

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

PORFIRIO VARGAS, *Applicant*

vs.

**MINT STAFFING;
LUMBERMEN'S UNDERWRITING ALLIANCE, now in liquidation and administered by
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION; SEDGWICK PORTLAND,
*Defendants***

**Adjudication Number: ADJ7656948
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Lien claimant First Choice Doctors Medical Group, Inc., seeks reconsideration of the Findings of Fact and Order (F&O) issued on June 23, 2021 by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ found that lien claimant First Choice Doctors Medical Group, Inc., doing business as (dba) Surgery Center of the Canyon, failed to file a lien activation fee as required by Labor Code section 4903.06(a)(4). The lien was therefore ordered dismissed with prejudice.

Lien claimant contends that the WCJ erred because there were not two separate lien claimants, as the "dba of Surgery Center of the Canyon" is not a separate legal entity and does not have a separate tax identification number, so no additional lien activation fee was required.

We did not receive an answer from any party.

The WCJ issued a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny Reconsideration.

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been appointed in her place.

In response to the WCJ's Report, lien claimant filed a petition requesting permission to file a reply to the WCJ's Report and a proposed reply to the WCJ's Report, which we treat as a Supplemental Pleading. Pursuant to WCAB Rule 10964(a), we have accepted and considered lien claimant's Supplemental Pleading. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations of the Petition for Reconsideration and the Supplemental Pleading, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the June 23, 2021 F&O and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

We will briefly review the relevant facts.

While employed by defendant as a framer, applicant claimed injury to multiple body parts arising out of and during the course of employment on February 25, 2010. The case in chief settled by way of Compromise and Release approved on December 5, 2013.

As relevant here, the following additional facts were detailed by the WCJ in the Report:

The parties stipulated that on November 27, 2012, First Choice Doctors Medical Group, Inc., doing business as First Choice Orthopedics and Spine Institute, filed a lien pursuant to Labor Code § 4903(b). The lien was filed in the amount of \$18,676.77 under lien reservation number 0006230681. An itemized bill was filed under EAMS document I.D. No. 36275628. A lien activation fee was paid on December 29, 2015. A Labor Code § 4903.8(d) declaration was filed on March 17, 2021 under EAMS document I.D. No. 359553669.

Subsequently, on November 30, 2012, First Choice Doctors Medical Group, Inc., doing business as Surgery Center of the Canyon, filed another lien pursuant to Labor Code § 4903(b). The lien was filed in the amount of \$32,444.45 under lien reservation number 0006250633. An itemized bill was filed under EAMS document I.D. No. 36275626. No additional lien activation fee was paid on this lien.

(Report, July 14, 2021, p. 2.)

The WCJ also stated in the Report that:

Subsequently the matter proceeded to trial on the lien claim of First Choice Doctors Medical Group, Inc., doing business as Surgery Center of the Canyon and the issue of whether a medical provider with two fictitious business names who files two separate liens (one for each of the fictitious business names) must pay a lien activation fee for each of the liens.

A Findings of Fact and Order issued on June 23, 2021 in which it was found that First Choice Doctors Medical Group, Inc., doing business as Surgery Center of the Canyon had failed to file a lien activation fee as required by Labor Code § 4903.06(a)(4). The lien was therefore ordered dismissed. First Choice Doctors Medical Group, Inc. filed a timely verified petition for reconsideration of the June 23, 2021 Findings of Fact and Order contending that no lien activation fee was required for the lien of First Choice Doctors Medical Group, Inc., doing business as Surgery Center of the Canyon.

(Report, July 14, 2021, pp. 1-2.)

Thereafter, lien claimant sought reconsideration of the F&O.

DISCUSSION

I.

As we held in our recent en banc decision in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 836 (Appeals Board en banc): “Parties have a due process right to a fair hearing and a determination based on the merits.”

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 p. 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 p. 577.)

The WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; see also, *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473, 476 (Appeals Board en banc).)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at p. 476., citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal. Comp. Cases 350, 351].) A decision “must be

based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal. Comp. Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal. Comp. Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal. Comp. Cases 16].) As required by Labor Code section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Here, the WCJ issued the F&O dismissing the lien of First Choice Doctors Medical Group, Inc., without issuing a notice of intent and without creating an evidentiary record to support the F&O. (Cal. Code Regs., tit. 8, §§ 10832 and 10888 (e).) Notably, although lien claimant and defendant submitted proposed exhibits as reflected in the Pre-Trial Conference Statement (PTCS, March 22, 2021, pp. 6-8), no exhibits were offered into evidence at the April 26, 2021 trial. (MOH, April 26, 2021, p. 1, lines 23-24.) Without the ability to review the evidentiary record, we cannot complete a meaningful review of the Petition.

Accordingly, we will rescind the F&O and return this matter to the trial level for further proceedings.

II.

Although we do not decide the merits of the case, the WCJ may wish to consider the following discussion upon return to the trial level.

In *Perez, supra*, 90 Cal.Comp.Cases at p. 838, we also held that: “In workers’ compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.”

Reflecting these principles, current WCAB Rule 10617 (former Rule 10397) (Cal. Code Regs., tit. 8, former § 10397, now § 10617 (eff. Jan. 1, 2020)) provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain “a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.” (Cal. Code Regs., tit. 8, former § 10397, now §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended

by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, former § 10492, now §10517.) These rules represent the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

These principles of liberal pleading are further reflected in Labor Code section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise, or excusable neglect in accordance with Code of Civil Procedure section 473. (Lab. Code, § 5506.) The Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox, supra*, 4 Cal. App. 4th 1196.)

With these principles in mind, it is questionable whether denying lien claimant relief due to filing of liens under different fictitious business names is consistent with our policy. The interests of substantial justice are better served by adjudication on the merits of the lien, rather than dismissal by administrative fiat for technical noncompliance in pleadings. As noted above, both liens appear to involve the same applicant, the same employer, the same insurer, and the same underlying claim. (Report, July 14, 2021, pp. 1-2.)

Accordingly, as our Decision After Reconsideration, we rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the F&O issued on June 23, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 29, 2026

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

FIRST CHOICE DOCTORS MEDICAL GROUP, INC.

PINNACLE LIEN SERVICES, INC.

FLOYD, SKEREN, MANUKIAN & LANGEVIN, LLP

DC/cs

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