

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

FRANCISCO BALAM, *Applicant*

vs.

**AMERICANOS USA; SPECIALTY RISK SERVICES, administered by
GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ6711342
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Lien claimants, Dental Trauma Center and Sleep Treatment Clinics of California, seek reconsideration of the “Findings, Award, and Orders” (F&A) issued on November 5, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant did not sustain industrial injury in the form of dental injury and that the services of Dental Trauma Center were not reasonable and necessary to cure or relieve from the effects of an industrial injury. The WCJ awarded Sleep Treatment Clinics of California \$1,819.30 as the reasonable value of its services.

Dental Trauma Center contends that the WCJ erred because defendant certified some dental treatment rendered as reasonable and necessary and thus, it waived argument as to whether additional dental treatment was reasonable and necessary. Sleep Treatment Clinics of California contends that the WCJ erred in relying upon defendant’s bill review expert to establish the reasonable value of its services.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed

below, we will grant lien claimant's petition for reconsideration and offer the parties mediation prior to issuing an opinion and decision after reconsideration.

FACTS

Per the WCJ's Report:

This case involves an admitted specific injury wherein Applicant was involved a motor vehicle accident while driving a bus on 1/8/2009, striking and killing a pedestrian. Defendant admitted injury to the psyche, cardiovascular system, digestive system, peripheral nerve system, diabetes, left upper extremity, left-sided numbness, and sleep disorder, but denied the dental injury claim. To help resolve the pending dispute regarding the dental injury, Applicant and Defendant utilized the services of an agreed medical examiner in dentistry, Dr. Cheri Lewis, who issued one medical report dated 11/12/2017 (*Defendant's Exhibit I*).

Lien claimant, Dental Trauma Center, filed their lien on 7/26/2018 and allege an outstanding balance of \$35,519.97 (*Lien Claimant's Exhibit 4*) and with \$7,473.99 being paid by Defendant (*Defendant's Exhibit J*). Lien claimant, Sleep Treatment Clinics, filed their lien on 11/9/2012 and allege an outstanding balance of \$17,404.56 (*Lien Claimant's Exhibit 17*) with no payments made by Defendant.

On 5/7/2024, the parties appeared before WCJ Carero for lien trial, with the stipulations and issues being identified by the parties, and exhibits being marked as evidence. Lien claimants' bill review expert, Mr. Manuel Fuentes, testifying on lien claimants' behalf. The matter was continued to another lien trial before WCJ Carero on 10/3/2024, where the parties concluded the direct and cross examination of Mr. Fuentes. Defendant did call their own bill review expert, Ms. Sue Choi, as a witness, but only limited, introductory testimony was given on that date.

After this second lien trial, additional delays occurred outside of the control of the parties. Unfortunately, during this delay, WCJ Carero tragically passed away. The matter was reassigned to the undersigned WCJ to pick up where the parties left off. After further proceedings, the matter was reset before this Court on 7/24/2025. Ms. Choi continued, and concluded, her testimony at that time. After the conclusion of that, the parties requested leave of the Court to file post-trial briefing on the issues pending. Such briefing was due by 8/8/2025, with the matter being submitted for decision as of that date.

On 8/6/2025, lien claimants filed their post-trial brief. On 8/8/2025, Defendant filed their post-trial brief.

On 11/5/2025, this Court issued the Findings, Award and Orders and Opinion on Decision. This Court found, as indicated above, that Applicant did not sustain dental injury as alleged, the services provided by lien claimant, Dental Trauma Center, were not reasonable nor necessary, there was basis to award any additional reimbursement for the lien claim of Dental Trauma Center, the services provided

by lien claimant, Sleep Treatment Clinics, were reasonable and necessary, and the value of the services provided by lien claimant, Sleep Treatment Clinics, is \$1,819.30, plus penalties and interest.

On 11/18/2025, lien claimants filed the Petition at issue herein. Petitioners contend that all the treatment provided by lien claimant, Dental Trauma Center, was reasonable and necessary in this case, that the Court should not have relied upon the testimony of Defendant's expert bill reviewer, Ms. Sue Choi, to form the basis for the Finding of the reasonable value for the services provided by lien claimant, Sleep Treatment Clinics, and that the Court should have relied upon the expert testimony and bill review provided by Mr. Manuel Fuentes. Petitioners also request a Finding of dental injury but do not explain the basis for that request.

On 12/3/2025, Defendant filed an Answer to the Petition.

(WCJ's Report, pp. 2-3.)

DISCUSSION

I.

Former 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, 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.

(§ 5909.)

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 December 3, 2025, and 60 days from the date of transmission is Sunday, February 1, 2026, which by operation of law means this decision is due by Monday, February 2, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on February 2, 2026, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 3, 2025, and the case was transmitted to the Appeals Board on December 3, 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 December 3, 2025.

II.

Lien claimants assert a right to reimbursement for services provided to applicant in the underlying case in chief, which resolved by way of Stipulations with Request for Award on May 18, 2021. "Where a lien claimant (rather than the injured employee) is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien." (*Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal. Comp. Cases 1588, 1592 (Appeals Board en banc).)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The]

commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at 577.)

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].)

Applicant presently has a stipulated award at 100% permanent total disability, which includes an ongoing lifetime award of medical treatment. The F&A issued by the WCJ could be construed as having issued against *applicant* in finding that applicant did not sustain a dental injury, notwithstanding the fact that "teeth" is listed as a body part in the stipulations between applicant and defendant. It does not appear that applicant was served with the F&A, or multiple minutes of hearing, including the hearing wherein a significant issue impacting applicant's right to future medical treatment was submitted for decision. This appears to create a significant issue of due process.

However, prior to addressing the issue of due process, it would appear that given the long and complex history of this case, 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.

If the parties do not wish mediation, or should the parties proceed to mediation, but fail to resolve their dispute, an opinion and decision after reconsideration will issue thereafter.

Accordingly, we grant lien claimants' Petition for Reconsideration, and order that a final decision after reconsideration is deferred.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings, Award, and Orders issued on November 5, 2025, by the workers' compensation administrative law judge 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/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 2, 2026

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

**FRANCISCO BALAM
SAAM AHMADINIA
BRADFORD BARTHEL
GRAIWER KAPLAN**

EDL/mt

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