

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

FRANCIS HARGREAVES, *Applicant*

vs.

**SOUTHWEST AIRLINES; ACE USA INSURANCE COMPANY,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ6776516
Oxnard District Office**

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

Lien claimant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on January 14, 2025, wherein the WCJ found in pertinent part that defendant is liable for payment to lien claimant David Bresler, M.D., together with a statutory increase under Labor Code section 4603.2 (b)(2)¹ and interest; that lien claimant was entitled to a penalty of 10% of under section 5814; that there is no good cause to impose any sanctions against defendant or its counsel or to award costs against any parties; and that there is no good cause for a referral of defense counsel to the State Bar of California.

Lien claimant contends that the WCJ should have found: 1) four section 5814 penalties at 25% each and defendant's bill reviews were "fabricated;" 2) that defendant engaged in bad faith tactics by "manufacturing" the bill reviews offered into evidence; and 3) that defendant's attorney should be referred to the State Bar of California for knowingly proffering "false and misleading" bill reviews.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will

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

grant the Petition for Reconsideration, rescind the F&O and return the matter to the trial level for further proceedings consistent with this opinion.

BACKGROUND

We will briefly review the relevant facts.

On January 20, 2009, while employed by defendant as a customer service agent applicant sustained injury arising out of and occurring in the course of employment to his back, left shoulder, left wrist, psyche, complex regional pain syndrome, coronary artery disease and sleep disorder.

Dr. Bresler treated applicant from April 16, 2011 through September 13, 2011. (Exhibits 2-7, 4/16/2011, 5/17/2011, 6/18/2011, 7/19/2011, 8/20/2011, 9/13/2011.)

On April 17, 2012, Legal Service Bureau, filed a lien on behalf of lien claimant. Although this a section 4903(b) lien for the cost of medical treatment, lien claimant checked the box for a section 4903(c) lien (living expenses).

On March 6, 2017, a WCJ found, in pertinent part, that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his back, left shoulder, left wrist, psyche, and in the form of complex regional pain syndrome, coronary artery disease and sleep disorder, which caused applicant to sustain 90% permanent disability.

On March 30, 2017, defendant sought reconsideration, and we affirmed the March 6, 2017 F&A, except that we amended the F&A to find that applicant sustained 88% permanent disability and awarded benefits accordingly.

On April 9, 2019, the matter came on for trial of the lien of Dr. David Bresler, and on April 17, 2019, the WCJ issued a decision determining in relevant part that lien claimant was entitled to payment together with the statutory increase and interest. In our decision of June 26, 2019, we affirmed the decision.

On February 21, 2020, lien claimant filed a “Post-Reconsideration Petition for Penalty, Interest Costs and Sanctions Against Defendant for Failure to Pay Lien of Dr. Bresler after WCJ’s 4/16/19 OMFS Award and After WCAB 6/26/19 Decision After Affirming Award Reconsideration.”

On March 3, 2023, lien claimant filed a “Petition for Exclusion of Evidence (Defendant’s Proposed Exhibits B and D) Petition For Costs and Sanctions against Defendant and Its Attorney

Andrew Bernal and Request For Referral of Andrew Bernal to the State Bar for Disciplinary Action.”²

On July 25, 2024, lien claimant filed an amended “Petition For Costs/Sanctions against defendant and its attorney Andrew Bernal.”

On July 25, 2024, lien claimant filed a “Post-Reconsideration Petition For Penalty, Interest Costs And Sanctions Against defendant For Failure To Pay Lien of Dr. Bresler After WCJs 4/16/19 OMFS Award and After Board’s 6/26/19 decision affirming award.”

On December 13, 2024, the matter came on for lien trial. The issues were payment of the lien; whether there has been an unreasonable delay warranting a penalty under section 5814; costs and sanctions pursuant to lien claimant’s petitions.

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, 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.”

² On May 23, 2023, the WCJ ordered development of the record, and we denied lien claimant’s petition for reconsideration on July 20, 2023.

Here, according to Events, the case was transmitted to the Appeals Board on January 28, 2025 and 60 days from the date of transmission is Saturday, March 29, 2025. The next business day that is 60 days from the date of transmission is Tuesday, April 1, 2025. (See Cal. Code Regs., tit. 8, §10600(b).)³ This decision is issued by or on Tuesday, April 1, 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 WCJ, the Report was served on January 28, 2025, and the case was transmitted to the Appeals Board on January 28, 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 28, 2025.

II.

Here, with respect to payment of the lien, only the issue of the reasonable value of the services remained, and we agree with the WCJ's conclusion that lien claimant is entitled to payment of \$6,848.68, the statutory increase under section 4603.2(b)(2), and interest.

We turn to the issue of the appropriateness of penalties under section 5814. Under section 5814(a), when payment of compensation pursuant to an award has been unreasonably delayed or refused, the part of the payment that has been delayed or refused shall be increased up to twenty five percent (25%) or \$10,000.00 whichever is less. Compensation under an award includes payment for medical treatment.

³ 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.

Here however, the issue is whether lien claimant is entitled to a penalty. Lien claimant filed a lien for payment for medical treatment, and subsequently, the WCJ awarded payment in his decision of April 17, 2019. Section 5814 penalties belong to applicant, and we do not consider the issue of whether applicant is entitled to penalties, except to note that section 5814 penalties are not awarded to a lien claimant. Instead, the WCJ must consider whether lien claimant is entitled to a payment of penalties pursuant to section 4622. With respect to any allegation regarding sanctions, we refer the parties to WCAB Rule 10786 (Cal. Code Regs., tit. 8, § 10786.)

Finally, with respect to lien claimant's request that defendant's attorney be referred to the State Bar, we note that on the record here, without a finding that sanctions are appropriate, there is not a sufficient basis for the WCAB to do so.

Accordingly, we grant lien claimant's Petition for Reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant's Petition for Reconsideration of the January 14, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 14 2025, Findings and Order is **RESCINDED**, and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 1, 2025

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

**LEGAL SERVICE BUREAU
D'ANDRE LAW LLP**

DLM/oo

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