WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOSE SOSA, ***Applicant***

vs.

MOUNTAIN VIEW TIRE & SERVICE;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ8078762
Long Beach District Office

OPINION AND DECISION GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioner Platinum Copy, Inc., (PCI) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) in this matter on November 4, 2024. In that decision, the WCJ found that PCI does have standing pursuant to WCAB Rule 10786 (b) (Cal. Code Regs., tit. 8, § 10786(b)) to file a petition for medical-legal determination, but that cost petitioner failed to meet its burden of proof to demonstrate that it is entitled to reimbursement for the expenses associated with the subpoenaing of records from the applicant's prior attorneys and applicant's treating physician Dr. Arthur Harris.

Petitioner contends the WCJ erred by not finding it met its burden of proof for reimbursement of the expenses associated with subpoenaing applicant's records from applicant's prior attorney and applicant's records from his treating physician.

We did not receive an answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed a cumulative trauma industrial injury from October 1, 2010 to October 1, 2011 to his neck, upper extremities, hands, back, lower extremities, and nervous system while employed as an Automotive Technician.

On January 9, 2012, defendant issued a letter denying applicant's claim. (Exhibit 110, 1/9/2012.)

On May 8, 2013, defendant issued a letter denying permanent disability benefits based on qualified medical evaluator (QME) Dr. Chiu's Report dated February 5, 2013. (Exhibit 111, 5/8/2013.)

On May 23, 2013, applicant's attorney submitted an order referral request to PCI for applicant's records from Dr. Arthur Harris and Law Office of Jon Woods. (Exhibit 101, 5/23/2013.)

On May 24, 2013, PCI issued a Subpoena Duces Tecum (SDT) for records pertaining to applicant from the Law Offices of Jon Woods. (Exhibit 103, 5/24/2013.)

On June 22, 2013, the Custodian of Records for Arthur Harris, M.D., executed a declaration stating under penalty of perjury that applicant's records were made available to PCI for copying. (Exhibit 102, 6/22/2013.)

On June 22, 2013, PCI issued an invoice for the requested copy services for the records of applicant from Dr. Arthur Harris. A proof of service was executed on June 22, 2013, stating that the invoice #70990 was served on June 22, 2013, and mailed to defendant Travelers Insurance, applicant's attorneys, and defendant's attorney. (Exhibit 104, 6/22/2013.)

September 9, 2013, PCI issued an invoice for the requested copy services for the records for applicant from the Law Offices of Jon Woods. A proof of service was executed on September 9, 2013, stating that the invoice #70991 was served on September 9, 2013, and mailed to defendant Travelers Insurance, applicant's attorneys, and defendant's attorney. (Exhibit 105, 9/9/2013.)

On January 29, 2014, a substitution of attorney dated May 15, 2013, was filed substituting in Appel & Rimbach as applicant's attorney of record in place of the Law Offices of Jon Woods.

The case in chief was resolved via a Compromise and Release (C&R). On January 29, 2014 a WCJ issued an Order Approving Compromise and Release (OACR). In relevant part, Paragraph 9 of the C&R states that:

2. THIS SETTLEMENT RESOLVES A PARTIALLY ACCEPTED INJURY CLAIM AND IS NOT AN ADMISSION OF LIABILITY FOR ANY DENIED BODY PART/SYSTEM. TRAVELERS ACCEPTED THE MUSCULAR NECK ONLY. PQME DR. CHIU FOUND 0% WPI AS IT PERTAINS TO THE NECK ALL OTHER BODY PARTS/SYSTEMS REMAIN DENIED AND/OR DISPUTED.

3. THIS SETTLEMENT IS INTENDED TO RESOLVE ALL CLAIMS OF INJURY TO THE NECK (200), LOWER EXTREMETIES (500), BACK (420), UPPER EXTREMETIES (300), HAND (330), UPPER EXTREMETIES (398), MULTIPLE PARTS (700), NERVOUS SYSTEM/PSYCH (842), AND ALL OTHER BODY PARTS AND/OR SYSTEMS ARISING OUT OF THE ALLEGED CUMULATIVE TRAUMA FROM 10/01/2010 THROUGH 10/01/2011. SERIOUS DISPUTES EXIST (IN CONNECTION WITH THE DENIED /DISPUTED BODY PARTS/INJURIES) REGARDING THE ISSUES OF INJURY AOE/COE, NATURE AND EXTENT OF PD, DURATION OF TD, NEED FOR PAST AND FUTURE MEDICAL CARE, LIENS, REIMBURSEMENT FOR OUT OF POCKET EXPENSES, MILEAGE CLAIMS, PENALTIES, INTEREST AND ALL OTHER MATTERS WHICH HAVE BEEN OR COULD HAVE BEEN RAISED, INCLUDING BUT NOT LIMITED TO ANY CAUSE OR ACTION ARISING UNDER LCS l32(A), 4553, 4553.1, 4554, 4555 AND/OR 4558.

On September 26, 2024, PCI and defendant proceeded to trial. The relevant issues raised for trial were: "1. Whether Petition for Medical-Legal Determination filed May 22, 2023, by Platinum copy has standing and is valid, timely, within Statute of Limitations. 2. Does the WCAB have jurisdiction under Labor Code Section 5804?, 3. Is Provider entitled to medical-legal reimbursement pursuant to Labor Code Section 4620, 4621, and the 2019 Colamonico en banc? . . ."

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. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code 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 Labor Code 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 November 26, 2024 and 60 days from the date of transmission is Saturday, January 25, 2025. The next business day that is 60 days from the date of transmission is Monday, January 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, January 27, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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. Labor Code 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 November 26, 2024, and the case was transmitted to the Appeals Board on November 26, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2)

[1] 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.

provided them with actual notice as to the commencement of the 60-day period on November 26, 2024.

II.

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See Lab. Code, §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico v. Secure Transport*, (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc).)

First, we will address the subpoenaed records from the Law Offices of Jon Woods. The WCJ states in the Opinion on Decision, ". . . the first date of service was for a subpoena for the records from the Law Offices of Jon Woods. It is clear that the Provider has met its burden to show that there was a contested claim at the time the expenses were incurred." (Opinion on Decision[2], 11/4/2024, p. 5.) In the Opinion on Decision, the WCJ states,

> "The Provider has made no showing at trial via testimony or documentary evidence that Applicant ever requested his file and that said request was rebuffed or ignored by the Law Offices of Jon Woods. In fact, the record demonstrates that Appel & Rimbach executed the substitution of attorney on May 15, 2013 and that its subpoena for records from the Law Offices of Jon Woods was issued a mere nine (9) days later on May 24, 2013. As such, without such a showing, the Provider cannot meet its burden to demonstrate that these expenses were reasonably, actually and necessarily incurred.[3] " (Opinion on Decision, 11/4/2024, p. 6.)

We disagree.

We agree that cost petitioner has met its burden of proof pursuant to Labor Code section 4620(a), that is, there is a contested claim. The next hurdle to overcome is whether the purported

[2] The Opinion on Decision refers to Exhibits 110 and 111 which are denial letters from defendant dated 1/9/2012 and 5/8/2013 which illustrate that the case was denied at the time the records were subpoenaed from the Law Offices of Jon Woods.

[3] In the Opinion on Decision the WCJ states, "It is unknown as to whether the subpoenaing of the records from the prior Applicant's Counsel was reasonable and necessary as the Provider failed to offer any evidence regarding the reasonableness and necessity." (Opinion on Decision, footnote 12, page 6, 11/4/2024.)

medical-legal expense was reasonably, actually, and necessarily incurred. (Lab. Code, § 4621 (a).) The determination of the reasonableness and necessity of a service focuses on the time period when the service was actually performed. (*Id*.)

In the panel decision of *Lopez v. Lauramark Enterprises, Inc*., 2016 Cal. Wrk. Comp. P.D. LEXIS 644, the Appeals Board concluded that it was not necessary that the attorney first seek to obtain copies of documents by way of written release, before seeking them by subpoena, in order for there to be a valid lien for photocopying the documents (Cal. Code Regs., tit. 8, §10530), because "[a]pplicant's attorney's decision to obtain records by subpoena rather than written request was within the attorney's discretion and the WCJ incorrectly determined that the expenses were not reasonably and necessarily incurred based on potential alternative methods for obtaining the documents." (*Id.*)

The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) Thus, parties generally have broad discretion in seeking and obtaining documents with a subpoena duces tecum in workers' compensation cases.

Here, there is no requirement that an applicant's attorney informally request records from the prior attorney before subpoenaing them. The decision about how best to proceed in a case is a matter of the attorney's discretion, and applicant's new attorney's decision to issue a subpoena duces tecum for applicant's file from his previous attorney is a reasonable choice. Thus, the expense was reasonable and necessary.

Next, we will address the subpoenaed records from Dr. Harris. The WCJ states in the Opinion on Decision, "The second date of service at issue was for the subpoena of records from Dr. Arthur Harris. Again, it is clear from the record that the Provider met its burden to show that there was a contested claim at the time the expenses occurred." (Opinion on Decision, 11/4/2024, p. 6.) In the Opinion on Decision, the WCJ states, ". . . that Dr. Harris was some form of treating physician as his initial 10/31/11 consultation and progress reports were reviewed by the Panel QME, Dr. Chiu[4]." (Opinion on Decision, 11/4/2024, p.6.) The WCJ then states that "the treating physician shall make [and serve] reports to the claims administrator as required by 8 CCR 10635

[4] The Opinion on Decision references Exhibit 114.

(c) and that the parties have an ongoing duty to serve each other with medical reports. . . . ." (Opinion on Decision, 11/4/2024, p. 7.)

Here, the WCJ's assertion is incorrect. It is not PCI's burden to show that the defendant failed in its obligation to serve the treatment reports of Dr. Harris on applicant's counsel. This is not a requirement when subpoenaing records.

Further, the WCJ found that PCI issued the subpoena when the claim was contested. As stated above, the second hurdle to overcome is that the purported medical-legal expense must be reasonably, actually, and necessarily incurred. (Lab. Code, § 4621 (a).) We conclude that the expense was reasonable and necessary when PCI issued the subpoena for records from Dr. Harris as the claim had been denied by defendant and the medical records were from a treating physician. Thus, the expense was reasonable and necessary.

Accordingly, we grant PCI's Petition for Reconsideration, and rescind the WCJ's F&O, and return this matter to the trial level to determine the reasonable value of the medical-legal services per the Official Medical Fee Schedule (OMFS).

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of November 4, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of November 4, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

LISA SUSSMAN, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2025

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

DIMACULANGAN & ASSOCIATES
PLATINUM COPY

DLM/oo

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