WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JULIE CASTELLANO, ***Applicant***

vs.

LOWE'S COMPANIES, INC., Permissibly Self-Insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ8236211
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioner Supreme Copy Service (Supreme) seeks reconsideration of the Findings and Order (F&O) issued on July 18, 2025. The workers' compensation administrative law judge (WCJ) found that Supreme did not meet its burden of proof that there was a contested claim at the time of services entitling them to medical legal reimbursement and that Supreme proceeded to trial on a legally unsupportable basis which was frivolous and in bad faith. The WCJ ordered that Supreme take nothing on their cost petition, pay $1,000.00 in sanctions, and pay costs to defendant.

Supreme contends that the claim was contested at the time of service pursuant to Labor Code section 4620(b), that defendant did not prove the affirmative defense of laches, and that they acted in good faith and should not be sanctioned.

We have received an answer from defendant.

WCJ filed a Report and Recommendation (Report) recommending denial of Supreme's Petition.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, we will grant reconsideration, rescind the F&O, and return the matter for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

On February 27, 2012, applicant filed an Application for Adjudication alleging a specific injury on December 15, 2011 to the neck, back, and arm due to a motor vehicle accident. The Application indicates disagreement regarding liability for temporary disability, permanent disability indemnity, reimbursement for medical expenses, rehabilitation, medical treatment, supplemental job displacement, and compensation.

Defendant filed an answer to application for adjudication on July 18, 2012. Defendant listed general denials for several benefit types including injury, noting nature and extent, liability for self-procured and future medical treatment, periods of disability, and permanent disability specifying apportionment.

Several Declarations of Readiness (DOR) were filed. On January 16, 2014, defendant filed a DOR for a mandatory settlement conference noting the following issues: compensation rate, permanent disability, future medical treatment, temporary disability, self-procured medical treatment, future medical treatment, apportionment, and credit. Applicant objected indicating that she was pending a cervical fusion and re-evaluation with the Agreed Medical Evaluator. Applicant also filed DORs on June 30, 2015 and December 21, 2015 for mandatory settlement conferences. Applicant indicated that the issues in dispute were compensation rate, permanent disability, future medical care, self-procured medical treatment, and mileage reimbursement.

The parties entered into a Compromise and Release (C&R), which was approved on April 12, 2016. The C&R was for a total amount of $15,000.00. According to the C&R, $45,465.95 was paid in temporary disability and no permanent disability indemnity was paid. On page 7, paragraph 9, the parties initialed disputes for earning, temporary disability, apportionment, injury AOE/COE, future medical treatment, mileage, prescriptions, out of pocket expenses, permanent disability, and supplemental job displacement benefits. The Comments section in Paragraph 9, is left blank, except for a reference to Addenda A. No evidence, medical or otherwise, was filed in support of the C&R.

On June 23, 2023, Supreme filed a Petition for Determination of Medical Legal Expense Dispute. On the same date a WCJ issued an Order Denying Costs which included language that a valid objection would void the order if filed within 15 days. Supreme filed a timely objection to the order on July 11, 2023. The matter was set for a status conference on October 18, 2023 and was taken off calendar.

Supreme filed another DOR and eventually the matter was set for trial on March 25, 2025. Supreme was ordered to provide all subpoenaed records for each invoice/subpoena and to provide a trial brief as to all issues. (Minutes of Hearing (MOH), 03/25/2025). The trial was continued to May 8, 2025. The issues were outlined as follows:

> 1. Lien claim[1] of Supreme Copy Service, Van Nuys which is the copy service which originally billed $7,564.80 which is for 19 invoices which does not include allegation of penalty and interest as raised in your petition. Four of those invoices out of the 19 were paid in full and 15 are at issue and are filed herein. Some of those have partial payments.
> 2. Other Issues:
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> 1. Whether services were actually reasonably and necessarily provided; whether cost petitioner proved a contested issue existed when services were rendered; and whether cost petitioner has met their burden pursuant to *Colamonico*.
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> 2. Doctrine of latches.
>
> 3. Whether there was unreasonable delay by cost petitioner
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> 4. Provider argues they are entitled to medical/legal reimbursement pursuant to Labor Code sections 4620, 4621, the *Colamonico* En Banc case.
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> 5. Lien claimant argues if the 30-day waiting period pursuant to Labor Code Section 5307.9 applies in this case.

(MOH, 05/08/2025, p. 2-3).

Among the evidence submitted were the following subpoenas by cost petitioner. Defendant objected on the basis that "the subpoenas are defective and do not have required signatures." The WCJ marked them for identification only.

> Exhibit 3: Subpoena Number 84389 for Lowe's dated 4-6-2012.
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> Exhibit 4: Subpoena Number 84390 for Sedgwick CMS dated 4-6-2012.
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> Exhibit 5: Subpoena Number 84391 for Eisenhower Medical Center dated 5-3-2012.
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> Exhibit 6: Subpoena Number 84392 for San Diego Spine Center dated 4-17-2012.
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> Exhibit 7: Subpoena Number 84393 for Dawson Chiropractic dated 5-3-2012.
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> Exhibit 8: Subpoena 84394 for West Point Physical Therapy dated 6-1-2012.
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> Exhibit 9: Subpoena Number 84395 for Douglas Roger, M.D. dated 6-28-2012.
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> Exhibit 10: Subpoena Number 84396 for WCAB dated 7-26-2012.

[1] It is unclear why the WCJ refers to "lien claim" and "lien claimant" rather than "claim for costs" or "cost petitioner."

Exhibit 11: Subpoena Number 84410 for Kaiser Foundation Hospital Riverside dated 5-3-2012.

Exhibit 12: Subpoena Number 84411 for SCPMG Riverside dated 4-6-2012.

Exhibit 13: Subpoena Number 213665 for Douglas Roger, M.D. dated 3-6-2015.

Exhibit 14: Subpoena Number 213667 for Dr. Justin P. dated 3-6-2015.

Exhibit 15: Subpoena Number 213669 for Temple Community Hospital dated 4-21-2015.

Exhibit 16: Subpoena Number 213670 for Dr. George Watkin dated 3-5-2015.

Exhibit 17: Subpoena Number 218368 for Iron Mountain Records Management, Inc. dated 3-6-2015.

Sua sponte, the WCJ raised sanctions under WCAB Rule 10421 in the amount of $1,000.00 against Supreme and their representative. (MOH, p. 6). Defendant was also given leave to file a petition for costs, which was filed on May 16, 2025. Costs were awarded.

In her Opinion on Decision, the WCJ puts forth this analysis with respect to the cost petitioner's claim:

> As this issue is brought by Supreme Copy Service, SCS understands and acknowledges that under Colamonico and Labor Code §4620, the burden to proof rests on SCS to show that this was a contested claim in order to obtain reimbursement. A review of the Pre-Trial Conference Statement shows that SCS stipulated that the body parts neck, back and arm on case ADJ8236211 were accepted.
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> In order to meet its burden of proving that this was a contested claim, SCS offered (40) Exhibits to prove this threshold issue. SCS offers the subpoenas to various providers (Exhibits 3-17) and the corresponding invoices (Exhibits 18-32). Supreme Copy also offers various calculations for fees, cost analysis, acceptance rate, and penalties and interest (Exhibits 33-40).
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> Supreme Copy Service offered no medical records or reports nor were they able to produce copies of the subpoenaed records listed in Exhibits 3-17 although ordered to do so by the Court.
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> ***
>
> Although these Exhibits were faulty and the subpoenas mostly unsigned the Court admits them as evidence noting that they have no evidentiary value and do not actually provide any evidence upon which the Court relied in finding that the Cost

Petitioner filed to meet is burden under Colamonico v. Secure Transportation, 84 CCC 1059 supra.

DISCUSSION

I

Former Labor Code section 5909[2] 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:

> (2) 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."

Here, according to Events, the case was transmitted to the Appeals Board on August 25, 2025 and 60 days from the date of transmission is October 24, 2025. This decision is issued by or on September 30, 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.

[2] All further statutory references will be to the Labor Code unless otherwise indicated.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 1, 2025 and the case was transmitted to the Appeals Board on August 25, 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 August 25, 2025.

II

A cost petitioner holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 3205.5, 5705.5; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 (Appeals Board en banc).) As we explained in our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), section 4622 provides the framework for reimbursement of medical-legal expenses. Subsection (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (§ 4622(f).)

Thus, a cost petitioner 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 were incurred. (§§ 4620, 4621, 4622(f); *Colamonico*, *supra*, 84 Cal.Comp.Cases 1059.)

Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs "for the purpose of proving or disproving a contested claim." (§ 4620(a).) Copy services fees are considered medical-legal expenses under 4620(a). (*Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 (Appeals Board en banc).) Cost petitioner's initial burden in proving entitlement to reimbursement for medical-legal expense is to show that a "contested claim" existed at the time the service was performed.

Section 4620(b) states that: "A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists: (1) The employer rejects liability for a claimed benefit. (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim. (3)

The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity." (§ 4620(b).)

The determination of whether a purported medical-legal expense involves a "contested claim" is a fact driven inquiry. 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].)

Here, Supreme argues that the claim became contested on March 20, 2012, and again on June 1, 2012, when defendant did not respond to applicant's claimed benefits within the relevant statutory timeframes and when they did not accept the claim within a reasonable time. (Petition, 6:7-6:10.) The Application indicates disputes regarding several benefits including temporary disability, permanent disability, and medical treatment. Moreover, defendant's answer also lists general denials for injury, clarifying nature and extent as an issue, periods of disability, and permanent disability regarding apportionment. Further, defendant also filed a DOR on January 16, 2014 indicating that multiple issues were in dispute including permanent disability, temporary disability, and medical treatment. Applicant also filed a DOR on December 12, 2015 noting that medical mileage had been unpaid.

More significantly, the C&R is entirely devoid of any information as to the basis for the settlement, for example, by way of reference to the reporting of the AME. In contravention of WCAB Rule 10700 (Cal. Code Regs., tit. 8, § 10700), no medical evidence in support of adequacy was submitted, no hearing was held to take in evidence, and no explanation was provided with respect to "reasonable doubt as to the rights of the parties or that approval is in the best interest of the parties." Although temporary disability was paid, there is simply no discussion and no evidence in the record as to applicant's injuries, medical treatment and whether the amount of permanent disability was adequate, and there was no allocation for permanent disability in the C&R despite the applicant having been recommended for a cervical fusion. [3]

Based on the WCJ's sparse analysis in her Opinion, it appears that she concluded that the

[3] Though there is no medical evidence in the record, applicant's objection to DOR January 15, 2014 indicated that she was pending a cervical fusion which involves an automatic allocation of permanent disability. The low value of this C&R is troublesome. Defendant did pay several of the invoices for subpoena of medical records. The low value and ongoing dispute over permanent disability and apportionment does lend itself to an inference that defendant also benefitted from the procurement of medical records.

analysis ended because defendant stipulated to injury to neck, back and arm. But the analysis under section 4620 of whether a contested claim existed does not turn on whether a defendant stipulated to injury to claimed body parts. Instead, the analysis is whether defendant paid compensation for each species of benefit owing. Though the claim is accepted, it is clear that there were benefits that were disputed, underpaid, or not paid at all which would meet the definition for a contested claim pursuant to section 4620(b). Further, we are unable to discern the basis for the WCJ's apparent belief as stated in her Opinion that cost petitioner was required to produce medical evidence, and she does not explain why she believes that was significant. Thus, we conclude that cost petitioner met its burden to show that a contested claim existed.

In our recent en banc opinion in *DiFusco v. Hands On Spa et al* (2025) 90 Cal.Comp.Cases __, we observed that:

> Our holding herein is consistent with the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) We emphasize that in workers' compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have *greater* discretion with respect to evidentiary matters than courts in civil proceedings, and *not narrower* discretion as defendant appears to believe. Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to *ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division*." (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that "admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure" will not invalidate an order, decision or award. (Lab. Code, § 5709.)
>
> Unlike a discovery request where the right to privacy or another privilege is implicated, proof of good cause is not required for a routine discovery request such as the one here.

(*Id.*)

Permitting liberal discovery is consistent with our Constitutional mandate that proceedings be expeditious. That is, allowing parties to obtain relevant or potentially relevant materials helps parties strategize and narrow the issues in their cases.

Here, the subpoenas for the employer's records (Exhibit 3), the workers' compensation adjusting agency (Exhibit 4), and the medical records (Exhibits 5 to 9; 11 to 17), all appear to be reasonably calculated to lead to the discovery of relevant evidence. The subpoena to the WCAB

(Exhibit 10) is the only subpoena where a further explanation may be necessary because it is not entirely clear from the face of the subpoena what records are sought. Thus, based on our preliminary review, it appears that cost petitioner met its burden under section 4621.

However, because the claim was not found to be contested, the WCJ did not complete the remainder of the analysis pursuant to *Colamonico*, and thus, we rescind the decision in its entirety in order that the issues may be fully adjudicated at the trial level.

Upon return the WCJ should, in the first instance, address whether the records were obtained for the purposes of proving or disproving a claim and whether the medical legal expenses were reasonably, actually, and necessarily incurred at the time of service. Since defendant provided no evidence that records were subpoenaed within 30 days of a request by applicant for records, it does not appear that the issue of the 30 day waiting period pursuant to section 5307.9 is at issue.

We note that defendant did pay adjusted amounts for ten sets of medical records. (Exhibit 40.) While it is alleged that the subpoenas were defective, there are no contemporaneous objections to the subpoenas in the record. The services outlined in the invoices also suggest that the subpoenas were served and records were provided in response. (Exhibits 18-32.) Since it appears that defendant did make some payments, calculation of the remaining amounts claimed by cost petitioner should be able to be determined on the present record.

III

The appeals board has broad equitable powers with respect to matters within its jurisdiction. (*Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382.) Thus, equitable doctrines such as laches are applicable in workers' compensation proceedings. (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd.* (*Kwok*) (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal.App.4th 258, 268 [159 Cal. Rptr. 3d 779]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.App.3d 57, 68, fn. 11 [50 Cal.Comp.Cases 411]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Valencia)* (1976) 41 Cal.Comp.Cases 730, writ denied.) Laches is a question of fact to be determined by the trier of fact. (*Kwok, supra,* 2 Cal. App.5th at p. 402.) "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.App.3d 351, 359, 360, see also

Johnson v. City of Loma Linda (2000) 24 Cal.4th 61, 77.) Once an unreasonable delay has been found, there must also be evidence of prejudice to the defendant caused by that unreasonable delay. (*Ragan v. City of Hawthorne* (1989) 212 Cal.App.3d 1361, 1367.) Prejudice is never presumed; rather it must be affirmatively demonstrated by the party asserting the defense in order to sustain its burden of proof. (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1050.) Thus, laches will apply only upon a showing of prejudice. (See, e.g., *New York Yankees v. Workers' Comp. Appeals Bd. (Montefusco)* (2001) 66 Cal.Comp.Cases 291, 2949 (writ den.); *McDonald's Corp. v. Workers' Comp. Appeals Bd. (George)* (2006) 71 Cal.Comp.Cases 674 (writ den.); *Wright v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 95 (writ den.); *New Century Chamber Orchestra v. Workers' Comp. Appeals Bd. (Simonds)* (2003) 69 Cal.Comp.Cases 421, 424 (writ den.).)

Supreme is correct that it is defendant's burden to prove a laches defense. Here, defendant has presented no evidence that they were prejudiced by the delay. While there is allusion to elements of prejudice in the Opinion and Report, there is no evidence in the record. Likewise, Supreme argues that defendant's actions led to the delay but also does not provide evidentiary support for their assertion that they continued to make periodic collection attempts through the years. Based on the evidence presented, it does not appear that defendant has met its burden with respect to laches.

IV

As explained above, it appears that the WCJ's conclusion that cost petitioner did not have sufficient evidence was based on her own misconception as to what evidence was necessary to meet cost petitioner's burden of proof. As outlined above, there appears to be enough evidence upon which it could be determined that there is a contested claim for Supreme to pursue its claim for medical legal costs as outlined in section 4620. On the record before us, we do not agree that cost petitioner has demonstrated conduct that was in bad faith or frivolous and/or calculated to lead to delay. Thus, there was no basis for the WCJ to sua sponte impose sanctions and costs pursuant to section 5813 or WCAB Rule 10421(b)(6)(A)(i) (Cal. Code Regs., tit. 8, § 10421(b)(6)(A)(i)).

Accordingly, we grant the 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 cost petitioner's Petition for Reconsideration of the July 17, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 17, 2025 Findings and Order is **RESCINDED,** and the matter is **RETURNED** for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 24, 2025

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

JULIE CASTELLANO
GILSON DAUB
SHAYNE MCDANIEL
SUPREME COPY

TF/md

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