WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOHN ENGLER, ***Applicant***

vs.

WALGREENS COMPANY;
AMERICAN ZURICH INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ2012962 (SBR 0341278)
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimants Comprehensive Outpatient Surgery Center (COSC) and California Urgent Care Center (CUC) jointly filed a Petition for Reconsideration (Petition) of the Findings and Order After Remand (F&O) issued June 17, 2025, wherein the workers' compensation administrative law judge (WCJ) found in part the applicant sustained injury to the head, hernia, back, hips, foot, psyche and lumbar spine but did not sustain injury to the thoracic spine, cervical spine or the upper extremities. The WCJ also found COSC and CUC were each entitled to reimbursement for services in connection with no more than one lumbar spine epidural injection, but that further development of the record was required to determine the reasonable value of such services. The WCJ found applicant was not denied care, other issues required further development, and that all other issues were moot.

In the Petition, lien claimants challenge the findings of body parts injured, claiming injury to the thoracic spine. Lien claimants also challenge the limited number of reimbursements allowed and the finding that applicant was not denied medical care.

Defendant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report of the WCJ with respect thereto. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration.

Our order granting 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 Labor Code section 5950 et seq.[1]

I.

Former Labor Code 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. (Former 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.

(Lab. Code, § 5909.)

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 July 21, 2025, and 60 days from the date of transmission is Sunday, September 19, 2025. This decision issued by or on September 19, 2025, so that we have timely acted on the Petition as required by section 5909(a).

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

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 shall be notice of transmission.

According to the proof of service, the Report was served on July 21, 2025, and the case was transmitted to the Appeals Board on July 21, 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 July 21, 2025.

II.

This case has a lengthy and convoluted history. The following is a non-exhaustive review.

According to a Panel Qualified Medical Examiner (PQME) history in this case, the applicant was an assistant manager for Walgreens when he slipped in liquid soap on the store floor landing on his back. Paramedics were called and he was transported by emergency services to the emergency room at Loma Linda Medical Center. (Exhibit FF, Panel PQME Dr. James Fait, December 15, 2016, pages 2-3, and 42.) The injury occurred on January 23, 2008, not January 15, 2008, as initially described by the applicant to the PQME. The date of injury is considered by Dr. Fait under the heading of "Discussion." (Exhibit FF, PQME Dr. Fait, December 15, 2016, pages 61, 63.)

On April 17, 2008, defendant sent notice that applicant's claim was accepted. (Exhibit AA.) Despite this notice the case proceeded to trial on this issue of injury AOE/COE. Findings of Fact after trial included applicant "while employed in the late night and early morning hours of January 23, 2008, and January 24, 2008," . . . "sustained an injury arising out of and in the course of employment due to a slip and fall." (Findings of Fact, dated September 6, 2009, filed September 9, 2009, page 1.)

Defendant sought reconsideration which was denied by the Workers' Compensation Appeals Board (Appeals Board) on October 28, 2009.

The digest of medical records in PQME Dr. Fait's report is not in chronological order but includes a January 12, 2010, primary treating report from Ralph Stieger which states "[t]he patent requires a pain management specialist." (Exhibit FF, PQME Dr. Fait, December 15, 2016, pages 18-19.) The digest reflects that Dr. Steiger was awaiting authorization for pain management on March 1, 2010, April 9, 2010, and April 29, 2010, with the last entry including "[r]eferral to pain management is absolutely required." (Exhibit FF, PQME Dr. Fait, December 15, 2016, pages 18-20.)

Over a year later on June 15, 2011, "[a]t the request of the primary treating physician," Grant P. Williams, M.D., (Dr. Williams), issued a Pain Management Consultation report – Initial Visit, in which the doctor stated applicant's "*problems can be attributed to entirely, wholly and solely to the injury on 1/13/10*." (Exhibit 201, pages 1, 9, emphasis added.)

Subsequently, defendant was served with billings and reports from Dr. Williams spanning the dates September 26, 2011, to October 8, 2012. (Exhibit 203.) It appears this treatment by Dr. Williams includes treatment to the lumbar and thoracic spine and provides the basis for both the COSC and CUC liens. The reports from Dr. William's refer in the caption to cumulative injury occurring either through January 13, 2010, or alternatively January 13, 2008, depending on the report. (Exhibit 203)

On November 27, 2012, defendant sent multiple letters to CUSC stating "[p]ayment is denied," "[t]his treatment was not authorized," and/or "[t]he claim is in litigation." (Exhibit DD.)

Some four years later, on April 6, 2017, defendant sent a Notice of Denial of Claim for Workers' Compensation Benefits which states as relevant that "*we are accepting liability only for* your claim of injury to the right hip and *lumbar spine*." (Exhibit BB, emphasis added.)

On April 20, 2017, and May 4, 2017, explanation of benefits (EOB) issued for billing from CUC for services regarding the thoracic and lumbar spine on April 9, 2012, and for cervical disc, brachial neuritis, and spinal stenosis from September 26, 2011, to July 12, 2012, both denying payment as "service required prior authorization" and "services not authorized." (Exhibit EE, pages 1-4, this exhibit includes two duplicate pages, 5-6.)

On June 30, 2022, defendant sent a Notice of Denial of Claim for Workers' Compensation Benefits that states in part "we are accepting liability only for your claim of injury to lumbar spine, cervical spine, right hip, right carpal tunnel." (Exhibit CC.)

Over a year later, on November 15, 2023, Stipulations with Request for Award were filed by applicant and defendant for applicant's January 15, 2008, injury to "psyche, lumbar spine, right hip only" with medical treatment. Award was filed on November 17, 2023.

On December 1, 2023, a Declaration of Readiness to Proceed (DOR) was filed by a lien claimant that is no longer a party to these proceedings. Defendant filed an objection to the DOR stating further discovery was necessary as there was a total of thirty-four liens.

Subsequent lien conferences resulted in continuances as various liens were resolved, and parties were added to the official address record. (Minutes dated February 5, 2024, February 26, 2024, April 8, 2024, and July 9, 2024.)

On April 29, 2024, a Pre-Trial Conference Statement (PTCS) dated April 8, 2024, was filed which appears to have been completed and signed by the lien claimants COSC, CUC, and Mumtas Ali, M.D. (Dr. Ali). The PTCS includes the stipulation that applicant, while employed on January 15, 2008, sustained injury to his head, hernia, back, hips, foot, psyche, and lumbar spine. (PTCS, April 29, 2024, page 2.)

On July 9, 2024, at trial the COSC, CUC and Dr. Ali liens were submitted for decision. (Minute of Hearing, Summary of Evidence, July 9, 2024, page 1, lines 24-25.) The stipulations in the trial minutes mirror the stipulation from the PTCS that applicant "employed on January 15, 2008," . . . "sustained injury arising out of and in the course of employment to the *head, hernia, back, hips, foot, psyche and lumbar spine*." (Minute of Hearing, Summary of Evidence, July 9, 2024, page 2, lines 7-10, emphasis added.) The minutes also state "exhibits identified as 304, 305, 306, 307 will remained [sic] marked for identification and the Court will make a determination as to admissibility at the time a decision is rendered." (Minute of Hearing, Summary of Evidence, July 9, 2024, page 6, lines 8-10.)

On September 26, 2024, Findings and Order with Opinion on Decision, issued finding applicant sustained injury to the "head, hernia, back, hips, foot, psyche and lumbar spine, but did NOT sustain injury to the thoracic spine, cervical spine or to the upper extremities." (Findings and Order, page 1.) It was also found that CUC and COSC were entitled to partial reimbursement for *three* lumbar treatments each, but further development of the record was required as to reasonable charges. Dr. Ali's lien required further development of the record before a determination could be made regarding reimbursement. (Findings and Order, page 1-2.) Although the Opinion on Decision at page 2 finds exhibits 304-307 admissible, there was no order admitting these exhibits. The

findings as to body parts injured were based on the reporting of PQME Dr. Fait. (Findings and Order, Opinion on Decision, pages 2-3).

On October 14, 2024, lien claimants COSC and CUC filed a joint petition for reconsideration, and on November 5, 2024, the WCJ filed a Report and Recommendation.

On January 6, 2025, we issued our Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, in which we rescinded the WCJ's decision, and returned the matter to the trial level. 'We are not able to provide meaningful review here because the record of proceedings in this case is unclear as to the industrially injured body parts." "[I]t is unclear that Dr. Fait's opinion on the treatment by Drs. Higashi and Williams is substantial medical evidence." In addition, "we note that while the WCJ addresses the admissibility of Exhibits 304 through 307 in the Opinion on Decision, there has been no actual order admitting them into the record." (Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, January 6, 2025, pages 7-10.)

At subsequent conference on January 27, 2025, the matter was continued to trial.

At trial on February 26, 2025, the case was continued to allow the parties an opportunity for informal settlement.

On March 27, 2025, the case was again submitted for decision based on the prior July 9, 2024, minutes of hearing with no additional exhibits and without testimony. (Minutes of Hearing (MOH), March 27, 2025, page 2, line 24 to page 3, line 19.) The March 27, 2025, minutes record there "is no appearance by or on behalf of Lien Claimant Mumtaz Ali, M.D., which lien claimant did not recon the undersigned's Findings and Order and Opinion on Decision dated 9/26/2024." (MOH, March 27, 2025, page 2, line 11-14.)

On June 17, 2025, the WCJ issued Findings and Order After Remand (FO) again finding applicant sustained injury to the "head, hernia, back, hips, foot, psyche and lumbar spine, but did NOT sustain injury to the thoracic spine, cervical spine or to the upper extremities." (FO, page 1.) It was also found that CUC and COSC were entitled to partial reimbursement for *one* lumbar treatment each, but that further development of the record was required to determine reasonable charges for the services. The lien of Dr. Ali was again found to require further development of the record before a determination could be made regarding reimbursement. (F&O, page 2.) Although the Opinion on Decision at page 2 finds exhibits 304-307 admissible, there is again no order

admitting these exhibits. The findings of body parts injured are again based on the reporting of PQME Dr. Fait. (F&O, Opinion on Decision, pages 4).

On July 7, 2025, lien claimant's COSC and CUC again sought joint reconsideration.

On July 21, 2025, the WCJ filed a Report and Recommendation recommending the Petition be denied. The lengthy Report includes the statements "[t]he paper Legacy File does clearly indicate that treatment was provided to the applicant prior to the 2009 trial, including multiple reports and records from Ralph Steiger, M.D. (Exhibit 4); US Healthworks (Exhibit 5 and Exhibit F); Loma Linda (Exhibit 6); Gale LeRoy McMurray, MD (Exhibit B); and James F. Lineback, MD (Exhibit C). Applicant's treatment with Comprehensive Outpatient Surgery Center and California Urgent Care Center was all self-procured medical treatment, not authorized by defendant, and obtained prior to any agreement or determination as to what part or parts of body were injured in the industrial incident of January of 2008." (Report, page 11.)

III.

We observe that 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.

As discussed below, further study is necessary to determine if the record is adequate. We note 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].)

A.

Although applicant and defendant filed Stipulations with Request for Award with injury to "psyche, lumbar spine, right hip only," lien claimants were not parties to those stipulations and are not bound by them. Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz v. Patterson Floor Coverings, Inc*. (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc); Lab. Code, §§ 3202.5, 5705.)

Here, lien claimants and defendant stipulated in the PTCS dated April 8, 2024, that applicant, while employed on January 15, 2008, sustained injury to his head, hernia, *back*, hips, foot, psyche, *and lumbar spine*. (PTCS, April 29, 2024, page 2, emphasis added.)

This stipulation was reaffirmed in the minutes of the first trial. (Minutes of Hearing, July 9, 2024, page 2, lines 7-10.) After reconsideration, we rescinded the Findings and Order resulting from the first trial.

On March 27, 2025, the case was again submitted using the original July 9, 2024, minutes of hearing which reaffirmed the original stipulation between lien claimants and defendant as to body parts injured. (MOH, March 27, 2025, page 2, line 24 to page 3, line 19.)

On June 17, 2025, the WCJ found applicant sustained injury to the "head, hernia, *back*, hips, foot, psyche *and lumbar spine*, *but did NOT sustain injury to the thoracic spine*, cervical spine or to the upper extremities." (F&O, page 1, emphasis added.)

The issue of injury to the thoracic spine is important as lien claimants seek recovery for treatment to both the lumbar and thoracic spine.

In the workers' compensation arena, the spine is typically broken down into the two areas of neck and back. If further precision is necessary when describing the back, the nomenclature is commonly further refined to the thoracic or lumbar spine, with occasional reference to the lumbosacral spine. This convention is reinforced by the common definition of the "back" as "the rear part of the human body especially from the neck to the end of the spine."[2]

[2] See, *Miriam-Webster* online Dictionary: https://www.merriam-webster.com/dictionary/back

Although the WCJ finds injury to the back, the WCJ also found applicant did not sustain injury to the thoracic spine. This finding was made without addressing the effect of the parties' stipulation of injury to the back. Injury to the back would appear, on its face, to include injury to the thoracic spine. The fact the parties specifically stipulated to a lumbar spine injury could lead to the reasonable conclusion that the stipulation of injury to the back includes something other than the lumbar spine: the thoracic spine.

Stipulations further the public policies of settling disputes and expediting trials and a stipulation of the parties may not be set aside by the Board absent a finding of good cause. (Lab. Code §5702; *County of Sacramento v. Workers' Comp. Appeals Bd.*, (*Weatherall*) (2000) 77 Cal. App. 4th 1114, 1119, [65 Cal.Comp.Cases 1].) Any analysis of injury to the thoracic spine should, of course, start with analysis of the parties' stipulation of injury to the back *and* lumbar spine.

Even should the thoracic spine be ultimately found non-industrial, it would not end the analysis of reimbursement for the thoracic spine treatment. As noted by the California Supreme Court, it is necessary to determine if the treatment of the thoracic spine was undertaken to cure or relieve from the effects of the industrial injury.

> It is a long accepted workers' compensation rule that the employer takes the employee as he finds him. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 282 [113 Cal.Rptr. 162, 520 P.2d 978]; *Ballard v. Workmen's Comp. App. Bd.* (1971) 3 Cal.3d 832, 837 [92 Cal.Rptr. 1, 478 P.2d 937].) Thus, an employee who suffers from a preexisting condition and is thereafter disabled by an industrial injury is entitled to compensation and reimbursement of medical expense, even though a healthy person would not have been injured by the event. (Ibid.) This is so even though the specific treatment is for a nonindustrial condition which must be treated in order to cure or relieve the effects of the industrial injury. (*Granado v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 399, 405-406 [71 Cal.Rptr. 678, 445 P.2d 294]; *Dorman v. Workers' Comp. Appeals Bd*. (1978) 78 Cal.App.3d 1009, 1020 [144 Cal.Rptr. 573]; *McGlinn v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 527, 535 [137 Cal.Rptr. 326]; 2 Hanna, Cal. Law of Employee Injuries and Workmen's Compensation, § 16.03 [1], [2].) While such expenses, in order to be compensable, must be reasonably necessary to cure or relieve the effects of an industrial injury, the statutes do not require any finding of disability, temporary or permanent, as a condition to such recovery. (*Cedillo v. Workmen's Comp. Appeals Bd.* (1971) 5 Cal.3d 450, 454 [96 Cal.Rptr. 471, 487 P.2d 1039].)

(*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.,* (1983) 34 Cal. 3d 159, 165-166, [48 Cal.Comp.Cases 566].)

Here, upon preliminary review of the record, we are unable to determine the effect of the parties' stipulation on the claimed injury to the thoracic spine, nor if the treatment for the thoracic spine was provided in order to cure or relieve from the effects of the industrial injury.

B.

Previously in the September 6, 2009, Fings of Fact, it was found applicant "while employed in the late night and early morning hours of *January 23, 2008, and January 24, 2008*," . . . "*sustained an injury*." (Findings of Fact, September 6, 2009, filed September 9, 2009, page 1, emphasis added.)

On June 15, 2011, treating physician Grant P. Williams, M.D., Q.M.E., issued a Pain Management Consultation report – Initial Visit, in which the doctor stated applicant's "*problems can be attributed to entirely, wholly and solely to the injury on 1/13/10*." (Exhibit 201, page 9, emphasis added.) The subsequent treatment notes provided by Dr. Williams reference cumulative injury ending on either January 13, 2008, or January 13, 2010. (Exhibit 203.)

In the Stipulations with Request for Award applicant and defendant stipulated to *injury occurring January 15, 2008*. Lien claimants and defendant also stipulated to *injury occurring on January 15, 2008*. Finally, in the FO the WCJ found *injury on January 15, 2008*.

After preliminary review we suspect Dr. Williams' statement that applicant's "*problems can be attributed to entirely, wholly and solely to the injury on 1/13/10*," is a clerical error, however further review of the record and proceedings is required to assess the full impact of this statement as the date of injury is by no means clear.

It is also unclear whether any of the medical reporting in this case is substantial evidence.

Dr. Williams apparently provided treatment based on a cumulative injury through either January 13, 2008, or January 13, 2010. (Exhibit 2003.) The WCJ has noted Dr. Williams' "reporting cannot be construed as carrying much, if any, probative weight. Dr. Williams did not review applicant's pre-injury medical records and he does not have a full and complete medical history." (F&O, Opinion on Decision, page 9; Report, page 8.)

Further, we previously found "it is unclear that Dr. Fait's opinion on the treatment by Drs. Higashi and Williams is substantial medical evidence." (Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, January 6, 2025, page 8.)

Further review is necessary.

C.

In the Report the WCJ states "[a]pplicant's treatment with Comprehensive Outpatient Surgery Center and California Urgent Care Center was all self-procured medical treatment, not authorized by defendant, and obtained prior to any agreement or determination as to what part or parts of body were injured in the industrial incident of January of 2008." (Report, page 11.) In contrast however, the FO finding number five is "[a]pplicant was not denied care." (FO, page2.)

We are unable to reconcile these positions. The record is unclear as to when and what body parts were accepted as well as when and what treatment was requested.

For example, on April 17, 2008, defendant sent notice that applicant's claim was accepted but did not state which body parts were accepted. (Exhibit AA.) It may reasonably be inferred that defendant accepted all those body parts pled by applicant through that date, however we have no record before us of applicant's claims at that time.

On April 6, 2017, defendant sent a notice that included "we are accepting liability only for your claim of injury to the *right hip and lumbar spine*." (Exhibit BB, emphasis.) While on June 30, 2022, defendant sent a notice including "we are accepting liability only for your claim of injury to *lumbar spine, cervical spine, right hip, right carpal tunnel*." (Exhibit CC, emphasis added.)

On November 15, 2023, Stipulations with Request for Award were filed by applicant and defendant for injury to "*psyche, lumbar spine, right hip only*," resulting in the Award of November 17, 2023. (Emphasis added.)

While it is possible defendant accepted the lumbar spine as early as April 17, 2008, the record is unclear on this point. What is clear is that defendant accepted the lumbar spine at least by April 6, 2017. It is also clear defendant is currently denying injury to the thoracic spine. We are, however, unable to determine when the thoracic spine was first denied or if the thoracic spine was ever accepted.

We are also unable to determine when treatment for the lumbar and/or thoracic spine was first requested by applicant. It appears that pain management was requested as early as January 12, 2010, by primary treating physician Stieger who stated "[t]he patent requires a pain management specialist." (Exhibit FF, PQME Dr. Fait, December 15, 2016, pages 18-19.)

The date a defendant denies a body part after receiving notice of a claimed injury (including a request for treatment), is important as it triggers a requirement to initiate the panel qualified medical examiner process or risks having the body part presumed industrial, (See *Simmons v. State*

of California, (2005) 70 CCC 866, 876-877, fn 8, (Appeals Board en banc).) The date a claim is accepted triggers the timelines to perform utilization review (Lab. Code § 4610(i),) as well as possibly initiate the explanation of review and independent bill review process (Lab. Code §§ 4603.3, 4603.6.)

Further review of the record is necessary to consider the dates when defendant has either denied or accepted body parts, and what consequences flow from such findings.

D.

Although the billing and reports of Dr. Williams were served with proofs of service spanning the dates September 26, 2011, to October 8, 2012, (Exhibit 203), after preliminary review we are unable to ascertain when the bills were properly served nor when defendant received them. For example, the official address record contains three addresses for Sedwick, PO Box 14433 and 14623 in Lexington, KY, and PO Box 1390 in Rancho Cordova. There are, however, proofs of service showing service on PO Box 14533 in Lexington (Exhibit 203, pages 7,) and PO Box 14522 in Lexington (Exhibit 203, page 13), neither of which PO Box address numbers appear on the current official address record.

At least some of the billing from CUSC were received by defendant by November 27, 2012, based on denial letters of that date, (Exhibit DD), while the April 20, 2017, and May 4, 2017, explanation of benefits (EOB) issued for billing from CUC would indicate that at least some of the billing from CUC had been received by defendant at that time. (Exhibit EE, pages 1-4.)

As noted above, the timing of the service of billings and reports may also effect analysis of defendant's possible obligation to initiate the panel qualified medical examiner process or have the contested body part presumed industrial, for defendant to perform utilization review, as well initiate the explanation of review and independent bill review processes. After a preliminary review of these matters further consideration of the record is necessary.

E.

The record appears silent on the existence of a Medical Provider Network (MPN) during any of the relevant treatment periods. (Lab. Code § 4616 et. seq.) The record is also silent as to any treatment requests having been submitted to Utilization Review or being subject to Independent Medical Review. (Cal Lab. Code §§ 4610 and 4610.5.)

Should timely Utilization Review not have been completed, lien claimants still have the burden of establishing the treatment was reasonable. (Lab. Code § 50705.) Therefore, if lien claimants' treatment to the thoracic or lumbar spine is found industrial, lien claimants would then need to establish that the treatment was reasonable under the Medical Treatment Utilization Schedule (MTUS). (Lab. Code §§ 4600, 5307.27; Cal.CodeReg., title 8, §§ 9792.20-9292.27.23.) This is because "to carry this burden, the employee must present substantial medical evidence." (*Dubon v. World Restoration*, (2104) (*Dubon II*) 79 Cal.Comp.Cases 1298, 1312, (Appeals Board en banc).)

Further review is necessary to evaluate, if necessary, whether substantial medical evidence supports lien claimant's treatment.

F.

At the March 27, 2025, second trial the minutes reflect there "is no appearance by or on behalf of Lien Claimant Mumtaz Ali, M.D., which lien claimant did not recon the undersigned's Findings and Order and Opinion on Decision dated 9/26/2024." (Minutes of Hearing, March 27, 2025, page 2, line 11-14.) The Findings and Order of September 26, 2024, resulting from the first trial was rescinded by the Appeals Board on January 6, 2025. Despite Dr. Ali not making an appearance at the second trial, the case was again submitted based on the prior July 9, 2024, Minutes of Hearing which included Dr. Ali's lien as an issue.

When a lien claimant served with notice of a lien trial fails to appear, the WCJ has three options: "(1) Dismiss the lien claim after issuing a 10-day notice of intention to dismiss with or without prejudice, or (2) Hear the evidence and, after service of the minutes of hearing and summary of evidence that shall include a 10-day notice of intention to submit, make such decision as is just and proper, or (3) Defer the issue of the lien and submit the case on the remaining issues." (Cal. Code Reg., title 8, § 10880(b).)

Here it appears none of the three available options in Section 10880 was used. While it is possible Dr. Ali has either resolved or abandoned the lien claim, on this record we are left with only speculation in that regard. Without the benefit of further study, it appears that the procedural due process requirements of Regulation 10880(b) may not have been met as to Dr. Ali.

G.

In the Opinion on Decision and the Report the WCJ notes "*[t]he paper Legacy File does clearly indicate that treatment was provided to the applicant prior to the 2009 trial*, including multiple reports and records from Ralph Steiger, M.D. (Exhibit 4); US Healthworks (Exhibit 5 and Exhibit F); Loma Linda (Exhibit 6); Gale LeRoy McMurray, MD (Exhibit B); and James F. Lineback, MD (Exhibit C). (Report, page 11, emphasis added.) In the next sentence of the same paragraph, the WCJ then states applicant's treatment with COSC and CUCC were all self-procured medical treatment, not authorized by defendant, and obtained prior to any agreement or determination as to what part or parts of body were injured in the industrial incident of January of 2008. (FO, Opinion on Decision, page 12; Report page11.)

The exhibits referenced by the WCJ do not appear to be in the Electronic Adjudication Management System (EAMS).

H.

Despite our January 6, 2025, Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, in which "we note that while the WCJ addresses the admissibility of Exhibits 304 through 307 in the Opinion on Decision, there has been no actual order admitting them into the record," there is again no order regarding admitting the exhibits into the record. (Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration, pages 9-10; F&O page 2, Opinion on Decision, page 2.)

Exhibits 304 through 307 were proffered by Dr. Ali, and, as such, on further consideration the failure to order them admitted will be considered together with Dr. Ali's failure to appear at trial.

IV.

It is unclear from our preliminary review that there is substantial evidence to support the WCJ's decision. Considering the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and

reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

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 sections 5950 et seq.

Accordingly, we grant both Petitions 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.

We express no opinion on the ultimate resolution of these matters.

For the foregoing reasons,

IT IS ORDERED that lien claimants' Petition for Reconsideration of the Findings and Order After Remand issued by the workers compensation administrative law judge on June 17, 2025, 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2025

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

ZA MANAGEMENT
SEDGWICK CLAIMS MANAGEMENT SERVICES
CALIFORNIA URGENT CARE CENTERS
COMPREHENSIVE OUTPATIENT SURGERY CENTER
MUMTAZ ALI

PS/oo

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