

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

DAVID EVANS, *Applicant*

vs.

**CHUCKAWALLA VALLEY STATE PRISON,
legally uninsured, adjusted by,
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11500341
Riverside District Office**

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

Lien claimant California Correctional Peace Officers Association (CCPOA) Benefit Trust Fund seeks reconsideration of the February 12, 2025 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained industrial injury to his circulatory system while employed as a correctional officer on January 13, 2025. The WCJ further found that the underlying case was resolved by way of Stipulated Award issuing on September 11, 2018, which resolved all pending issues including discharging defendant's responsibility for temporary disability which had been previously paid; that, as a result of said injury lien claimant provided applicant benefits of living expenses in the amount of \$49,504.80 for a period of February 14, 2015 to March 13, 2016, and the subject of its lien dated April, 1, 2022; and that the lien claimant's lien was filed with the Board more than 5 years after the date of last service and therefore barred by time limitations set forth in Labor Code¹ section 4903.5 (a) and 4903.5 (b). Based on these findings, the WCJ disallowed CCPOA Benefit Trust Fund's lien.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Lien claimant contends that the WCJ erred in disallowing its lien arguing that defendant received legally sufficient notice of the lien in April 2016 and had an affirmative duty to withhold funds to satisfy that lien.

We received defendant's Answer. The WCJ issued a Report and Recommendation recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our review of the record, we will grant lien claimant's Petition for Reconsideration and as our Decision After Reconsideration, we will rescind the February 12, 2025 F&O and substitute a new Findings and Order, which finds that CCPOA failed to timely notify defendant of its lien and thus defendant is not liable for the lien as the temporary disability funds to which CCPOA's lien attached were already properly paid.

FACTS

The WCA provided the following discussion in the Report:

David Evans, a 58-year-old Correctional Officer, sustained injury arising out of and in the course of his employment at Chuckawalla Valley State Prison on January 13, 2015 to his circulatory system. The case in chief was resolved by way of Stipulated Award which issued by Administrative Law Judge (WCJ) Robert Hill on September 11, 2018. The pending issue is limited to lien filed on behalf of California Correctional Peace Officers Association (CCPOA) in the amount of \$49,504.80 and referencing the Disability Benefit Plan.

Certain facts are undisputed. Following applicant's injury defendant's administrator, SCIF State Employees, paid temporary disability on May 3, 2017 in the amount of \$8,705.86 for the period of January 13, 2016 to March 14, 2016. On May 2, 2017 applicant was paid Industrial Disability Leave (IDL) referencing an earlier period from January 14, 2015 through January 12, 2016. Prior to any documents being filed with the Board or commencing WCAB jurisdiction, CCPOA forwarded a lien to SCIF dated April 14, 2016 seeking benefit reimbursement for benefits paid from February 14, 2015 to March 13, 2016. As no case was pending before the WCAB, no case # was listed on the lien. On April 21, 2016, SCIF returned the document to lien claimant noting that there was insufficient information provided to locate a claim, and requesting that a claim number be provided. Lien claimant did not provide a timely response, and in fact no evidence was offered of any response. On August 30, 2018, Stipulations with Request for Award were filed with the WCAB with Award issuing on September 11, 2018. The Stipulations reflect temporary disability as previously paid for the period of January 13, 2016 through March 14, 2016 at the weekly rate of \$982.92 and 36% permanent disability amounting to \$50,170.

Subsequently, and on April 1, 2022 CCPOA filed its lien before the WCAB and in an amount noted above.

The matter proceeded to hearing before this Administrative Law Judge Jeffrey Wilson (WCJ) on December 17, 2024. The matter was submitted based on documentary evidence offered at hearing and without testimony of any witness. Exhibits offered into evidence included the unassigned April 14, Notice and Request for CCPOA lien sent to SCIF and return (Joint Exhibit 1), Stipulations and Request for Award August 29, 2018 and filed with Board on August 30, 2018 (Joint Exhibits 2 & 3), Award (Joint Exhibit 4), CCPOA Notice and Request for Lien April 1, 2022 with accompanying bill, verification and proof of service (Joint Exhibits 5 - 8), SCIF Benefit Printout and IDL Report (Joint Exhibits 9 & 10), April 21, 2016 SCIF Rejected Notice (Joint Exhibit 11) and December 16, 2024 Declaration of Kathy Evans (applicant's spouse) (Joint Exhibit 12).

In review of the documents noted above, it is clear that lien claimant, CCPOA did pay benefits during a period that SCIF subsequently paid applicant temporary disability benefits and IDL. Further, it is apparent that lien claimant attempted to communicate a lien to SCIF in April 2016, a date prior to actual temporary disability payment made by SCIF (May 3, 2017) or IDL being paid (May 2, 2017). SCIF timely returned the lien to CCPOA on April 21, 2016 requesting additional information including a claim number or any other legal document. No response had been offered by lien claimant at hearing and presumably such inquiry remained unresponsive until lien was filed by CCPOA before the WCAB on April 1, 2022.

Ultimately this WCJ issued Findings of Fact that lien filed by Petitioner CCPOA was untimely filed and statute barred and with lien disallowed.

(Report, at pp. 1-2.)

DISCUSSION

I.

Preliminarily, we note that 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, 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 March 7, 2025, and 60 days from the date of transmission is May 6, 2025. This decision is issued by or on May 6, 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 March 7, 2025, and the case was transmitted to the Appeals Board on March 7, 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 March 7, 2025.

II.

Section 4903.1(a)(3)(A) states that:

(a) The appeals board or arbitrator, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to Section 4903.05, whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy,

including a loss-of-income policy or a self-insured employee welfare benefit plan, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows:

...

(3)(A) If the appeals board issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss-of-time benefits and for loss-of-time benefits paid by a self-insured employee welfare benefit plan. The lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. A lien shall not be allowed hereunder unless the group disability policy or self-insured employee welfare benefit plan provides for reduction, exclusion, or coordination of loss-of-time benefits on account of workers' compensation benefits.

(§ 4903.1(a)(3)(A), emphasis added.)

The WCJ found that CCPOA's lien was barred by the statute of limitations found in section 4903.5. However, the statute of limitations described in section 4903.5 applies to liens provided under section 4903(b), which addresses liens of *medical treatment* and *medical-legal expenses*. Section 4903.5 does not create a bar to liens of living expenses provided by a group disability policy filed under section 4903.1(a). Accordingly, we agree with CCPOA that the WCJ erred in dismissing its lien pursuant to section 4903.5.

However, addressing the merits of the lien, CCPOA cannot collect in these proceedings as SCIF has already paid applicant the temporary disability benefits, to which CCPOA's lien may attach. SCIF paid these benefits correctly as CCPOA failed to properly notify SCIF of the existence of its lien. CCPOA attempted to notify SCIF of its lien on April 19, 2016, but failed to include any case number or claim number on the document. (Joint Exhibit 11.) SCIF expressly returned the lien to CCPOA and requested that CCPOA notify SCIF of a case or claim number to which its lien attached. (*Ibid.*) CCPOA failed to respond. Thereafter, SCIF correctly paid temporary disability as no properly noticed lien was on file. Defendant is not liable to CCPOA as defendant acted reasonably in requesting that CCPOA identify a case number or claim number in response to CCPOA's initial lien notice and CCPOA failed to respond.

Accordingly, we grant lien claimant's Petition for Reconsideration, and as our Decision After Reconsideration, we will rescind the February 12, 2025 F&O and substitute a new Findings and Order, which finds that CCPOA failed to timely notify defendant of its lien and thus defendant is not liable for the lien as the temporary disability funds to which CCPOA's lien attached were already properly paid.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that as our Decision After Reconsideration, the February 12, 2025 F&O is **RESCINDED**, with the following **SUBSTITUTED** therefore:

FINDINGS OF FACT

1. David Evans, a 58-year-old correctional officer at Chuckawalla Valley State Prison, sustained injury arising out of and in the course of employment to his circulatory system on January 13, 2015.
2. At the time of injury, the employer was legally uninsured with benefits administered by State Compensation Insurance Fund - State Employees.
3. The case in chief was resolved by way of Stipulated Award issued on September 11, 2018, which resolved all pending issues including discharging defendant's responsibility for temporary disability which had been previously paid.
4. As a result of said injury California Correctional Peace Officers Association (CCPOA) provided applicant benefits of living expenses in the amount of \$49,504.80 for a period of February 14, 2015 to March 13, 2016, and the subject of its lien dated April, 1, 2022.
5. CCPOA failed to properly notify defendant of its lien prior to defendant paying applicant all monies to which the lien could attach under Labor Code section 4903.1(a)(3)(A), and thus, defendant is not liable to CCPOA for its lien.

ORDER

IT IS ORDERED that lien claimant, California Correctional Peace Officers Association Benefit Trust Fund, take nothing on its lien.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 6, 2025

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

CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION BENEFIT TRUST FUND

**DAN ESCAMILLA, LIEN REP WITH LEGAL SERVICE BUREAU
STATE COMPENSATION INSURANCE FUND, LEGAL
SMITH & GARFUNKEL, LLP**

EDL/mc

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