

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

DORINA CORNEJO, *Applicant*

vs.

**SEARS HOLDINGS CORPORATION;
ACE AMERICAN INSURANCE COMPANY,
as administered by ESIS, INC., *Defendants***

Adjudication Numbers: ADJ7580462; ADJ7580463; ADJ8813744

Oxnard District Office

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

Lien claimant Supreme Copy Service, Inc., seeks reconsideration of the Findings of Fact (Findings) issued by a workers' compensation administrative law judge (WCJ) on November 27, 2024, wherein the WCJ found in relevant part that the lien remains withdrawn and not reinstated; and that lien claimant and its representatives engaged in sanctionable conduct.

Lien claimant contends in relevant part that it and its representatives did not engage in sanctionable conduct; and that its lien should be reinstated.

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

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration and rescind the Findings and substitute new findings that the lien was dismissed by operation of law on July 03, 2017, and that defendant's petition for sanctions is moot.

FACTUAL BACKGROUND

On April 16, 2012, lien claimant filed a lien for its services in case number ADJ7580462. It is undisputed that lien claimant did not file a lien in case numbers ADJ7580463 and ADJ8813744.

On May 20, 2024, defendant filed a declaration of readiness (DOR) alleging that:

DEFENDANT HAS ATTEMPTED TO CONTACT LIEN CLAIMANTS ON MAY 1, 2024 AND MAY 6, 2024 WITH NO SUCCESS IN RESOLVING THEIR LIENS. WCAB ASSISTANCE IS REQUIRED TO FACILITATE RESOLUTION OF OUTSTANDING LIENS.

On July 29, 2024, lien claimant filed a declaration pursuant to Labor Code section 4903.8(D).

It is undisputed that lien claimant did not file a declaration pursuant to Labor Code section 4903.05(c)(3).

It is undisputed that lien claimant paid a filing fee of \$100.00 as required Labor Code section 4903.06.

On September 4, 2024, the parties proceeded to trial. Among the issues were lien claimant's lien and compliance with Labor Code sections 4903.8 and 4903.05.

On November 27, 2024, the WCJ issued the Findings.

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

(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 January 10, 2025 and 60 days from the date of transmission is Tuesday, March 11, 2025. This decision is issued by or on Tuesday, March 11, 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 January 10, 2025, and the case was transmitted to the Appeals Board on January 10, 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 January 10, 2025.

II.

In 2016, the Legislature amended section 4903.05 to add subsection (c), i.e., the declaration requirement, which became effective January 1, 2017. (Lab. Code, § 4903.05.) Section 4903.05(c) states:

(c)(1) For liens filed on or after January 1, 2017, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall

be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

- (A) Is the employee's treating physician providing care through a medical provider network.
 - (B) Is the agreed medical evaluator or qualified medical evaluator.
 - (C) Has provided treatment authorized by the employer or claims administrator under Section 4610.
 - (D) Has made a diligent search and determined that the employer does not have a medical provider network in place.
 - (E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600.
 - (F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.
 - (G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical- legal services, or has an expense allowed as a lien under rules adopted by the administrative director.
- (2) Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) for any lien claim filed before January 1, 2017, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.
- (3) The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law. Filing of a false declaration shall be grounds for dismissal with prejudice after notice.

On February 24, 2017, the Appeals Board adopted WCAB Rule 10770.7 providing that:

Any section 4903(b) lien that is subject to a filing fee pursuant to section 4903.05 and that is filed before January 1, 2017 shall be dismissed unless, on or before July 1, 2017, the lien claimant electronically files, in accordance with Article 4 of the Workers' Compensation Appeals Board Rules of Practice and Procedure, a Supplemental Lien Form and 4903.05(c) Declaration on the form approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10770.7.)

Here, it is undisputed that lien claimant did not file the declaration required by section 4903.05, and thus, its lien was dismissed by operation of law by July 3, 2017. Therefore, lien claimant could not further pursue the lien; the WCAB did not have jurisdiction over lien claimant once the time to challenge the dismissal had elapsed; and trial should not have been set.

However, defendant filed the DOR on May 20, 2024, and defendant should have withdrawn the DOR as soon as it realized that the lien had already been dismissed by operation by law. Thus, we do not believe that defendant proceeded in good faith, and it is not entitled to sanctions.

Moreover, as soon as the WCJ realized that she had no jurisdiction to proceed, she should have immediately terminated proceedings on the lien, including as to the issue of sanctions, as all issues were moot.

Accordingly, we rescind the Findings and substitute a new finding that the lien was dismissed by operation of law on July 03, 2017, and that defendant's petition for sanctions is moot.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the November 27, 2024 Findings of Fact issued by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 27, 2024 Findings of Fact issued by the WCJ is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Lien claimant Supreme Copy Services, Inc., failed to file the declaration required by Labor Code section 4903.05, and its lien was dismissed by operation of law by July 3, 2017.
2. All further issues with respect to lien claimant in this case, including defendant's petition for sanctions, are moot.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 11, 2025

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

**ALONNA GILMORE, COLLECTOR, SUPREME COPY SERVICE, INC.
FLOYD SKEREN MANUKIAN LANGEVIN, LLP
REYES & BARSOUM, LLP**

AS/mc

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