WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIA MARTINEZ, *Applicant*

vs.

BOSS FASHION, INC.; CIGA for CALIFORNIA COMPENSATION INSURANCE COMPANY, in liquidation, *Defendants*

Adjudication Numbers: ADJ3776569, ADJ3927273

Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant The Dental Trauma Center seeks reconsideration of the "1st Amended Joint Findings and Order" (F&O) issued on December 20, 2024, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a laborer on October 8, 1999 (ADJ3776569), and July 15, 1999 (ADJ3927273), applicant sustained injury arising out of and in course of employment (AOE/COE) to her neck, back, psyche, shoulders and upper extremities, and claims to have sustained injury to the mouth (dental); and (2) lien claimant did not sustain its burden to prove entitlement to additional reimbursement for medical treatment.

The WCJ ordered that lien claimant take nothing.

Lien claimant contends that the WCJ erroneously failed to find that (1) it is entitled to additional reimbursement for dental treatments; and (2) defendant is estopped from denying that it is entitled to reimbursement for dental reporting.

We did not receive an Answer.

We received the "Joint Report and Recommendation on Petition for Reconsideration" (Report) from the WCJ recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report. Based upon our preliminary review of the record, we will grant lien claimant's Petition. Our order granting the Petition 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 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.

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:

> (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 January 28, 2025, and 60 days from the date of transmission is March 29, 2025. The next business day that is 60 days from the date of transmission is Tuesday, April 1, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Tuesday, April 1, 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

[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.

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 January 28, 2025, and the case was transmitted to the Appeals Board on January 28, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 28, 2025.

II.

Lien claimant first contends that the WCJ erroneously failed to find that it is entitled to additional reimbursement for dental treatments. Specifically, lien claimant argues that the evidence shows that defendant certified applicant's treatments without asserting any subsequent conditions for payment and defendant is therefore obligated to pay for additional treatment.

Pursuant to Labor Code section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Labor Code section 3202.5 states that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd.* (*Brower*) (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557].) A lien claimant treating physician's burden of proof includes the burden of showing that he or she provided medical treatment "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com.* (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen's Comp. Appeals Bd. v. Small Claims Court* (*Shans*) (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].)

Any award, order or decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal. 3d 312, 317 [90 Cal. Rptr. 355, 475 P.2d 451, 35 Cal.Comp.Cases 500].) It is well

established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. (See *Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, [90 Cal.Rptr. 424, 475 P.2d 656, 35 Cal.Comp.Cases 525]; *Chu v. Workers' Comp. Appeals Bd.* (1996) 49 Cal.App.4th 1176, 1182 [57 Cal.Rptr.2d 221, 61 Cal.Comp.Cases 926].)

Here, our preliminary review shows that the parties framed for trial the issue of whether lien claimant is entitled to a balance of $4,271.46 on a $7, 029.83 bill for dental treatments and reporting, plus an additional $ 8,250.88 in penalties and interest, for the dates of service from December 28, 2006 through November 25, 2015. (Minutes of Hearing and Order of Consolidation, December 5, 2024, p. 4:2-4.)

The WCJ admitted in evidence lien claimant's billing statement (Ex. 1.), which lists various dental treatments performed in 2006 and 2007, as well as records review/reporting services performed in 2015. The WCJ also admitted in evidence defendant's Utilization Review Certification dated August 10, 2011 (Ex. 2), which certifies twenty-three dental treatments as reasonable and necessary for applicant's injury to the teeth but does not refer to any actual or expected date of treatment.

The WCJ requested that lien claimant file a brief that would explain what services were certified by Utilization Review, what services were paid, and what services were unpaid. (Report, p. 3.) Lien claimant filed a brief, but the WCJ concluded it did not set forth with sufficient specificity the requested information. (*Id*., p. 3.)

However, we are unpersuaded that the record fails to supply the information requested by the WCJ. More particularly, it appears that lien claimant's billing statement (Ex. 1), defendant's Utilization Review (Ex. 2), and lien claimant's brief, when read together, may demonstrate what treatments were provided, what treatments were authorized, and the extent to which their corresponding bills have been paid.

Moreover, to the extent that lien claimant may demonstrate that the treatments provided were authorized by Utilization Review, and the Utilization Review itself suggests the treatments were reasonable and necessary, it is our view that defendant is bound by the Utilization Review and may not decline authorization *ex post facto* based upon whether the physician requesting authorization complied with AD Rules surrounding the requests for authorization of the treatments.

Hence, our preliminary review suggests that the record may be sufficient for lien claimant to show what treatments were authorized by Utilization Review, and whether and to what extent any bills for those treatments are outstanding, and thereby establish the presumption that it is entitled to reimbursement for those treatments.

We therefore conclude that further inquiry is required as to whether lien claimant may establish the presumption that it is entitled to reimbursement for dental treatments. Accordingly, we will order that a final decision after reconsideration is deferred pending further review of the merits of this issue.

We next address lien claimant's contention that defendant is estopped from denying it is entitled to reimbursement for dental reporting because it partially paid for the reporting.

Here, our preliminary review reveals that the WCJ concluded that the estoppel issue was not raised at trial and was therefore waived. (Report, p. 5.) However, we are unpersuaded that the issue was waived because lien claimant included the dates the reporting services were provided in the issues framed for trial.

On the other hand, defendant asserts that lien claimant is not entitled to reimbursement for dental reporting in the first instance because lien claimant is not primary treating physician (PTP), qualified medical evaluator (QME) or agreed medical evaluator (AME).

Here, our preliminary review does not reveal a record from the WCJ regarding whether or not lien claimant may be entitled to reimbursement for dental reporting based upon the merits of the parties' respective evidence and arguments. Accordingly, we will order that a final decision after reconsideration is deferred pending further review of the merits of this issue.

III.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if

reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id*. at p. 404.)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the findings, awards, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above, given the numerous issues which have not been fully addressed.

IV.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commission*ers (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc*. (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd*. (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final

order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied."

Thus, this is not a final decision on the merits of the Petition, 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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant lien claimant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition 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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the "1st Amended Joint Findings and Order" issued on December 20, 2024 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 A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 1, 2025

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

MARIA MARTINEZ
LAW OFFICE OF SAAM AHMADINIA, APC
GUILFORD SARVAS & CARBONARA, LLP

SRO/*bp*

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