

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

JERRY HURST, *Applicant*

vs.

**KIMCO STAFFING SERVICES, INC., permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ7937022
Long Beach District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Lien claimant Southland Spine & Rehabilitation Medical Center (lien claimant) seeks reconsideration of the November 7, 2025 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that lien claimant failed to timely file a declaration pursuant to Labor Code¹ section 4903.05, subd. (c)(2), on or before July 3, 2017, resulting in dismissal of its lien by operation of law.

Lien claimant contends that because its lien was filed in 2012, it was not required to file a declaration under section 4903.05(c).

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 deny reconsideration.

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

FACTS

Applicant sustained injury to his head, neck, trunk, psyche and neurological [system] including seizures, tinnitus, loss of memory and headaches, while employed as a forklift operator by defendant Kimco Staffing on June 21, 2011. The WCJ issued an Award following trial in the case-in-chief on October 22, 2018. The parties subsequently settled applicant's claim by way of Compromise and Release, approved on June 4, 2024. (Order Approving Compromise and Release, dated June 4, 2024.)

Lien claimant filed its lien on March 9, 2012, alleging "reasonable expense incurred by or on behalf of the injured employee, as provided by Labor Code § 4600." (Ex. 1, Notice and Request for Allowance of Lien, dated March 9, 2012.)

On September 8, 2025, the parties proceeded to lien trial and placed in issue "[w]hether or not the lien of Southland Spine & Rehabilitation Medical Center is dismissed by operation of law." (Minutes of Hearing, dated September 8, 2025, at p. 2:13.) Neither lien claimant nor defendant offered witness testimony, and the WCJ ordered the matter submitted for decision on the documentary record the same day.

On November 7, 2025, the WCJ issued his decision determining in relevant part that "[l]ien claimant, Southland Spine and Rehabilitation failed to timely file a declaration pursuant to LC 4906.05 (c) (2) on or before July 3, 2017, resulting in dismissal of their lien filed March 12, 2012, with prejudice by operation of law rendering this court lacking jurisdiction to address their lien." (Finding of Fact No. 2.)

The WCJ's Opinion on Decision determined that section 4903.05(c)(2) required the filing of a declaration regarding the basis for the filing of the lien, no later than July 3, 2017. Because lien claimant did not file the required declaration, the lien was dismissed by operation of law on July 3, 2017, depriving the court of any continued jurisdiction over the matter. (Opinion on Decision, at pp. 2-3.)

Lien claimant's Petition contends that because it filed its lien in 2012, the lien was subject to an activation fee under section 4903.06, rather than a filing fee under section 4903.05, and as such, was not required to file a declaration pursuant to section 4903.05(c).

Defendant's Answer responds that the supplemental lien declaration required under section 4903.05(c)(2) is required for all liens filed prior to January 1, 2017.

The WCJ's Report observes that under the plain language of section 4903.05(c)(2), any lien claim filed prior to January 1, 2017 for services provided pursuant to section 4903, subd. (b), is required to file a supplemental lien declaration. (Report, at p. 3.) Because the instant lien sought reimbursement for medical expense under section 4903(b) and was filed prior to January 1, 2017, the supplemental lien declaration of section 4903.05(c) was applicable, and the failure of timely filing resulted in the dismissal of the lien by operation of statute. (*Id.* at p. 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.

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 2, 2025, and 60 days from the date of transmission is Saturday, January 31, 2026. The next business day that is 60 days from the date of transmission is Monday, February 2, 2026. (See Cal. Code

Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on December 2, 2025, and the case was transmitted to the Appeals Board on December 2, 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 2, 2025.

II.

Section 4600(a) requires the employer to provide all “[m]edical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that [are] reasonably required to cure or relieve the injured worker from the effects of the worker’s injury.” (Lab. Code, § 4600, subd. (a).)

Section 4903 authorizes the filing of a lien “as against any sum to be paid as compensation,” for multiple categories of expenses, including reasonable expenses for medical treatment pursuant to section 4600 incurred by or on behalf of the injured employee. (Lab Code, § 4903, subd. (b).)

Section 4903 further authorized multiple other categories of lien filings, including liens for attorney’s fees (§ 4903, subd. (a)), certain types of medical-legal expense (subd. (b)), employee’s

² 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.

living expenses (subd. (c)), burial expenses (subd. (d)), family living expenses (subd. (e)), and various collateral disability, unemployment, and other species of benefit (subd. (f)-(i)).

Lien claimant herein seeks reimbursement for medical treatment services provided to applicant, with its request filed under the auspices of section 4903(b) for “the reasonable expense incurred by or on behalf of the injured employee, as provided by Labor Code § 4600.” (Ex. 1, Notice and Request for Allowance of Lien, dated March 9, 2012.)

In 2016, the Legislature enacted section 4903.05 which provided for the filing of a written lien claim, and instituted new requirements associated with the filing of certain types of liens, including medical treatment liens under section 4903(b). Section 4903.05(c) provides:

(c)

(1) For liens filed on or after January 1, 2017, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

- (A) Is the employee’s treating physician providing care through a medical provider network.
- (B) Is the agreed medical evaluator or qualified medical evaluator.
- (C) Has provided treatment authorized by the employer or claims administrator under Section 4610.
- (D) Has made a diligent search and determined that the employer does not have a medical provider network in place.
- (E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600.
- (F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.
- (G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director.

(2) Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) for any lien claim filed before January 1, 2017, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.

(3) The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law. Filing of a false declaration shall be grounds for dismissal with prejudice after notice.

(Lab. Code, § 4903.05(c).)

In addition, section 4903.06, subdivision (a) provides that “[a]ny lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee unless the lien claimant provides proof of having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.” (Lab. Code, § 4903.06, subd. (a).)

Here, there is no dispute that lien claimant filed its lien on March 9, 2012, and that it paid an activation fee pursuant to section 4903.06(a) on December 28, 2015. (Report, at p. 2.) Further, the parties do not dispute that lien claimant did not file the declaration required under section 4903.05(c). Lien claimant contends that because its lien was filed prior to January 1, 2013 and was thus subject to the activation fee of section 4903.06, it was not required to file the declaration specified by section 4903.05(c). (Petition, at p. 4:12.)

In *Montelongo Gelson’s Market* (February 11, 2022, ADJ2193346) [2022 Cal. Wrk. Comp. P.D. LEXIS 41] (Workers’ Compensation Appeals Board (WCAB) panel³ decision), we discussed the circumstances giving rise to the amendments of sections 4903.05 and 4903.06 as follows:

Sections 4903.05 and 4903.06 were added by Senate Bill (SB) 863 in 2012, and became effective January 1, 2013. Section 4903.05 was amended in 2016 by SB 1160 to add subdivision (c), the declaration requirement. The declaration requirement was described as an “anti-fraud measure.” (Sen. Rules Com., Off. of Sen. Floor Analysis, Analysis of Sen. Bill No. 1160 (2015-1016 Reg. Sess.), as amended August 29, 2016, p. 4.) The anti-fraud measures in SB 1160 were described as follows:

14) Requires, for liens filed on or after January 1, 2017, a lien filer to specify in the lien filing the basis upon which the lien is authorized.

³ 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.

15) Requires these same data elements to be added to pre-existing liens, but allows until July 1, 2017, for lien filers to comply.

16) Provides that the failure to comply with the requirements noted above results in a dismissal of the lien with prejudice (Ibid.)

The Analysis of SB 1160 commented on the anti-fraud measures contained in the bill as follows:

In a recent letter to the Commission on Health and Safety and Workers' Compensation, the author of SB 1160 identified fraud in the workers' compensation system as a fundamental challenge. Specifically, the letter cited the recent press coverage by the Center of Investigative Reporting, which detailed more than \$ 1 billion in fraudulent activity by a variety of medical providers. The schemes have one common feature: the use of the workers' compensation lien system to monetize the fraud. Despite the criminal charges, medical bills and workers' compensation liens from doctors charged or [*5] even convicted of medical fraud continue to be pursued. Please see Senate Labor and Industrial Relations Committee policy analysis for an example of these schemes.

Overall, DWC places the dollar amount of liens held by providers who have been charged or convicted of workers' compensation fraud at \$ 600 million - or 17% of all liens in the system.

SB 1160 addresses fraud in the workers' compensation lien process in three ways:

...

Second, **SB 1160 requires all lien claimants to file a declaration as to which specific category provided under existing law allows the claimant to file a lien.** As the statute that provides the specific categories for filing a lien is unchanged by SB 1160, the causes for filing a lien under existing law remain unchanged by SB 1160 - including denied industrial injuries. The only change is that a lien claimant must now file a declaration to support an assertion of rights. (Id., at p. 6, italics in the original, bold added.)

The legislative intent for the amendment of section 4903.05 to add the declaration requirement was to impose that requirement on "all lien claimants." (Ibid.) Section 4903.05(c)(1) addresses the declaration requirement for those liens filed after January 1, 2017, and section 4903.05(c)(2) addresses the declaration requirement for those liens filed before January 1, 2017.

Moreover, and contrary to lien claimant's contention, the purpose of the lien filing fee of section 4903.05 and the lien activation fee of section 4903.06 are not qualitatively different. They were both enacted to deter the filing of frivolous liens:

One of the reforms recommended by the Commission Report is the institution of a lien filing fee in order to deter the filing of liens generally, and particularly to deter the filing of frivolous liens.

SB 863 imposes a \$ 150 filing fee for all liens filed on or after January 1, 2013. Cal. Lab. Code § 4903.05(c)(1). Plaintiffs do not challenge the filing fee in this action. More pertinently, SB 863 imposes a \$100 "activation fee" for pending liens filed prior to January 1, 2013... The purpose of these fees, according to a report of the State Assembly's Committee on Insurance, is to "provide a disincentive to file frivolous liens." (*Angelotti Chiropractic v. Baker* (9th Cir. 2015) 791 F.3d 1075, 1079 [80 Cal. Comp. Cases 672], emphasis added.)

(*Id.* at pp. 4-5.)

Based on the foregoing, the panel concluded "we will not - and cannot upset the legislative intent of the declaration requirement as requested by lien claimant." (*Id.* at p. 6.) Other panels of the Appeals Board have reached similar conclusions, including *Carrillo v. Troon Golf Management* (January 13, 2025, ADJ4642758) and *Cornejo v. Sears Holding Corp.* (March 11, 2025, ADJ7580462) [2025 LX 57717].

Here, lien claimant advances the argument that all liens filed between 2006 and 2012 would be exempt from the lien declaration required under section 4903.05(c). However, for the reasons discussed in *Montelongo, supra*, we find the legislature intended the declarations required under section 4903.05(c) to apply to all section 4903(b) medical treatment liens filed prior to January 1, 2017. We acknowledge lien claimant's arguments that contemporaneous DWC Newslines caused lien claimant to infer that its lien, filed prior to January 1, 2013, was not subject to the required declaration under section 4903.05(c). However, as we have previously stated, and as lien claimant's Petition acknowledges, while "[t]he DWC periodically issues Newslines to provide informal guidance for the workers' compensation community ... the authority to adopt rules and regulations rests with the Appeals Board. (Lab. Code, § 5307; see Lab. Code, § 111.)" (*Hernandez v. Henkel Loctite Corp.* (2018) 83 Cal.Comp.Cases 698, 702, fn. 6 [2018 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc).)

Here, lien claimant filed its lien prior to January 1, 2017, and was therefore required to file a declaration under section 4903.05(c). Because no such declaration was timely filed, the lien was dismissed by operation of statute on July 3, 2017. We therefore agree with the WCJ that the WCAB retains no jurisdiction over the lien claim. (Finding of Fact No. 2.) We will deny reconsideration, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, 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.

**SOUTHLAND SPINE AND REHABILITATION MEDICAL CENTER
MEDICAL COST REVIEW**

SAR/abs

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