**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**RAUL ALEJANDRO GONZALEZ LOPEZ,** ***Applicant***

**vs.**

**ALLURA PRINTING, INC.; TECHNOLOGY INSURANCE COMPANY, administered by AMTRUST NORTH AMERICA,** ***Defendants***
**Adjudication Number: ADJ10684244**
**Santa Ana District Office**

**OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] Having completed our review, we now issue our Decision After Reconsideration.

Cost petitioner Med-Legal, LLC seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on November 19, 2021, wherein the WCJ found in pertinent part that there was no issue in dispute at the time cost petitioner's services were provided, the services provided by cost petitioner are not med-legal services and the services of cost petitioner were not reasonable.

Cost petitioner contends that an issue in dispute is not synonymous with a contested claim, that its services were med-legal services and that its services were reasonable, and that it is entitled to compensation for the services provided.

We received an Answer from defendant.

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

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and as discussed below, we will rescind the WCJ's F&O, and substitute a new Findings of Fact, that finds that a contested claim existed at the time

[1] Commissioner Deidre Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

cost petitioner provided its medical-legal services and defer all other issues. We return this matter to the trial level for further proceedings consistent with this decision.

**BACKGROUND**

We will briefly review the relevant facts.

Applicant claimed injury to his right knee and right ankle while employed by defendant as a machine operator on November 18, 2016.

Applicant's attorney filed an Application for Adjudication of Claim (Application) on November 29, 2016. It alleged that: "Applicant sustained injuries to his right knee and right ankle while performing his normal job duties." Paragraph 9 of the Application states that "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) ALL BENEFITS."

On November 29, 2016, applicant's attorney issued a letter to applicant's employer informing it of the representation and the claimed industrial injury of November 18, 2016. The letter requested "all medical reports, any statements oral or written taken from or made by the employee pertaining to his injury; any motion pictures, videos or sub-rosa films that have been taken of the employee; and a statement of benefits paid, including the date of payment, the purpose, the period, and the amount paid." (Exhibit 1, 11/29/2016.)

On December 1, 2016, Stephen Kiran Kumar, M.D. issued an Industrial Work Status Report. Discharge/Release status: "This patient is discharged/released and may return to full unrestrictive work with no need for future medical care and no ratable impairment per AMA guides, 5th edition as of 12/1/2016." (Exhibit 2, 12/1/2016.) There is no information about applicant's complaints or the injury, and no information about whether applicant was examined by a physician.

On December 2, 2016, defendant issued a letter to applicant accepting his claim of injury. (Exhibit A, 12/2/2016.)

On December 13, 2016, defendant issued a NOTICE OF DENIAL OF PERMANENT DISABILITY BENEFITS addressed to applicant. The notice states in relevant part:

> On 12/01/2016 you were discharged from care. Based upon the report of 12/01/2016 from Dr. Raul Gonzalez, you have recovered from your injury with no

> permanent disability. For this reason, no permanent disability payments are payable. . . .

(Exhibit 4, 12/13/2016.)

The notice advised applicant of his right to a QME.

On December 13, 2016, defendant issued a NOTICE OF FINAL TEMPORARY DISABILITY BENEFITS addressed to applicant. The notice states in relevant part:

> Payments are ending because you return to work full duty 12/01/2016. . . .
>
> Our records show that you have been paid temporary disability benefits. . . from 11/22/2016 through 12/05/2016. . . .

(Exhibit 3, 12/13/2016.)

Between January 23, 2017, through May 24, 2017, lien claimant issued Subpoenas Duces Tecum (SDT) to the following: Allura Printing, Inc., (1/23/17) SCPMG/KFH (2/13/17), and UCI Medical Center (5/18/17), and Richard Raczka, M.D. (5/24/17). (Exhibit 6, 1/23/2017-5/24/2017.)

The case in chief was resolved by way of a Compromise and Release (C&R). The C&R was approved on a walkthrough calendar, without applicant present, and an Order Approving Compromise & Release (OACR) issued on February 15, 2018. The C&R reflects payment of $666.00 in temporary disability benefits in 2016 and medical bills of $743.75, for a settlement of $10,000.00. All of the boxes in Paragraph 9 are initialed under the section that states "The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a serious dispute exists as to the following issues (initial only those that apply). . ." There is no basis otherwise provided for the settlement. According to the OACR, the WCJ considered the "medical evidence" when approving the C&R. However, the only medical evidence is the December 1, 2016 report discharging applicant from care. (Exhibit 2, 12/1/2016.)

On November 30, 2018, cost petitioner filed a petition for costs.

On September 22, 2021, the matter came on for lien trial. At the trial, the parties stipulated that applicant, while employed by defendant on November 18, 2016, as a machine operator sustained injury arising out of and in the course of employment to his right knee and right ankle. (Minutes of Hearing, 9/22/2021, p. 2.) The issues were listed as "Whether the subpoenas issued by Med-Legal are med-legal services, reasonableness of services, costs, sanctions, and attorney fees."

On November 19, 2021, the WCJ issued the F&O. In the Opinion on Decision, the WCJ stated in relevant part that:

> Copy service fees incurred to obtain medical and other records are medical-legal expenses under Labor Code section 4620(a). There is no requirement that a copy service proves that each of the records it copied was specifically relied upon to resolve an issue in dispute to have a valid claim for copying the records.
>
> ***However, copy services are not medical-legal if there is no issue in dispute.*** Furthermore, it is the Cost Petitioner's burden to establish that there was an issue in dispute at the time their services were provided.
>
> Cost Petitioner has submitted the defendant's termination of TTD letter and the defendant's Notice of Denial of Permanent Disability Benefits.
>
> No evidence was submitted that the applicant objected to the termination of TTD and/or the denial of PD. Absent this evidence, the Court is left with speculation, which cannot be the basis for a determination.
>
> The Court finds that ***Med- Legal, LLC has failed to meet its burden of proof in establishing that there was an issue in dispute at the time their services were provided***.

(Opinion on Decision, 11/19/2021, p. 4, italics and bold added for emphasis.)

On November 29, 2021, cost petitioner filed a Petition for Reconsideration.

## DISCUSSION

The threshold issue when considering reimbursement of a medical-legal expense is whether there is a contested claim. A party's ability to subpoena records is governed by the Labor Code and the WCAB Rules of Practice and Procedure which generally provide "adequate tools to the practitioner for liberal discovery." (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) Thus, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Ibid.*)

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See Lab. Code, §§ 3205.5, 5705.5; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 (Appeals Board en banc).) As we explained in our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal. Comp. Cases 1059 (Appeals Board en banc), Labor Code section 4622 provides the framework for

reimbursement of medical-legal expenses. Subsection (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (Lab. Code, § 4622(f).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico*, *supra*, 84 Cal.Comp.Cases 1059.)

Labor Code section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs "for the purpose of proving or disproving a contested claim." (Lab. Code, § 4620(a).) Copy services fees are considered medical-legal expenses under section 4620(a). (*Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 (Appeals Board en banc).) Section 4620(b) states that: "A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists: (1) The employer rejects liability for a claimed benefit. (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim. (3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity." (Lab. Code, § 4620(b).) The determination of whether a purported medical-legal expense involves a "contested claim" is a fact driven inquiry.

As stated above, Labor Code section 4620(b) states that a "contested claim exists" when "the employee is claiming entitlement to ***any benefit*** arising out of a claimed industrial injury. [Emphasis added.]" Subdivisions (b)(1), (2) and (3) refer to an additional condition that must exist, and all three refer to liability for a benefit or payment of benefits. This language is clear.

We briefly review the fundamental difference in workers' compensation law between "injury" and "benefits." Labor Code section 3207 states that: "'Compensation' means compensation under this division and includes ***every benefit or payment*** conferred by this division upon an injured employee . . ." Inherent in this statutory distinction between "injury" and "benefits" is that when there is an industrial injury, an employer still may potentially dispute its liability for every species of benefits. For example, an employer may dispute injury to additional body parts, including as a compensable consequence, the applicable occupational variant, the rate

of compensation for temporary and permanent disability indemnity, entitlement to medical treatment and its cost, liability for any period of temporary disability, the amount of permanent disability if any, including apportionment, and a host of other issues. We are perplexed that defendant argues that the claim was not contested because it accepted liability for the "injury" and yet has provided no information about the injury.

On November 29, 2016, applicant's attorney filed an Application. According to Paragraph 9 of the Application, there were disagreements as to liability for all benefits. On November 29, 2016, applicant's attorney issued a letter of representation to defendant and requested information and records. On December 2, 2016, defendant issued an acceptance of claim letter to applicant and admitted injury. (Exhibit A, 12/2/2016.) On December 13, 2016, defendant issued applicant notices that further temporary disability and permanent disability benefits were being terminated and applicant was being returned to work at full duty. (Exhibits 3 and 4, 12/13/2016.) The sole medical evidence is a Kaiser note discharging applicant to return to work. (Exhibit 2, 12/1/2016.) As explained above, acceptance of liability for the injury does not equate to an immediate agreement to pay all benefits. Thus, filing of an Application demonstrates that there were disputes between the parties.

We disagree with the reasoning in the WCJ's Opinion on Decision. As discussed in our en banc decision *Colamonico v. Secure Transportation*, when analyzing a lien claim the threshold issue is to determine if there was a contested claim when the first SDT is issued. Here, we agree with cost petitioner's assertion that the WCJ did not follow the correct legal standard when he decided this medical-legal dispute. We will follow the standard set forth in *Colamonico*, which states that we first look for a contested claim at the time cost petitioner issued the first SDT.

Here, the first SDT was issued on January 23, 2017, the Application was filed on November 29, 2016, and defendant sent notices on December 13, 2016. Here, applicant's claim was unequivocally contested under Labor Code section 4620(b) on January 23, 2017 when the first subpoena was issued, after defendant issued notices terminating payment of benefits on December 13, 2016.

The very nature of a C&R settlement means that issues remain in dispute and that the parties are "compromising" their disputes. We observe that the WCJ approved the C&R in February 2018, finding a settlement of $10,000.00 to be adequate. There is a sole page of medical records from Kaiser from December 2016, which appears to be a notice releasing applicant to full

duty at work, and not an actual record of an examination of applicant by a physician, containing documentation of his complaints and an explanation of how the injury happened. The C&R shows payment of $666.00 in temporary disability benefits from November to December 2016, and payment of $743.75 in medical bills. There is no explanation in the C&R itself about how the amount of the settlement was determined, yet all boxes in Paragraph 9 are initialed. Based on the signature page, an interpreter was present. The settlement was approved on a walkthrough calendar, without applicant present, and without any notes by the WCJ as to why the settlement was adequate.

From our review, it does not appear that the lack of information in the record is the fault of cost petitioner. When a WCJ approves a settlement and finds it adequate, the WCJ is required to have obtained at least a skeletal understanding of the case and to review some medical evidence. Here, it appears that the WCJ simply checked the box on adequacy without considering any basis for the settlement. More importantly, there is no information from defendant about how applicant's injury occurred, about the elapse of time between the date of applicant's injury and the settlement in 2018, and about the basis for the settlement. Defendant was a party to the settlement, and signed the C&R. If a defendant, like defendant here, is claiming that all benefits were paid and none were disputed, defendant should be poised to provide more information about the injury and the basis for the settlement. Instead in its Answer, defendant provides no information about the case and no real argument except to point the finger at cost petitioner and claim that cost petitioner did not meet its burden. We acknowledge that it is cost petitioner's burden to show that the claim was contested but with such a woeful record in the first instance, we accept cost petitioner's evidence that an Application was filed and that a C&R was paid on some unknown basis, and that the claim was compromised. We observe that by engaging in such tactics, the result is that defendant actually drives the cost of litigation higher than if it had simply paid the cost of subpoenas in the first instance nine years ago.

As we emphasized above, the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. This means that parties should engage in active discovery and investigation to develop the evidence necessary to prove their cases. Participation in discovery by an applicant's representative is not only permitted, it is encouraged. Upon return, we recommend that defendant enter into

negotiations forthwith for resolution of the disputed amount to avoid any further waste of the WCAB's scarce resources.

Accordingly, we rescind the F&O, and substitute a new Findings of Fact that finds that cost petitioner met its burden under Labor Code section 4620 to show a contested claim existed at the time it provided its medical-legal services beginning on January 23, 2017 and defer all other issues. We return this 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 November 19, 2021, Findings and Order is **RESCINDED** and that a new Findings of Fact be **SUBSTITUTED** in its place as follows:

FINDINGS OF FACT

1. Cost petitioner Med-Legal, LLC, met its burden under Labor Code section 4620 to show a contested claim existed at the time it provided its medical-legal services beginning on January 23, 2017.

2. All other issues are deferred.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**


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

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

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

**APRIL 1, 2026**

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

**LITIGATION AND CONSULTING ASSOCIATES**
**MEDICAL COST REVIEW**
**AMTRUST**
**MED LEGAL**

**DLM/*pm***

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