**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**RAMON MARTINEZ,** ***Applicant***

**vs.**

**EUGENE FROST TRUCKING AND SALES, INC.,**
**STATE COMPENSATION INSURANCE FUND,** ***Defendants***

**Adjudication Number: ADJ9354045**
**Bakersfield District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant State Compensation Insurance Fund (defendant) seeks reconsideration of our Opinion And Decision After Reconsideration (Decision), issued in the above referenced matter by a panel of the Workers' Compensation Appeals Board ("Appeals Board") on May 20, 2025, wherein the panel found in pertinent part that a contested claim existed at the time lien claimant performed its services and that its services were reasonable and necessary, and ordered that the matter be returned to the trial level for further proceedings to determine defendant's liability for payment.

Defendant, in essence, contends that there was no contested claim at the time lien claimant performed its services and the lien claims should be dismissed.

We have not received an Answer from any party. We have considered the allegations in the Petition. Based on our review of the record, and as discussed below, we will deny defendant's Petition per our prior Decision.

## BACKGROUND

We will briefly review the relevant facts.

On March 14, 2014, applicant filed an Application for Adjudication (Application), claiming that he sustained injury to the back while employed on May 22, 2013, by defendant as a truck driver. Paragraph 9 of the Application for Adjudication states, "This application is filed because of a disagreement regarding liability for: Temporary disability indemnity, Permanent

disability indemnity, Reimbursement for medical expense, Rehabilitation, Medical treatment, Supplemental Job Displacement/Return to Work, Compensation at proper rate, Other (Specify) AS PER LABOR CODE."

The 11 subpoenas at issue are as follows:

- Eugene Frost Trucking and Sales, dated 9-15-14 (Lien Claimant's Exhibit 7)
- Dr. Alla Liberstein, dated 9-15-14 (Lien Claimant's Exhibit 8)
- Law Offices of The Nielsen Firm, dated 9-15-14 (Lien Claimant's Exhibit 9)
- Dr. Vernon Sorenson, dated 9-15-14 (Lien Claimant's Exhibit 10)
- VIP Medi Records, Inc., dated 9-15-14 (Lien Claimant's Exhibit 11)
- Dr. Marshall Lewis, dated 9-9-14 (Lien Claimant's Exhibit 12)
- State Compensation Insurance Fund, dated 9-12-14 (Lien Claimant's Exhibit 13)
- Pactox, dated 11-17-14 (Lien Claimant's Exhibit 14)
- Glinn & Giordano Physical Therapy, dated 10-20-14 (Lien Claimant's Exhibit 15)
- Medilab Corporation, dated 11-19-14 (Lien Claimant's Exhibit 16)
- Dr. Michael Price, dated 5-27-15 (Lien Claimant's Exhibit 17)

On July 29, 2015, the case in chief was resolved by way of a Compromise and Release (C&R). As relevant herein, in Paragraph 9, under Comments it states that: the parties resolved the matter based on the Agreed Medical Evaluator (AME) Dr. Pechman and that the settlement "***resolves all retro benefits to date***, including but not limited to retro medical mileage to date. (Emphasis added.)"

On March 9, 2016, lien claimant filed its lien for copy services.

On February 21, 2020, lien claimant and defendant proceeded to trial on the lien.

On May 11, 2020, the WCJ issued the Finding & Order (F&O), in which he found in relevant part that: "Lien Claimant Citywide Scanning services were not shown to be reasonable or necessary" and disallowed the lien.

On June 3, 2020, lien claimant filed a Petition for Reconsideration of the F&O.

On July 15, 2020, we granted the Petition.

On May 20, 2025, we issued our Decision wherein we rescinded the F&O and substituted a new Findings of Fact that finds that a contested claim existed at the time that the services were provided and that the services were reasonable and necessary, and defers the issue of the amount

of payment owed to lien claimant. We returned the matter to the trial level for further proceedings consistent with our decision.

On June 6, 2025, defendant filed the Petition for Reconsideration.

## DISCUSSION
## I.

Former Labor Code section 5909[1] 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:

> (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 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 June 6, 2025, and 60 days from the date of transmission is August 5, 2025. This decision was issued by or on August 5, 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

[1] All further references are to the Labor Code unless otherwise noted.

act on a petition. Section 5909(b)(2) requires the trial judge to provide notice to the parties of the transmission and that service of the Report and Recommendation provides notice.

Here, the case was transmitted to the Appeals Board on June 6, 2025. Since the Petition was filed in response to our Decision, there was no Report prepared, and no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, while the district office did not provide notice of transmission required by section 5909(b)(1), so that the parties did not have notice of the commencement of the 60-day period on June 6, 2025, this failure to provide notice does not alter the time for the Appeals Board to act on the Petition.

**II.**

In its Petition, defendant contends that the Decision "impermissibly shifted" the lien claimant's burden of proof to defendant. First, we remind defendant of the requirements for a proper petition under WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945(a)(b)), and note that defendant's attempt to "incorporate by reference" the WCJ's discussion is not only improper, it is also not persuasive because defendant fails to explain why it believes that the WCJ's analysis was correct.

Next, defendant's argument that it accepted liability for injury to applicant's back and paid medical benefits and temporary disability is similarly unconvincing. As relevant here, WCAB Rule 10450 (Cal. Code Regs., tit. 8, § 10450) specifies that the jurisdiction of the Appeals Board is invoked by way of an application for "proceedings for the adjudication of rights and liabilities. . . and that no discovery may be conducted until the application is filed." That is, the purpose of the application is to give the Appeals Board the authority to adjudicate disputes, and it is based on the underlying assumption that disputes exist. Yet, defendant ignores that applicant filed an Application ***after*** the two letters of May 2013 and March 2014 that it refers to in support of its arguments that it accepted liability.

Furthermore, the plain language of section 5000 states that "nothing in this division shall: (a) Impair the right of the parties interested to compromise . . . any liability which is claimed to exist under this division on account of injury . . . ." (Lab. Code, § 5000(a); see *Camacho v. Target Co.* (2018) 24 Cal.App.5th 291 [88 Cal.Comp.Cases 1014] (explaining the concept of a release in the context of workers' compensation law).) Nowhere in defendant's Petition does it address the

C&R, nor does it acknowledge that the C&R is a "compromise." The term compromise is widely understood to mean that the parties have come to an agreement after having made mutual concessions. Moreover, defendant ignores the specific language of release that it included in the C&R, and nothing in the C&R indicates that defendant admits that applicant sustained injury.

In short, it is unclear from defendant's Petition how it believes that the Appeals Board shifted the burden of proof under sections 4620 and 4621 to defendant.

We turn to defendant's argument that the Appeals Board "misconstrued" the statutory definition of a contested claim. Here, it is defendant who misconstrues the statutory definition of a "contested claim."

Defendant first appears to allege that it was improper to rely on pre-printed forms to show that benefits were contested. The Appeals Board is granted statutory authority over the conduct of proceedings, including the creation of forms approved by it to be used in the adjudication of claims. (Lab. Code, § 5307; see § 5708.) Use of pre-printed forms streamlines proceedings and ensures consistency. We are unable to discern why a pre-printed form that is promulgated by the Appeals Board, that includes particular information about the case and is signed by the filing party or parties and is legally enforceable, is not capable of demonstrating that a contested claim existed.

Section 4620 states a contested claim exists when the employer knows that an injured worker is claiming a benefit and fails to accept liability for it. (Lab. Code, § 4620(b).) We see no indication in the record that defendant accepted liability after it received the Application. Indeed, the only evidence referred to by defendant is from before the filing of the Application, and not after.

We are unpersuaded by defendant's argument that lien claimant did not show that the costs of the subpoenas were reasonable and necessary under section 4621. Code of Civil Procedure section 2017.010 states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.

(Code of Civ. Proc., § 2017.010.)

It is well settled that section 5310 grants the Appeals Board jurisdiction over discovery disputes. For our purposes here, it is clear that the 11 subpoenas were relevant; all of the records sought involved applicant's claim for benefits. The standard for determining relevance is whether the discovery sought "appears reasonably calculated to lead to the discovery of admissible evidence," so that whether a subpoena is somehow duplicative of efforts by previous counsel or did not result in admissible evidence is simply not the point. Defendant's argument that allowing liberal discovery results in increased costs may be true, but it is not relevant to the discussion of whether a party has the right to conduct discovery. We observe that upon return, defendant still has ample opportunity under section 4622 to challenge its liability for payment for the costs of the subpoenas.

Defendant contends that lien claimant failed to meet its burden of proof under sections 4620 and 4621, and thus the Appeals Board's decision was in error. We disagree.

Thus, we deny the Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** as defendant's Petition for Reconsideration of the Opinion and Decision issued by the Workers' Compensation Appeals Board on May 20, 2025 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**CRAIG SNELLINGS, COMMISSIONER**
**CONCURRING NOT SIGNING**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 5, 2025**

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

**CITYWIDE SCANNING SERVICE**
**STATE COMPENSATION INSURANCE FUND**

**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*