WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

COLIN JOINER, ***Applicant***

vs.

BEST FORMULATIONS, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Numbers: ADJ15853585, ADJ15953973
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) in this matter and served on October 21, 2024. In that decision, the WCJ found that no good cause has been shown for the Appeals Board to order defendant to pay Casa Colina for treatment services in an amount over and above that which was previously ordered. The WCJ further found that his decision was without prejudice to Casa Colina's right to pursue reimbursement upon the filing of a valid lien.

Petitioner asserts that the WCJ's findings are contrary to the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration of the Appeals Board (Opinion and Order) on February 27, 2024 wherein it was found that applicant is entitled to reasonable and necessary medical treatment as authorized by defendant pursuant to Labor Code[1] section 4600 and other relevant provision of the law.

Petitioner further contends that the defendant's failure to pay Casa Colina for applicant's inpatient treatment is tantamount to a denial of care, in violation of his right to same.

Petitioner requests the petition be granted, the findings of the WCJ be rescinded, and the defendant be ordered to issue payment immediately.

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[1] All further references are to the Labor Code unless otherwise stated.

Defendant filed an Answer, alleging that the WCAB lacks jurisdiction over the payment dispute insofar as Casa Colina has not filed a lien for their services, and further, that an express agreement fixing the amounts to be paid exists between Casa Colina and defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We have reviewed the allegations in the Petition for Reconsideration and the contents of the Report.

Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

DISCUSSION

I.

Former section 5909 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, Labor Code 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 November 26, 2024, and 60 days from the date of transmission is Saturday, January 25, 2025. The next business day that is 60 days from the date of transmission is Monday, January 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, January 27, 2025, so that we have timely acted on the petition as required by Labor Code 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. Labor Code 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 November 26, 2024, and the case was transmitted to the Appeals Board on November 26, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 26, 2024.

Turning to the merits, we note the following, which may be relevant to our review:

The WCJ addresses the issue of the services provided by Casa Colina to applicant in his Opinion, in pertinent part, as follows:

> The problem with the claim that was presented at the 10/9/24 trial herein, is that Casa Colina has never filed a lien on its own behalf for medical treatment services pursuant to Labor Code section 4903(b). Accordingly, it is obvious that this judge has no authority to award payment on their behalf.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

> Although it shouldn't be necessary to elaborate on this fundamental principle, I note that the whole subject of medical provider liens is heavily regulated in sections 4903 et seq., and a host of related administrative rules. No authority has been cited that Mr. Joiner can sidestep this entire regulatory scheme simply by, sua sponte, asserting a claim on behalf of one of his providers.
>
> I do recall handling another case involving the same applicant's firm in which the same facility's entitlement to reimbursement was extensively litigated even before findings in the case in chief issued. (That case for anyone's reference is *Gonzalez v. Weslar*, ADJ11162420.) However, that case differs inasmuch as the facility, at all relevant times had a lien on file in their own name and even sent counsel down to litigate the lien concurrently with applicant's counsel's efforts.
>
> I do not discount the possibility that, as in the *Gonzalez* matter, a case could be made that a hypothetical lien filed by Casa Colina be litigated ahead of the case in chief if nonpayment were shown to affect the applicant's rights. However, here we have no lien, nor any indication that Casa Colina is even perturbed enough about their balance sheet in this case to send down a witness promised by the applicant.

(Opinion, p. 2.)

In the 2020 panel decision in *Gonzales v. Weslar, Inc.* (ADJ11162420) which is referenced above, we upheld the decision of the WCJ who ordered defendant to pay lien claimant Casa Colina the sum of $ 237,192.14 for the period October 9, 2018 to December 31, 2019, and found that applicant and lien claimant were entitled to claim additional reimbursement. While in that case Casa Colina had filed a lien for services, the rationale behind the decision was based upon the responsibility of the defendant for medical expenses per section 4600. We stated as follows:

> In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227, 234 [35 Cal.Comp.Cases 383], the Court said:
>
> "Upon notice or knowledge of a claimed injury an employer has both the right and *duty to investigate the facts* in order to determine his industrial liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he *take the initiative in providing benefits.* He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury ... [Italics added]." (Accord, *Aliano v. Workers' Comp. Appeals Bd.* (1979) 100 Cal.App.3d 341, 366-367 [44 Cal.Comp.Cases 1156, 1172]; *Dorman v. Workers' Comp. Appeals Bd.* (1978) 78 Cal.App.3d 1009, 1020 [43 Cal.Comp.Cases 302, 308].)

> Moreover in *United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8), the Court said:
> "Section 4600 of the Labor Code places the responsibility for Medical expenses upon the employer when he has knowledge of the injury ....[ ] The duty imposed upon an employer who has notice of an injury to an employee is *not…the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary* to determine the extent of his obligation and the needs of the employee. [Italics added]."

(*Gonzalez*, ADJ11162420, 6/15/20, p. 7.)

Further, in the instant case, we previously issued an Opinion and Order Granting Reconsideration and Decision After Reconsideration (Opinion and Order) on February 27, 2024, which has now become final. In that Opinion, we issued Findings of Fact as follows:

1. Applicant is entitled to reasonable and necessary medical treatment as authorized by defendant herein pursuant to Labor Code section 4600 and other relevant provisions of the law.

2. Defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of applicant's inpatient treatment at Casa Colina.

3. All other issues are deferred.

(Opinion and Order, 2/27/24, p. 15.)

Thus, in finding applicant entitled to reasonable and necessary treatment and the absence of a finding of a change of circumstances or condition warranting discontinuation of applicant's inpatient treatment, we affirmed defendant's responsibility to continue providing for the services provided to Casa Colina.

Here, the evidence indicates that the applicant is in danger of a premature discharge from care due to the non-payment by defendant to Casa Colina. (Ex. 40.) Thus, a failure to provide for payment to the facility amounts to a denial of care. As such, the existence or non-existence of a lien is not of import with respect to defendant's duty to provide such care.

II.

It is well established that decisions by 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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

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).) 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]).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.*

(2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, we must consider the effect of the failure by defendant provide the treatment which has already been found to be reasonable and necessary, and whether the legal conclusions of the WCJ are supported by the existing evidence, whether the correct issue was framed at the trial of this matter, as well as whether further development of the record may be necessary with respect to the issues noted above.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either

"determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

IV.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings issued on October 21, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2025

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

COLIN JOINER
SOLOV & TEITELL
SAUL ALWEISS

LAS/*pm*

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