

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

JUAN SALAZAR, *Applicant*

vs.

**MAYWOOD PLAZA MARKET;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ10344350; ADJ10344309
Oxnard District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration¹ 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 claimants Industrial Healthcare PMG, Complete Interpreting, and Peralta Hills-Mission Valley Imaging (collectively, lien claimants) seek reconsideration of the June 1, 2021 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a butcher/meat cutter by Maywood Ranch Market, sustained industrial injury to his abdomen, groin, internal system, and hernia. The WCJ found that the declarations filed by lien claimants and signed by Ilona Kulikova do not meet the requirements of Labor Code² section 4903.8(d).³ The WCJ further determined that lien claimants' amended declarations were untimely. Accordingly, the WCJ dismissed the liens of Industrial Healthcare PMG, Complete Interpreting, and Peralta Hills-Mission Valley Imaging.

¹ Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been selected in her place.

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

³ We observe that case numbers ADJ10344350 and ADJ10344309 were ordered consolidated on April 14, 2021. (Minutes of Hearing and Order of Consolidation, dated April 14, 2021, at p. 2:2.) Notwithstanding this consolidation, the WCJ has issued a joint opinion but separate findings of fact. Although we acknowledge that this matter has a complex procedural history involving related lien claims filed in separate cases, we observe that when cases are consolidated it is appropriate for the WCJ to issue both joint findings of fact and a corresponding joint opinion on decision.

Lien claimants contend that their declarations are prima facie evidence of compliance with section 4903.8(d) and that defendants failed to meet their burden of proof that the declaration of Ilona Kulikova was invalid. Lien claimants further contend the failure to allow lien claimant the opportunity to correct identified defects in the lien declarations is a violation of the right to due process.

We have 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 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 issued by the WCJ in each case and substitute new Findings of Fact that the declarations filed by lien claimants pursuant to section 4903.8(d) are valid. We will then return this matter to the trial level for further proceedings.

FACTS

In Case No. ADJ10344350, applicant claimed injury to his low back, shoulders, legs, knees, arms and hands while employed as a butcher/meat cutter by Maywood Ranch Market from March 1, 2015 to February 28, 2016. In Case No. ADJ10344309, applicant claimed injury to his abdomen, groin, internal and hernia while similarly employed on October 1, 2015. Both cases in chief resolved by Compromise and Release ordered approved on April 9, 2019.

These supplemental proceedings involve liens filed by Industrial Healthcare PMG, Complete Interpreting, and Peralta Hills-Mission Valley Imaging. The WCJ's Report sets forth the relevant procedural history as follows:

Lien claimant, Peralta Hills Mission Valley, filed their original lien on 10/20/2017. Lien claimants, Complete Interpreting and Industrial Healthcare Physicians, filed their original liens on 2/22/2018. All three lien claimants filed declarations pursuant to Labor Code §4903.8(d) at the time of each filing (Lien Claimant's Exhibit 7, 2, and 5, respectively), and all the declarations were signed by Ilona Kulikova.

All three lien claimants filed new, amended Labor Code §4903.8(d) declarations, and all were signed by individuals other than Ilona Kulikova. These amended declarations include filings made for Complete Interpreting on 10/5/2020 (Lien Claimant's Exhibit 1) and 6/18/2020

(Lien Claimant's Exhibit 9), filings made for Industrial Healthcare Physicians on 10/5/2020 (Lien Claimant's Exhibit 4) and 6/18/2020 (Lien Claimant's Exhibit 10), and filings made for Peralta Hills Mission Valley on 6/22/2020 (Lien Claimant's Exhibit 11).

On 4/14/2021, a lien trial was held before the undersigned WCJ. After informal discussion of the issues, the parties agreed to limit the scope of the trial to the validity of and compliance with the Labor Code §4903.8(d) declarations filed by Lien Claimants. Although the liens listed above were put at issue for trial, all other issues related to those liens besides compliance with that section were deferred. The evidence was identified for the record, with lien claimants objecting to the admissibility of Defendant's Exhibit A for failure to comply with CCP §2025.620. The parties did not offer any testimony of any witnesses, and the matter stood submitted for decision at that time.

On 5/7/2021, after review of all the evidence submitted by the parties and other documents in the court's file, an Order Vacating Submission and Notice of Intent to Resubmit Based Upon New Evidence issued by this court. Three additional declarations were identified by this court, and marked as evidence as Lien Claimant's Exhibit 9, 10, and 11. There being no objection to the admissibility of that evidence by either party, the matter stood resubmitted for decision as of 5/24/2021.

On 6/1/2021, this court issued the two Findings and Orders and Joint Opinion on Decision at issue herein. The undersigned WCJ Found the original declarations filed by lien claimants do not meet the requirements of Labor Code §4903.8(d), the lien filings are invalid pursuant to Labor Code §4903.8(e), and lien claimants' attempts to cure the original lien filings by filing new, amended Labor Code §4903.8(d) declarations were untimely pursuant to Labor Code §4903.5(a). This court also overruled lien claimants' objection to Defendant's Exhibit A and lien claimants' liens were Ordered dismissed.

(Report, at pp. 2-3.)

The WCJ's Opinion on Decision addressed the deficiencies in lien claimants' section 4903.8(d) declarations as follows:

Ilona Kulikova never had any personal knowledge about the validity of those declarations, and she would just rely upon the information being entered into a computer system by others (*Defendant's Exhibit A*, pages 20 to 30). This was the standard business practice of Ilona Kulikova for all such declarations while working at QBC for the period 2011 through 2018, which is when the declarations were signed for these providers in this case (*Defendant's Exhibit A*, page 30). Lien claimants offered nothing

to rebut this evidence, or to clarify Ilona Kulikova's sworn testimony made at that deposition.

(Opinion on Decision, at p. 2.)

The WCJ determined that because the section 4903.8(d) declarations were invalid, the liens supported by those declarations were similarly invalid pursuant to section 4903.8(e). (Findings of Fact Nos. 2 & 3.) The WCJ further determined that lien claimants' attempts to cure the defects through amended filings were untimely. (Finding of Fact No. 4.)

Lien claimants' Petition avers the declaration of Ms. Kulikova was based on her review of medical reports, records, and the Electronic Adjudication Management System (EAMS), rendering her deposition testimony *prima facie* evidence that the services attested to in the 4903.8(d) declaration were actually provided to applicant. (Petition, at p. 3:3.) Petitioners contend defendant failed to rebut this *prima facie* evidence. Lien claimants further contend the signature affixed by Ms. Kulikova to the relevant declarations was valid under Code of Civil Procedure section 2015.5, and that the declarations meet the requirements of section 4903.8(d). (*Id.* at p. 11:10.)

Defendant's Answer responds that any amended declarations filed by lien claimants are invalid because "[t]here is no statutory authority whatsoever in the Labor Code for Lien Claimants to file 'amended' declarations." (Answer, at p. 6:4.) While defendants acknowledge Workers' Compensation Appeals Board (WCAB) panel decisions that have allowed for potential amendment to required declarations, "any attempt to cure a noncompliant Labor Code §4903.8(d) must be completed prior to the expiration of the statute of limitation." (*Id.* at p. 5:25.) Defendants observe that none of the amended declarations filed herein was timely under the original time limitations set forth in section 4903.8.

The WCJ's Report observes that no finding was entered regarding the sufficiency of the signature to the declaration, and that in any event, defendant met their burden of establishing that Ms. Kulikova was not competent to testify to the facts as set forth in lien claimants' section 4903.8(d) declarations. The WCJ observes that per her deposition testimony, declarant Ms. Kulikova was unable to offer specific information about the nature and source of the specific charges set forth in the billing statements, or the disposition of billing remittances or any alleged mistakes in billing. (Report, at p. 4.) The WCJ observed that "the sworn testimony of Ilona Kulikova indicates she lacked the requisite knowledge to attest to any of the facts contained in the

Labor Code §4903.8(d) declarations filed for lien claimants, Complete Interpreting, Industrial Healthcare Physicians, and Peralta Hills Mission Valley, in this case.” (*Id.* at p. 7.)

DISCUSSION

The parties have placed in issue the “validity of and compliance with the Labor Code 4903.8(d) Declarations filed by Lien Claimants.” (Minutes of Hearing, dated April 14, 2021, at p. 3:8.)

Section 4903.8 provides, in relevant part:

(d) At the time of filing of a lien on or after January 1, 2013, or in the case of a lien filed before January 1, 2013, at the earliest of the filing of a declaration of readiness, a lien hearing, or January 1, 2014, supporting documentation shall be filed including one or more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

(1) The services or products described in the bill for services or products were actually provided to the injured employee.

(2) The billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.

(e) A lien submitted for filing on or after January 1, 2013, for expenses provided in subdivision (b) of Section 4903, that does not comply with the requirements of this section shall be deemed to be invalid, whether or not accepted for filing by the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

(Lab. Code, § 4903.8(d)-(e).)

Here, the liens for all three lien claimants were filed after January 1, 2013, requiring lien claimants to make the declarations required under section 4903.8(d) at the time of filing. There is no dispute that each of the three lien claimants herein filed a “4903.8 (D) DECLARATION” signed by Ilona Kulikova on October 20, 2017 or on February 22, 2018. (Exhibits 2, 5 & 7.)

Thus, any inquiry into the sufficiency of the section 4903.8(d) declarations requires an evaluation of whether Ms. Kulikova was a natural person “competent to testify” that the services or products described in the bill for services or products were actually provided to the injured employee and that the billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee. (Lab. Code, § 4903.8(d)(1)-(2).)

In *Lopez v. Marromac* (January 23, 2018, ADJ9827338) [2018 Cal. Wrk. Comp. P.D. LEXIS 633],⁴ we discussed the import of the term “competent to testify” as follows:

Although section 4903.8 does not define exactly what is meant by the phrase, “competent to testify,” we find guidance in Evidence Code section 702, which provides, in relevant part:

Subject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter.

Therefore, the person making the 4903.8(d) declaration must have personal knowledge of the matters set forth in the declaration. For our purposes, the declarant must have personal knowledge that the billing statement accurately describes the services/products provided to applicant, and that those services/products were actually provided.

(*Id.* at p. 11.)

We further discussed how such a declaration affected the respective burdens of proof of the parties:

The import of a declaration under penalty of perjury is set forth in Code of Civil Procedure section 2015.5, which provides:

Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or provided by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same ... such matter may with like force and effect be supported, evidenced, established or provided by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this

⁴ 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, 242, 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 these panel decisions because they considered a similar issue.

state, states the date of execution and that is so certified or declared under the laws of the State of California....

The rationale for permitting a declaration under penalty of perjury in lieu of testimony under oath is that the potential for application of criminal sanctions of perjury where material facts declared to be true are, in fact, not true or are not known to be true provides a sufficient deterrent against false and/or unknowing declarations. (*In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 87 Cal. Rptr. 2d 339; *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150, 115 Cal. Rptr. 879.) A declaration under penalty of perjury signed and executed in California, even if incompetent, is sufficient to establish fact and support an order or judgment where the declaration is received without a proper objection or motion to strike. (*Nalley's, Inc. v. Corona Processed Foods, Inc.* (1966) 240 Cal.App.2d 948, 50 Cal. Rptr. 173.) Further, although a declaration under penalty of perjury contains hearsay and mere conclusions, it is competent evidence if received without objection. (*Waller v. Waller* (1970) 3 Cal.App.3d 456, 83 Cal. Rptr. 533.)

...

[Lien claimant's declarant] Katherine Espinosa's declaration under penalty of perjury is made in the format exactly as required by section 4903.8(d) and, accordingly, makes a prima facie showing of the truth of the matters asserted therein pursuant to Code of Procedure section 2015.5. When defendant challenged the competency of Katherine Espinosa to make the declaration, the burden shifted to it to demonstrate her incompetence.

(*Id.* at p. 12.)

Here, we find a similar burden-shifting analysis to be applicable. The declaration of Ms. Kulikova, made under penalty of perjury, makes a prima facie showing of the truth of the matters asserted. And as was the case in *Lopez, supra*, defendant's challenge to the declarant's competence to testify carried with it the burden of proof.

The WCJ's Opinion on Decision explains that pursuant to her deposition testimony, Ms. Kulikova "never had any personal knowledge about the validity of those declarations, and she would just rely upon the information being entered into a computer system by others ... [t]his was the standard business practice of Ilona Kulikova for all such declarations while working at QBC for the period 2011 through 2018, which is when the declarations were signed for these providers in this case (Defendant's Exhibit A, page 30)." (Opinion on Decision, at p. 2.) The Report offers additional details regarding the WCJ's analysis, noting that Ms. Kulikova could not testify to how the charges were determined in the first instance and subsequently entered into the billing for each provider. (Report, at p. 4.) Nor could Ms. Kulikova explain payment being made but not reflected

on the billing or provide details regarding alleged mistakes in the billing. (*Ibid.*) Based on this lack of personal knowledge regarding the nature and sourcing of the amounts billed for each provider, the WCJ concluded that Ms. Kulikova “never had any personal knowledge about the validity of the declarations in this case, she would just rely upon the information being entered into a computer system by others, and this was the standard business practice of Ilona Kulikova for all such declarations while working at QBC for the period 2011 through 2018, which is when the declarations were signed for these providers in the present case.” (*Id.* at pp. 5-6.)

We agree with the WCJ’s conclusion that Ms. Kulikova was unable to testify as to the nature of how the specific charges were determined. However, based on the language of section 4903.8(d) and pursuant to our analysis in *Lopez, supra*, we are persuaded that the necessary declaration requires competent testimony the “[t]he services or products described in the bill for services or products *were actually provided to the injured employee*” and that “[t]he billing statement attached to the lien truly and accurately describes the services or products that were provided to the injured employee.” (Lab. Code, § 3208.3(d)(1)-(2).) And in this respect, we note that Ms. Kulikova testified that her office used a computer program that contained all the medical reports and billing generated out of each physician’s office. (Ex. A, Transcript of the Deposition of Ilona Kulikova, dated April 8, 2019, at p. 16:8.) Ms. Kulikova testified:

Q. So you’re on one computer program that’s linked to the doctor’s office?

A. Yes.

Q. Okay. What I’m going to ask for is how do you personally know that, in this case, Veronica Vasquez was the patient who is there in the office of Dr. Donahue?

A. It’s because I have records. I have records the patient was there, doctor put report. So I know, for sure, that the patient was there.

Q. Do you have sign-in sheets?

A. We have it, not personally me. But we have it.

(*Id.* at p. 16:15.)

When asked about the nature of the records to which declarant had access, Md. Kulikova testified, “[a]ll records, which we have under Conexem, the program which we are using all the time, we have medical reports. We have whatever doctor is doing, reports, records, everything under computer. I can see it when doctor, two person -- and he’s doing whatever he’s doing, whatever -- it’s everything on the computer.” (*Id.* at p. 19:8.)

Ms. Kulikova thus testifies to having access to both the underlying medical reports and the associated billing corresponding to each lien claim in which she provided a declaration under

section 4903.8(d). Moreover, the direct connection between the billing office and the provider's office allowed the witness to competently testify as to the actual services provided to the injured employee, and that billing statement accurately corresponds to the services set forth in the associated medical reports.

Returning to the parties' respective burdens of proof, we note that lien claimants' declarations comport with the form and content prescribed by section 4903.8(d). As such, lien claimants' declarations are prima facie evidence of the facts attested to. Insofar as defendant seeks to challenge the declaration on the basis that the witness was not competent to testify to the facts declared, Ms. Kulikova's deposition testimony does not meet that burden. Rather, declarant's testimony establishes that she had at all relevant times access to the information upon which she could declare that both the services being billed were actually provided and that the billing statement accurately describes the services. (Lab. Code, § 4903.8(d)(1)-(2).) Consequently, defendant has not met its burden of successfully challenging the competency of Ms. Kulikova to make the declarations required under section 4903.8(d).

In summary, we conclude that because lien claimants' declarations made under penalty of perjury comply with both the form and content required under section 4903.8(d), lien claimants have made a prima facie showing of the facts necessary to such a filing. Because defendant has not met its burden of overcoming lien claimant's prima facie showing, we conclude the declarations are valid.

We also observe that insofar as the parties dispute whether lien claimants' amended declarations were timely, we need not address this issue because the initial 4903.8(d) declarations were valid in the first instance.

Accordingly, as our decision after reconsideration, we will rescind the F&O in both ADJ10344350 and in ADJ10344309 and substitute new joint findings of fact that lien claimants' declarations under section 4903.8(d) are valid. We will also restate the WCJ's order regarding the admissibility of Defendant's Exhibit A.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 1, 2021 Findings and Orders in ADJ10344350 is **RESCINDED**.

IT IS FURTHER ORDERED that the June 1, 2021 Findings and Orders in ADJ10344309 is **RESCINDED**, with the following Joint Findings and Order in ADJ10344309 and ADJ10344350 **SUBSTITUTED** therefor:

JOINT FINDINGS OF FACT

(Case Nos. ADJ10344350; ADJ10344309)

1. The declarations filed by Complete Interpreting, Industrial Healthcare Physicians, and Peralta Hills Mission Valley and signed by Ilona Kulikova meet the requirements of Labor Code section 4903.8(d).

ORDER

- a. Lien claimants' objection to the admissibility of Defendant's Exhibit A is overruled, and the document is admitted into the evidentiary record.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, 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.

INNOVATIVE MEDICAL MANAGEMENT
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*