost petitioner "$2015, plus 10% penalty at $201.50, and 7% interest per year up until Judge Owensby's May 30, 2024 Order, at $211.57, for a total of $2428.07" and that "[n]o cost or sanctions are owed."

Cost petitioner contends that it is entitled to interest through the date of payment and to costs and sanctions due to defendant's frivolous conduct in delaying payment.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

On July 22, 2025, cost petitioner filed a Petition for Approval to File a Supplemental Pleading and a Supplemental Pleading. We accept and have considered the Supplemental Pleading. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations in the Petition, the Supplemental Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, and in the WCJ's Report and Opinion on Decision which we adopt and incorporate, except as to the discussion in the Report of the filing of the Petition on pages 4 to 5, and the discussion in the Report as to the impact of WCJ's Owensby's erroneous order on pages 7 to 8 and the discussion in the Opinion[1] as to the impact of WCJ's Owensby's erroneous order on page 8. We will grant cost petitioner's Petition, amend the F&O to order that cost petitioner is entitled to interest and penalties through the date of the F&O, and otherwise affirm the F&O.

DISCUSSION
I.

Former Labor Code section 5909[2] 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."

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[1] We observe that the "Order Request to File a Petition in Excess of 25 Pages" of May 30, 2024 is not only incorrect because cost petitioner can seek payment for both medical legal and medical treatment, but is also erroneous because the 25 page limit does not include attachments.

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

Here, according to Events, the case was transmitted to the Appeals Board on August 11, 2025 and 60 days from the date of transmission is October 10, 2025. This decision is issued by or on October 10, 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 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 August 11, 2025, and the case was transmitted to the Appeals Board on August 11, 2025. 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 August 11, 2025.

II.

Cost petitioner's Petition for Reconsideration was timely. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California and 30 days if served by mail to an address outside of California but within the United States. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1), (2).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

The Findings & Order were served on June 26, 2025, and the proof of service lists an out-of-state party in Clinton, Iowa. Thus, the parties had 30 days from that date to file a Petition for Reconsideration. (Cal. Code Regs., tit. 8, §§ 10600, 10605(a)(2).) Cost petitioner filed the Petition for Reconsideration on July 22, 2025, which was 26 days after the service of the F&O. Therefore, the Petition was timely filed.

III.

In the F&O, the WCJ ordered that defendant pay penalties and interest up to May 30, 2024, the date of WCJ Owensby's order. We disagree with the WCJ regarding the end date for the penalties and interest in the instant matter. The issue of whether defendant's conduct was unreasonable under section 4622(a) was already decided by the WCJ when she ordered defendant to pay penalties and interest, and defendant did not challenge that conclusion. There is simply no provision in section 4622(a) that allows a WCJ to order penalties and interest for only a portion of the period. We also note that not only was the May 30, 2024 order by WCJ Owensby erroneous, there was actually no finding as to cost petitioner's bills, so that defendant could not have reasonably relied on it.

We agree with cost petitioner that interest at the rate of 7% on the unpaid medical legal charges should continue until the amount petitioner is owed is paid in full by defendant. Under section 4622(a), penalties are also mandatory when a WCJ determines that defendant unreasonably failed to make payment. Thus, pursuant to section 4622(a), cost petitioner is entitled to penalties and interest on the unpaid amount of $2,015.00.

Accordingly, we grant cost petitioner's Petition for Reconsideration. We affirm the F&O, except that we amend it to find that defendant shall pay interest at the rate of 7% and penalty at 10% owed to cost petitioner up until the date that cost petitioner's medical-legal charges are paid in full by defendant. The amount shall be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of a dispute.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the Findings and Order issued June 26, 2025 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 26, 2025 Findings and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

ORDER

IT IS ORDERED that Defendant **JACOBELLIS SAUSAGE COMPANY, INC.; OAK RIVER INSURANCE COMPANY dba BERKSHIRE HATHAWAY HOMESTATE COMPANIES** pay cost petitioner, Physical Rehabilitation Services Inc, Dr. Arbi Mirzaians D. C., $2015, plus 10% penalty and 7% interest per year up until defendant pays cost petitioner in full, to be adjusted by the parties, with jurisdiction reserved to the WCJ in the event of a dispute. No cost or sanctions are owed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 10, 2025

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

GOLDMAN MAGDALIN & STRAATSMA
AV MANAGEMENT SERVICES FOR PHYSICAL REHABILITATION SERVICES

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

REPORT AND RECOMMENDATION ON COST PETITIONER'S PETITION FOR RECONSIDERATION

I
INTRODUCTION

Cost Petitioner, PHYSICAL REHABILITATION SERVICES, Inc., Arbi Mirzaians D.C., by and through their representative, AV MANAGEMENT COLLECTION LOS ANGELES (hereinafter referred to as "Cost Petitioner"), has filed an untimely verified Petition for Reconsideration on July 22, 2025, objecting to a Findings and Award that was issued on June 26,2025 by WCJ Woo. It is recommended that Petition for Reconsideration be denied.

Cost Petitioner contends that they are aggrieved by Findings and Order for the following reasons:

1. By the Order, Decision or Award, the WCJ acted without or in excess of its powers,
2. The evidence does not justify the Findings and Order.

II
FACTS

APPLICANT, Carlos Arturo Hernandez, born on xx-xx-xxxx, while employed during the period of May 1, 2016 through January 22nd, 2021, as a general laborer/box maker, occupational group number 321, at Burbank, California, by Jacobellis Sausage Company, Inc., sustained injury to the left shoulder and left trapezius.

The Application was filed on February 5, 2021. A Notice of Denial of claim was issued by Defendant on April 29, 2021. **(Cost Petitioner's Exhibit 2).**

Per Labor Code §4600, Applicant elected to treat with Arbi Mirzaians D.C. by designating him as the primary treating physician on August 9, 2021 **(Cost Petitioner's Exhibit 1**).

Applicant was first evaluated by the Panel Qualified Medical Examiner (PQME) Dr. Raj Ahluwalia, M.D. on August 4, 2022. Dr. Ahluwalia issued two reports, one dated September 2, 2022 **(Defendant's Exhibit B),** and supplemental report dated October 5, 2023 **(Defendant's Exhibit C).**[1] As a result of his August 4, 2022 exam, Dr. Ahluwalia found that

[1] Judicial Notice is taken that initial exam with Dr. Raj Ahluwalia as the Panel QME was first scheduled for

Applicant sustained a cumulative trauma industrial injury from May 1, 2016 to January 22, 2021 to his left shoulder, left trapezia! and left carpal tunnel syndrome due to his work duties as a packer for Jacobellis Sausage Company, Inc. However, he did not find industrial causation for the low back or the left knee. He also found no periods of temporary total or temporary partial disability, as the Applicant never missed any time from work prior to being laid off his job. Dr. Ahluwalia issued his report as a ML201-93 and charged $2,216.50.

As a result of the PQME, Dr. Raj Ahluwalia, M.D. findings, a Notice of Acceptance of Claim was issued by Defendant on September 16, 2022 **(Defendant's Exhibit A).** The acceptance letter was served on Applicant, Applicant's Attorney, the employer and the Defense Attorney.

Applicant was first evaluated by Arbi Mirzaians, D.C., as the elected primary treating physician on September 19, 2022 (Cost Petitioner's Exhibit 3), three days after defendant accepted the claim.

Chiropractor Mirzaians issued his report as the *Initial Primary Treating Physician's Comprehensive Medical-Legal Evaluation Report* and billed it as a ML201-92 with a charge of $2015. Mirzaians found industrial injury to the left shoulder, right wrist and hand and lumbar spine. He recommended temporary partial disability with work restrictions. If no modified work was available, he would be TTD.

The case resolved by Compromise and Release Agreement on March 21, 2024.

Cost Petitioner filed their Petition to Resolve Non-IBR Med-Legal Dispute and Request for Penalties, Interest, Costs, Monetary Sanctions and Attorney Fees on May 28, 2024. With their petition, Cost Petitioner filed a request for permission to file a document in excess of 25 pages in length pursuant to Calif. Code of Reg., Title 8 §10205.12(a)(10). In Response, Judge Owensby issued an order on May 30, 2024, not only denying Cost Petitioner's request to file a cost petition in excess of 25 pages, but also denying Cost Petitioner the right to file a Cost Petition as a Medical Legal Provider. Instead, she said Dr. Mirzaians described himself as a PTP, and therefore, must pursue his unpaid charges as a lien and not as a cost petitioner. **(Defendant's Exhibit D.)**

No Petition for Removal or Petition for Reconsideration was filed to Judge Owensby's Order.

May 5, 2022. Applicant did not appear for the exam, a second appointment was set for August 4, 2022 and an Order issued on June 28, 2022 compelling the Applicant to appear.

III
DISCUSSION

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Cost Petitioner contends the evidence does not justify the findings and order. In support of their petition, Cost Petitioner points to Labor Code §4622, which provides that all medical-legal expenses for which the employer is liable.shall, upon receipt by the employer of all reports and documents required by the administrative director incident to the services, be paid to whom the funds and expenses are due, except as provided in subdivision (b) , within 60 days after receipt by the employer..., and if payment is not made within this period, that portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum...

Here, there was only one charge. It was for the Initial Primary Treating Physician's Comprehensive Medical-Legal Evaluation Report and Request for Authorization dated 09/19/2022 billed as ML 201 for $2015. The proof of service indicates it was served on October 03, 2022 on Berkshire Hathaway. Defendant did not file any Explanation of Benefits or Explanation of Review (EOB/EOR) or any objections to Cost Petitioner's charges. Instead, defendant relied on the Acceptance letter to prove that no contested claim existed at time the medical legal expenses were incurred; the PQME reports from Dr. Ahluwalia to show that Dr. Mirzaian's medical legal report was duplicative and not necessary; and Judge Owensby's May 30, 2024 Order to support their position that it was a final order to which Cost Petitioner did not file a removal or reconsideration.

A Medical-legal provider has the initial burden of proof that 1.) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to Labor Code Section 4620, and 2.) its Medical-legal services were reasonably and necessarily incurred pursuant to Labor Code Section 4621(a). *Colamonico v. Secure Transportation,* (2019) 84 Cal. Comp Cases 1059.

A lien claimant holds the burden of proof to establish all elements necessary to establish its claim. *Torres v. ACJ Sandblasting* (2012) 77 Cal. Comp. Cases 1113 (Appeals Board en banc*)*. Thus, a lien claimant 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. C§§ 4620, 4621, 4622(f); *American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd. (Hurtado) (1995)* 36 Cal. App. 4th 1626 {43 Cal. Rptr. 2d 254, 60 Cal. Comp. Cases 5591.*)* Once a lien claimant has established these three elements, it then may proceed to address the reasonable value of its service under §4622. In sum, §4620 and §4621 pertain to a medical-legal provider's service, and §4622 pertains to the reasonable value of the service.

The *Colamonico* decision went on further to hold that a Defendant does not waive an objection based on Labor Code §4620 or 4621 by failing to raise those objections in an explanation of review. Labor Code §4622(f) explicitly states that §4622 is not applicable unless there has been compliance with §4620 and 4621. Labor Code §4620 was expanded in 1993 to render it crystal clear that an applicant could not seek medical-legal evaluations for which the employer/carrier would be financially responsible before the employer had received notice of the industrial claim and had had an opportunity to respond to it. *Colamonico at 1064.*

In its detailed analysis of the 1993 amendments, the Court of Appeal in *Hurtado* held that "section 4622, which provides that an employer/carrier must protest a medical-legal billing within 60 days of receipt, has no application in its entirety when the medical provider has not complied with the "contested claim" rule. *Hurtado, 36 Cal.App.4th. 1626.*

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Next, Cost Petitioner contends this Court erred in not awarding cost and sanctions regarding defendant's frivolous conduct and actions. However, they failed to cite any credible specific incidents or facts to support their allegation of frivolous bad faith actions or conduct.

Labor Code §5813 provides, the worker's compensation referee or appeals board may order a party, ... , to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.Cal. Code of Regs., Tit 8, §10421*(a)* adds: "In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code §5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust. "In this case, Cost Petitioner did not provide any evidence demonstrating bad-faith actions or tactics by defendant that are frivolous or solely intended to

cause unnecessary delay. Cost Petitioner initially filed their Petition to Resolve Non-lBR Medical-Legal Dispute on May 29, 2024. Immediately, thereafter, on May 30, 2024, Judge Owensby issued her order denying Cost Petitioner's petition. This order in any reasonable person's mind would have created reasonable doubt as to whether any medical legal expenses were owed to Cost Petitioner. It certainly did the defendant and this Court. Only after substantial research and review, did this Court conclude that Judge Owensby Order was interlocutory and not final as to cost petitioner's substantive rights.

Defendant in this case acted within reason and with justification by the circumstances created in this case. Labor Code §5813 sanctions are discretionary, not mandatory. Moreover, Reg. §10421 specifically, mandates that no award of monetary sanction shall be imposed where the one subject to the sanction acted with reasonable justification.

In the opinion of this Court, defendant's actions did not warrant justification for costs and sanctions. Here, Applicant was already evaluated by the PQME Dr. Raj Ahluwalia, M.D. on August 4, 2022. As a result of that evaluation, defendant accepted the claim on September 16, 2022. Thus, in the mind of defendant Dr.

Raj Ahluwalia was already the selected PQME and Dr. Dr. Mirzaians's medical legal report is duplicative and not necessary. Moreover, the acceptance of this claim created reasonable doubt on the part of defendant as to whether a "contested claim" as defined in Labor Code Section 4620(b) still existed by the time Dr. Mirzaians's exam took place on September 19, 2022, three days later. Furthermore, as a result of that initial exam, Arbi Mirzaians, D.C. issued his report calling himself the Primary Treating Physician, but billing as medical-legal expense. Although, this is permitted by Title 8. California Code of Regulations Section 9793(c)(2), it nonetheless created reasonable doubt on the part of defendant.

However, because Labor Code §4060(b) allows for a medical-legal evaluation by a treating physician and Labor Code §4064(a) provides that an employer is liable for the cost of any comprehensive medical evaluations authorized under Labor Code §4060, this Court awarded penalties and interest for defendant's failure to follow the procedures outlined in Labor Code §4622.

As for Attorney fees, it is worth noting that Cost Petitioner, Sako Arutyunyan is a hearing representative, not an attorney. As such, he is not entitled to attorney fees. He is the one who filed the Petition to Resolve Med-Legal Dispute and he is the one who appeared at

the hearings.

IV
RECOMMENDATION

For the reasons set forth herein, it is respectfully recommended that Cost Petitioner's petition for reconsideration be denied.

Dated: August 11, 2025

Respectfully submitted,

KRISTINA WOO
Workers' Compensation
Administrative Law Judge

OPINION ON DECISION

I.
INTRODUCTION

This matter came on for regular hearing before this workers' compensation administrative law judge. This decision is based on a thorough review of the record including the medical and non-medical documents admitted into evidence, along with relevant case law that addresses the issues at hand.

II.
FINDINGS OF FACT

APPLICANT, Carlos Arturo Hernandez, born on xx-xx-xxxx while employed during the period of May 1st, 2016 through January 22nd, 2021, as a general laborer/box maker, occupational group number 321, at Burbank, California, by Jacobellis Sausage Company, Inc., sustained injury to the left shoulder and left trapezius.

The Application was filed on February 5, 2021.

A Notice of Denial of Claim was issued by Defendant on April 29, 2021. **(Cost Petitioner's Exhibit 2).**

Per Labor Code §4600, Applicant elected to treat with Arbi Mirzaians D.C. by designating him as the primary treating physician on August 9, 2021 **(Cost Petitioner's Exhibit 1).**

Applicant was first evaluated by the Panel Qualified Medical Examiner Dr. Raj Ahluwalia, M.D. on August 4, 2022. Dr. Ahluwalia issued two reports, one dated September 2, 2022 **(Defendant's Exhibit B),** and a supplemental report dated October 5, 2023 **(Defendant's Exhibit C).i** As a result of his August 4, 2022 exam, Dr. Ahluwalia found that Applicant sustained a cumulative trauma industrial injury from May 1**,** 2016 to January 22, 2021 to his left shoulder, left trapezial and left carpal tunnel syndrome due to his work duties as a packer for Jacobellis Sausage Company, Inc. However, he did not find industrial causation for the low back or the left knee. He also found no periods of temporary total or temporary partial disability, as the Applicant never missed any time from work prior to being laid off his job. Dr. Ahluwalia issued his report as a ML201-93 and charged $2,216.50.

As a result, a Notice of Acceptance of Claim was issued by Defendant on September 16, 2022 **(Defendant's Exhibit A).** The acceptance letter was served on Applicant, Applicant's

Attorney, the employer and the Defense Attorney.

Applicant was first evaluated by Arbi Mirzaians, D.C. as the elected primary treating physician on September 19, 2022 **(Cost Petitioner's Exhibit 3).** He issued a report as the Initial Primary Treating Physician's Comprehensive Medical-Legal Evaluation Report and billed it as a ML201-92 with a charge of $2015. Dr. Mirzaians found industrial injury to the left shoulder, right wrist and hand and lumbar spine. He recommended temporary partial disability with work restrictions. If no modified work was available, he would be TTD.

The case resolved by Compromise and Release Agreement on March 21, 2024 with Judge Diane Phillips issuing her Order Approving C&R on March 21, 2024.

Physical Rehabilitation Services, inc., Arbi Mirzaians, D.C. through their representative AV Management & Collections Services (herein after collectively referred to as "Cost Petitioner") filed their Petition to Resolve Non-IBR Med-Legal Dispute and Request for Penalties, Interest, Costs, Monetary Sanctions and Attorney Fees on May 28, 2024. With their petition, Cost Petition filed a request for permission to file a document in excess of 25 pages in length pursuant to Calif. Code of Reg., Title 8 §10205.12(a)(l 0).

In Response, Judge Owensby issued an order on May 30, 2024, not only denying Cost Petitioner's request to file a cost petition in excess of 25 pages, but also denying Cost Petitioner the right to file a Cost Petition as a Medical Legal Provider. Instead, she said Dr. Mirzaians described himself as a PTP, and therefore, must pursue his unpaid charges as lien and not as a cost petitioner. **(Defendant's Exhibit D.)**

No Petition for Removal or Petition for Reconsideration was filed. As such, the May 30, 2024 Order from Judge Owensby is final.

ADMISSIBITY OF EVIDENCE

Defendant's objection as to Cost Petitioner's Exhibit's 4 and 7 are sustained. Evidence of communication between parties regarding settlement offers, demands and negotiations are prohibited by Evidence Code §1152. Cost Petitioner's Exhibits 4 and 7 remain for identification only. Cost Petitioner's objections are over-ruled, and Defendant's Exhibits A, B and F are admitted into evidence. Cost Petitioner failed to provide any evidence that Defendant's Exhibits were not served and or not received by Applicant or Applicant Attorney, the document speaks for itself, Cost petitioner does not represent the Applicant and does not step into the shoes of the Applicant.

III.
DISCUSSION

Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code,§ 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board en bane).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." *(Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473,476 (Appeals Board en bane), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, Judge Owensby's May 30, 2024 order denying Cost Petition's request to file petition in excess of 25 pages was an interlocutory order and it was final as to cost petitioner's right to file petition in excess of 25 pages. However, it was not final as to cost petitioner's substantive right to file their claim as a cost petitioner.

This is because there was no taking in of evidence. There was no Finding of Fact, no Opinion on Decision that explains the reasoning and analysis upon which the WCJ's determination is based. The petition was a request to file in excess of 25 pages. She answered that petition with a denial of that request and that interlocutory order is final.

However, as to cost petitioner's substantive rights, the rest of her decision stating that Dr. Mirzaians cannot be both a PTP and medical legal provider is inconsistent with the California Code of Regulations Section 9793(c)(2), and the Labor Code, and is dicta.

According to California Code of Regulations Section 9793(c)(2), a comprehensive medical-legal evaluation can be performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, or the primary treating physician for the purpose of proving or disproving a contest claim.

Section 4060(b) allows for a medical-legal evaluation by a treating physician and section 4620(a) defines medical-legal expense as "any costs and expenses ... for the purpose of proving or disproving a contested claim." Section 4064(a) provides that an employer is liable for the cost of any comprehensive medical evaluations authorized under section 4060.

AD Rule 9793(h) states:

(h)"Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:

(1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
(2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
(3)The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.
(4)The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
(5)In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.20)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793(h).)

It is clear the intention of section 4060(b), when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's primary treating physician (PTP) can be considered a medical-legal evaluation pursuant to section 4060 and as such, the employer can be held liable for any associated reasonable and necessary medical-legal costs and expenses. Moreover, the Appeals Board has previously held that there is no legal authority to support the proposition that an injured worker is not entitled to a medical-legal report from a PTP and no legal authority to support that a PTP's report is not a medical-legal expense for which defendant is liable. *(Warren Brower v. David Jones Construction* (2014) 79

Cal.Comp.Cases 550 (Appeals Board en bane).)

In this instant case, A Notice of Denial of Claim was issued by Defendant on April 29, 2021. Subsequently, almost one and a half years later, a Notice of Acceptance of Claim was issued by Defendant on September 16, 2022. In the interim, Applicant elected to treat with Arbi Mirzaians D.C. by designating him as the primary treating physician on August 9, 2021. Applicant was first evaluated by the Panel Qualified Medical Examiner Dr. Raj Ahluwalia, M.D. on August 4, 2022. As a result of this exam, Defendant accepted the claim on September 16, 2022 and the acceptance was communicated to the Applicant and the Applicant's attorney. However, even though a PTP report can qualify as a medical legal expense, Cal. Code Regs., tit. 8, § 9793(h)(4), requires the medical-legal evaluation must have occurred prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.

A Medical-legal provider has the initial burden of proof that 1.) a contested claim existed at the time the expenses were incurred, and that the expenses were incurred for the purpose of proving or disproving a contested claim pursuant to Labor Code Section 4620, and 2.) its Medical-legal services were reasonably, actually, and necessarily incurred pursuant to Labor Code Section 4621(a). *Colamonico v. Secure Transportation, (2019) 84 Cal. Comp Cases 1059.*

A lien claimant holds the burden of proof to establish all elements necessary to establish its claim. *Torres v. ACJ Sandblasting (2012)* 77 *Cal. Comp. Cases 1113 (Appeals Board en bane[sic]).* Thus, a lien claimant 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. *(§§ 4620. 4621, 4622(j),·American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd. (Hurtado) (1995) 36 Cal. App. 4th 1626 [43 Cal. Rptr. 2d 254. 60 Cal. Comp. Cases 5597.)*

Here, the acceptance took place on September 16,2022 and it was communicated to the Applicant, Applicant's Attorney, the employer and defense counsel. Defendant argues that the claim was accepted three days prior to the time the expenses were incurred, and at the time the expenses were incurred this was no longer a contested claim. Although it is true that this claim

was accepted when the expenses were incurred, there is still a question as to whether there were any disputed material fact(s). In this case, we find in the affirmative. Specifically, Dr. Ahluwalia (PQME) found Applicant sustained a cumulative trauma industrial injury from May 1, 2016 to January 22, 2021, to his left shoulder, left trapezia! and left carpal tunnel syndrome due to his work duties as a packer for Jacobellis Sausage Company, Inc. However, he did not find industrial causation for the low back or the right hand and wrist. He also found no periods of temporary total (TTD) or temporary partial disability. On the other hand, Dr. Mirzaians found industrial injury to the left shoulder, right wrist and hand and lumbar spine. He recommended temporary partial disability with work restrictions. If no modified work was available, he would be TTD. In other words, at the time the evaluation took place, there was still a dispute as to the right wrist and hand, lumbar spine and TTD.

Remember, Labor Code 4620 Subsection (b) sets forth the parameters for determining whether a contested claim existed.(§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b). In addition, Cal. Code Regs., tit. 8, *§* 9793(h)(3) states: "The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.

Here, the parties entered into Compromise and Release Agreement in 2024, with the Order Approving issued on March 21, 2024, almost two years after Mirzaian's report issued. Mirzaian's report was sent to the PQME Dr. Ahluwalia for comment. After reviewing Mirzaian's report, Dr. Ahluwalia asked to re-evaluate the Applicant in his October 5, 2023 report. However, the parties entered into settlement "so that each party may "purchase its peace," without a final report from Dr. Ahluwalia. This clearly indicates that there were still disputed issues and the parties entered into settlement to buy out the disputed issues. Otherwise, they would have settled entirely on the PQME Dr. Ahluwalia findings.

As such, our review indicates that lien claimant met its burden to show that there was a contested claim, meaning a disputed material fact existed at the time the expense was incurred, and that the medical-legal reporting was reasonable and necessary in resolution of

this claim.

If a lien claimant meets its burden of proof pursuant to sections 4620 and 4621, the analysis shifts to the reasonable value of the invoices pursuant to section 4622. A defendant then has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code,§ 4622(a)(l).) 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)(l), (e)(l); 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, *§* 10451.l(f)(l)(A); 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. A lien claimant has the burden of proof of the reasonable value of its services. In the instant case, as noted above, lien claimant has met its burden of proof pursuant to sections 4620 and 4621, and the analysis should shift to the reasonable value of the invoice pursuant to section 4622.

We found that cost petitioner has met its burden of proving the reasonable value of its services, and a contested claim existed at the time the evaluation took place since injury to the right wrist and hand and lumbar spine was still disputed. Thus, rendering the expense reasonable and necessary at the time they were incurred.

Accordingly, Defendant is liable for the Medical Legal Expense of Cost Petitioner Physical Rehabilitation Services, inc., Arbi Mirzaians, D.C at $2015, plus 10% interest, and 7% interest per year for one and a half years up until Judge Owensby's May 30, 2024 Order since the order created reasonable doubt as to whether Dr. Mirzaian can file as a cost petitioner.

Cost Petitioner's request for cost and sanctions is denied. Cost Petitioner did not present any evidence of bad faith on the part of Defendant. Additionally, this Court finds that Arbi

Mirzaians, D.C. initial report which was titled "Initial Primary Treating Physician's Comprehensive Medical-Evaluation Report and Request of r Authorization" created reasonable doubt as to whether someone who describes himself as a PTP and was elected as a PTP qualifies as a medical-legal expense. Although, this Court did not ultimately agree with Defendant's interpretation of the law, Defendant had a reasonable legal and factual basis for denying payment. Judge Owensby May 30, 2024 Order created further doubt as to Defendant's liability since her order said that Mr. Mirzaians is a PTP and is not eligible to pursue his unpaid charges as a medical legal expense. It is reasonable for Defendant to interpret this as a final order since Cost Petitioner failed to file a Petition for Removal or Petition for Reconsideration. Therefore, this Court finds that no cost or sanctions are owed.

IV.
CONCLUSION

The parties provided the court with documentary and medical evidence. The court has reviewed and considered the entire evidence provided. Based upon such evidence, it is found that the **cost petitioner has met its burden and** Defendant **JACOBELLIS SAUSAGE COMPANY, INC.; OAK RIVER INSURANCE COMPANY dba BERKSHIRE HATHAWAY HOMESTATE COMPANIES is ordered to** pay cost petitioner, Physical Rehabilitation Services Inc., Dr. Arbi Mirzaians D. C., $2015, plus 10% penalty at $201.50, and 7% interest per year up until May 30, 2024, at $211.57, for a total of $2428.07. No cost or sanctions are owed.

Dated: June 25, 2025

KRISTINA WOO
Workers' Compensation
Administrative Law Judge