WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EDGAR ARAGON-ZARATE, *Applicant*

vs.

MODERN AUTO CENTER; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ9835949 (MF); ADJ9835948; ADJ9860843
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant Joyce Altman Interpreting (lien claimant) seeks reconsideration of the March 22, 2021 Joint Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found in Case No. ADJ9835949 that applicant, while employed as a body repairman on November 24, 2014, sustained industrial injury to his neck, thoracic spine, right shoulder, and right knee. The WCJ further found that applicant while similarly employed on January 19, 2015 claimed to have sustained injury to his bilateral eyes (ADJ9853948) and while employed from February 2, 2014 to January 1, 2015, claimed to have sustained injury to the neck, back, right, shoulder, bilateral knees, bilateral wrists, psyche, stress, lungs and bilateral feet (ADJ9860843). The WCJ found in relevant part that lien claimant's declaration filed pursuant to Labor Code[2] section 4903.05(c) contained false or inaccurate information requiring the dismissal of the lien.

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[1] Commissioners Lowe and Sweeney, who were previously members of this panel, no longer serve on the Workers' Compensation Appeals Board. Other panelists have been selected in their place.

[2] All further references are to the Labor Code unless otherwise noted.

Lien claimant contends that the medical appointment interpreting services it provided qualified as "an expense allowed as a lien under rules adopted by the administrative director," under section 4903.05(c)(1)(G), and thus its lien declaration was true and correct.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&O and return this matter to the trial level for further proceedings.

FACTS

The WCJ's Report sets forth the factual background in relevant part as follows:

> On February 10, 2015 applicant filed two applications for adjudication of claim. The first one alleging a specific orthopedic injury to his neck, thoracic spine, right shoulder and right knee was assigned case number ADJ9835949. That claim was timely denied by defendant. The second application alleged a specific injury to applicant's eyes on January 19, 2015. That case was assigned case number ADJ983598 and was denied by defendant.
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> On March 3, 2015 applicant filed a cumulative trauma claim from February 2, 2014 through January 23, 2015 alleging injury to his neck, back, right shoulder, bilateral knees, bilateral wrists, bilateral feet, psyche and lungs, which was assigned case number ADJ9860843. That claimant was also denied by defendant.
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> Applicant initially sought medical care for his November 24, 2014 injury in Los Angeles, in late December 2014 before the application was filed, with unknown physicians.
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> On February 3, 2015, applicant began receiving treatment at Advance Care Specialists Medical Clinic in Long Beach using Spanish interpreters from lien claimant Joyce Altman to assist the various medical providers. Lien claimant's services ended on January 27, 2016.
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> Applicant was seen by Soheil Aval MD as an agreed medical evaluator (AME) on August 14, 2015 for all three claims even though only two of them were orthopedic in nature. That report issued in October 2015.
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> In April 2016 applicant dismissed his attorney and retained new counsel. There is no further information as to what occurred on the case until defendant filed a

> declaration of readiness to proceed to hearing (DOR) on March 6, 2017 claiming there was no response to settlement negotiations.
>
> At the MSC before the undersigned judge on May 4, 2017, new applicant's counsel made the representation that he was not in possession of the entire medical file. Defendant agreed to serve him with the information and the case was taken off calendar. There was still no discussion as to whether or not any of the cases were going to be admitted.
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> Joyce Altman filed notice and request for allowance of lien on August 18, 2017 in all 3 cases. The cases resolved by way of joint compromise & release on November 21, 2019. Joyce Altman filed a petition for service of medical information on January 9, 2020.
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> Lien conference took place before the undersigned judge on August 20, 2020 via telephonic conference where lien claimants and defendant could not settle, therefore all three cases were set for trial. On the first trial date of November 2, 2020, one lien claimant, Certified Interpreters, settled their lien, but trial could not go forward with Joyce Altman Interpreters as her representative had medical emergency. The parties were ordered to file trial briefs before the next trial date, which was January 5, 2021. The matter proceeded to trial January 5, 2021 at which time the three cases were consolidated with ADJ935949 identified as the master file. Lien claimant Joyce Altman did not file their trial brief prior to trial and ask leave to file it within 20 days. They were given until close of business on January 25, 2021 at which time the matter was submitted for decision.
>
> A finding an order issued on March 22, 2021 finding the declaration filed by lien claimant Joyce Altman was not valid resulting in dismissal of all three liens. Joyce Altman took exception to the decision and filed a petition for reconsideration.

(Report, at pp. 2-3.)

The WCJ's Opinion on Decision explains that lien claimant's mandatory declaration under Labor Code section 4603.05(c)(1) attests that the lien was filed as "an expense allowed as a lien under rules adopted by the administrative director." (Lab. Code, § 4903.05(c)(1)(G).) However, the WCJ explains that when reading the entirety of subdivision (c)(1) in context, the statute provides a series of categories under which a lien may legitimately be filed, and that (c)(1)(G) applies only in the context of certain expenses that may be filed as cost petitions. (Opinion on Decision, at p. 5.) Because lien claimant's services were rendered in connection with medical treatment and because section 4603.05(c)(1)(G) does not apply to medical treatment expenses the declaration is false or inaccurate. Accordingly, the WCJ dismissed the medical interpreting lien. (*Id.* at pp. 5-6.)

Lien claimant avers that because none of the other classifications of permissible lien filings under section 4903.05(c)(1)(A)-(F) are applicable, its filing as an "expense allowed as a lien," was permissible and correct. (Petition, at p. 5.)

Defendant's Answer agrees with the WCJ's determination that section 4603.05(c)(1)(G) would not apply to services rendered by lien claimant and that the lien was properly dismissed. (Answer, at p. 5:12.)

The WCJ's Report observes that lien claimant's petition fails to offer appropriate citation to the evidentiary record and is skeletal and should be dismissed on that basis. (Report, at p. 4.) As to the merits of lien claimant's section 4903.05 declaration, the WCJ observes that although all three claims in question were denied by defendant at the time the interpreting services were rendered, lien claimant "failed to properly explain why she did not choose option E of the declaration, which state[s] that medical treatment has been neglected or unreasonably refused; a section commonly used as a catchall for lien claimants providing medical treatment in denied claims." (Report, at p. 5.) Because the claimed services were not provided by a certified interpreter "during a medical-legal examination, a copy service providing medical-legal services, or as an expense allowed as a lien under rules adopted by the administrative director," the lien declaration was incorrect. (*Ibid*.) The WCJ recommends we deny the Petition, accordingly.

DISCUSSION

The instant dispute involves the question of whether lien claimant's declaration pursuant to section 4903.05(c) was accurate and valid. Here, lien claimant filed its lien on June 27, 2017. Section 4903.05(c) governs liens filed after January 1, 2017, and provides, in relevant part:

> (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:
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> (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.
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> (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.
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> (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.

(Lab. Code, § 4903.05(c).)

Lien claimant filed its Notice and Request for Allowance of Lien on June 27, 2017, on a Division of Workers' Compensation form which includes the required declaration under section 4903.05(c). Therein, lien claimant declared that the provider was "a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services[,] or as an expense allowed as a lien under rules adopted by the Administrative Direct." (Notice and Request for Allowance of Lien, dated June 27, 2017, at p. 11.)

Lien claimant avers that because interpreting liens are allowed as a lien under applicable rules adopted by the Medical Director, and because the clauses in section 4903.05(c)(1)(G) are disjunctive, the declaration that the services were provided as "an expense allowed as lien under rules adopted by the administrative director" is valid and correct. Lien claimant contends the selection of section 4903.05(c)(1)(G) was the only possible option for lien claimant's services provided at a medical evaluation. (Petition, at p. 4.)

The WCJ's Report notes, however, that the record is not clear as to the nature of when the services were provided in relation to defendant's admission of liability for at least one of the

claimed injuries. The WCJ's Report observes that "[a]t inception of the claims, all three were denied," but that "[o]n an unknown date, defendant admitted the specific injury claim, case number ADJ98359494, to the neck, thoracic spine, right shoulder and right knee. The other two claims remain denied." (Report, at p. 4.) Thus, it appears that "[a]t the time petitioner's services were rendered, all three claims were denied." (*Ibid.*) By extension, if all three claims were denied at the time lien claimant interpreted at applicant's medical evaluations, the question is raised as to why lien claimant chose not to declare under section 4903.05(c)(1)(E) that it provided services on a fully denied claim wherein defendant "neglected or unreasonably refused to the employee as provided by Section 4600." (Report, at p. 5, citing Lab. Code, § 4903.05(c)(1)(E).)

The WCJ also observes that the expansive reading of section 4903.05(c)(1)(G) allowing for a declaration to be based on "an expense allowed as a lien under rules adopted by the administrative director," would effectively render the categories of liens specified under (C)(1)(A)-(G) to be distinctions without a difference. (Opinion on Decision, at p. 6; see, e.g., *Lopez v. JHOS Logistics & Transp*. (October 8, 2019, ADJ9518297) [2019 Cal. Wrk. Comp. P.D. LEXIS 496][3] ["[t]he suggested interpretation of California Labor Code § 4903.05 (c)(1)(G) that the wording "has an expense allowed as a lien under rules adopted by the administrative director" was intended to be inclusive of medical treatment would render sub-sections A through F meaningless as they would be superfluous.]; *cf. Luong v. Gardena Restaurant, Inc. dba Sea Empress Restaurant* (December 23, 2020, ADJ9742388) [2020 Cal. Wrk. Comp. P.D. LEXIS 416] ["there is no question that expenses for interpreting services at medical treatment appointments may be recovered as a lien"].) Accordingly, the WCJ concludes that lien claimant's declaration does not provide a valid basis for the filing of the lien under section 4903.05(c)(1) and is thereby subject to mandatory dismissal.

In considering the merits of the declaration, we are mindful of the clear and unequivocal command of the Labor Code, that "[i]f the injured employee cannot effectively communicate with the employee's treating physician because the employee cannot proficiently speak or understand

[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Lopez* and *Luong* because they considered a similar issue.

the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments." (Lab. Code, § 4600(g); see also *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc Opinion)]. We therefore agree with the WCJ that insofar as an interpreter provides interpreting services in connection with medical treatment necessary to cure or relieve from the effects of an industrial condition, those interpreting services are an integral component of the medical treatment afforded under section 4600. (Report, at p. 3; *Guitron*, *supra*, 76 Cal.Comp.Cases 228.)

Here, it is unclear from the record whether the services provided by lien claimant occurred during a time in which defendant denied all liability for all three pending claims. Nor does the record disclose at what point defendant admitted liability in case ADJ9835949, or the nature and extent of the admission of liability.

All parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158, [65 Cal.Comp.Cases 805].) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, 158 P. 218, "[The] commission … must find facts and declare and enforce rights and liabilities – in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker*, *supra*, at pp. 157–158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers*' *Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at 157–158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Section 5506 authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise or excusable neglect in accordance with Code of Civil Procedure section 473. That relief has been extended to all parties, including lien claimants. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196 [57 Cal.Comp.Cases 149].) Code of Civil Procedure section 473(b) states, in pertinent part:

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

(Code Civ. Proc., § 473(b).)

Therefore, in cases where a lien claimant may be entitled to relief under section Code of Civil Procedure section 473, lien claimant is entitled to assert that the dismissal should be set aside due to mistake, inadvertence, surprise or excusable neglect. (*Rucker*, *supra*, at pp. 157–158.) This is consistent with the principle expressed in *Fox* that "it is the policy of the law to favor, whenever possible, a hearing on the merits." (*Fox*, *supra*, 4 Cal.App.4th at p. 1205, citing *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478, 243 Cal. Rptr. 902, 749 P.2d 339.)

Allowing the full development of the evidentiary record to complete adjudication of the issues is consistent with due process. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see also *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; and *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Thus, a WCJ, "may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404–406 [65 Cal.Comp.Cases 264].)

Here, the record is not clear as to whether applicant's three claims were fully and completely denied at the time lien claimant provided interpreting services. As these considerations speak directly to the issue of whether lien claimant's medical interpreting services were provided when "medical treatment has been neglected or unreasonably refused" by defendant, and based on the considerations relevant to potential mistake or excusable neglect, and further considering the legislature's instruction that interpreting services during medical treatment be considered an integral component of medical treatment, we believe the record must be developed. (Lab. Code, § 4903.05(c)(1)(E); Code Civ. Proc., § 473(b).)

Accordingly, we will rescind the F&O and return this matter to the trial level for development of the record. Upon return of this matter, we encourage the parties to seek amicable resolution of the interpreting lien in line with the clear legislative mandate that interpreting at medical appointments be considered an integral component to medical treatment. (Lab. Code, § 4600(g).) However, should the parties be unable to resolve this lien, we encourage the parties to

develop the record to address whether lien claimant's services were rendered at a time when defendant denied all liability for the three claimed injuries, and whether the totality of the evidence supports the conclusion that lien claimant's June 27, 2017 declaration was the result of clerical error, mistake or excusable neglect. (Code Civ. Proc. § 473(b); *Fox*, *supra*, 4 Cal.App.4th 1196.)

Accordingly, as our Decision After Reconsideration, we rescind the decision and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 22, 2021 Joint Findings and Order is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 29, 2025

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

EDGAR ARAGON-ZARATE
JOYCE ALTMAN INTERPRETERS
ALCALA & ASOCIATES
STATE COMPENSATION INSURANCE FUND

SAR/abs

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