

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

**STEVEN VLASIS, *Applicant***

**vs.**

**CITY OF TAFT, COUNTY OF FRESNO;  
CCLAMATION RESNO, *Defendants***

**Adjudication Number: ADJ11941983, ADJ11941968  
Fresno District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant's attorney, on his own behalf, seeks reconsideration of the February 3, 2026 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that lien claimant's attorney participated in the lien conference where the lien was first placed at issue; that the requirements of Labor Code<sup>1</sup> section 4903.2(b) were not met; that there was no "common fund" created by applicant's attorney's efforts from which the lien claimants were a passive beneficiary; and that applicant's attorney is not entitled to an attorney fee to be paid out of Blue Shield of California or Anthem Blue Cross' recovery on their respective liens. Based on these findings, the WCJ ordered that applicant's attorney take nothing further from the recovery of Blue Shield of California or Anthem Blue Cross on their respective liens.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

## I.

Preliminarily, we note that former Labor Code<sup>2</sup> 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 March 5, 2026 and 60 days from the date of transmission is May 4, 2026. This decision is issued by or on May 4, 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 March 5, 2026, and the case was transmitted to the Appeals Board on March 5, 2026. Service of the Report and transmission of the

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<sup>2</sup> All further statutory references are to the Labor Code, unless otherwise noted.

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 March 5, 2026.

## **II.**

In addition to the reasons stated by the WCJ in the Report, we note the following. Appeals Board panel decisions are not binding precedent. (*Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) Section 4903.2 attorney fees are discretionary not mandatory. We see no abuse of discretion in the WCJ's decision not allowing attorney fees out of lien claimants' recovery.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**MAY 4, 2026**

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

**STEVEN VLASIS  
LAW OFFICE OF DANIEL EPPERLY  
4600 BOEHM**

**PAG/bp**

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

- |  |  |
|--|--|
| 1. Applicant's Occupation:   | Deputy Sheriff                           |
| 2. Age at Injury:  | 54                                       |
| 3. Date of Injury:   | 9/4/99 – 9/21/18                         |
| 4. Manner in Which Injury Alleged Occurred:  | cumulative trauma, cancer<br>Presumption |
| 5. Identity of Petitioner:   | Applicant's Attorney                     |
| 6. Timeliness:   | Timely filed on 2/17/26                  |
| 7. Verification:   | The Petition was Verified.               |
| 8. Date of Decision:   | 2/3/26                                   |
| 9. Petitioner contends:  |  |
| a. There is good cause to order fees to be paid to Applicant's Attorney out of the lien claimant's recovery because absent the diligent work of the applicant's attorney, the lien claimants would have recovered little or nothing. |  |

**II**

**FACTS**

The facts in this case are undisputed and were stipulated to by the parties. The applicant's claimed brain cancer injury was denied by defendant. Applicant's attorney conducted extensive discovery and prevailed at trial in establishing that applicant's brain cancer arose out of and occurred in course of his employment. (MOH 12/4/25, Stipulations #2, #9.)

Lien claimants filed liens for medical treatment related to applicant's brain cancer. There were four Mandatory Settlement Conferences and three trial dates for which the lien claimants received notices of hearings but did not appear. Following the judicial finding of industrial causation of applicant's brain cancer, there was a single lien conference where applicant's attorney and lien claimants' attorney both appeared. Lien

claimants' attorney negotiated a settlement of Anthem Blue Cross lien for \$19,000.00 and Blue Shield of California lien for \$200,000. (MOH 12/4/25, Stipulations #3, #4, #5, #6, #7, #8)

Lien Claimants' attorney and support staff extended time and effort in discovery, proving basis for the liens and negotiating with the defendant to resolve the liens. Applicant's attorney did not participate in any of these activities. (MOH 12/4/25, Stipulation #11)

### III

#### DISCUSSION

Applicant's attorney contends he is entitled to a portion of the recoveries of lien claimants, Anthem Blue Cross and Blue Shield, as attorney fees due to his efforts in litigating AOE/COE issues. It is clear that applicant's attorney's efforts in obtaining a finding of industrial causation of applicant's brain cancer were instrumental in lien claimant's ability to successfully negotiate a recovery on their liens. What is disputed is whether or not efforts spent litigating causation of the injury alone is sufficient to entitle applicant's attorney to collect a portion of the attorney fees from the lien claimants.

Labor Code section 4903.2 allows for an award of attorney's fees to the applicant's attorney out of the lien claimant's recovery if all of the conditions set forth in the statute are met. Labor Code section 4903.2 states:

Where a lien claimant is reimbursed pursuant to subdivision (f) or (g) of Section 4903 or Section 4903.1, for benefits paid or services provided, the appeals board may award an attorney's fee to the applicant's attorney out of the lien claimant's recovery if the appeals board determines that all of the following occurred:

**(a)** The lien claimant received notice of all hearings following the filing of the lien and received notice of intent to award the applicant's attorney a fee.

**(b)** An attorney or other representative of the lien claimant did not participate in the proceedings before the appeals board with respect to the lien claim.

**(c)** There were bona fide issues respecting compensability, or respecting allowability of the lien, such that the services of an attorney were reasonably required to effectuate recovery on the claim of lien and were instrumental in effecting the recovery.

**(d)** The case was not disposed of by compromise and release.

The amount of the attorney's fee out of the lien claimant's recovery shall be based on the extent of applicant's attorney's efforts on behalf of the lien claimant. The ratio of the amount of the attorney's fee awarded against the lien claimant's recovery to that recovery shall not exceed the ratio of the amount of the attorney's fee awarded against the applicant's award to that award.

In this case, the parties stipulated that the lien claimants received notice of all hearings following the filing of the liens and the stipulations to pay lien claimants provided for withholding of 15% attorney fees held in trust pending litigation of this issue. (Exhibit CC and DD, Stipulation to pay Lien Claimant Anthem Blue Cross, 9/8/25; Stipulation to pay Lien Claimant Blue Shield of California, 9/8/25.)

Labor Code section 4903.2(b) requires that an attorney or other representative of the lien claimant did not participate in the proceedings before the appeals board **with respect to the lien claim.** (emphasis added) When interpreting the language of a statute, it is necessary to presume that all words have meaning and to avoid an interpretation that would render some words or phrases meaningless.

In this case, applicant's attorney claims that this provision has been met because the lien claimants did not appear or participate in hearings prior to the lien conference held on 9/8/25. However, the statute does not require that an attorney or other representative of the lien claimant participate in all proceedings before the appeals board but only those that are with respect to the lien claim. At none of the hearings up to and including the trial on 11/29/23 were the lien claims at issue. The lien claims or reimbursement for medical treatment were not even listed on the pre-trial conference statement when the AOE/COE issue was set for trial. While it is true that a finding of AOE/COE is a necessary preliminary element for any determination on the validity of a lien, it does not alone equate to litigation conducted with respect to the liens. The only proceedings before the appeals board with respect to the lien claims was the lien conference on 9/8/25 where both applicant's attorney and lien claimant's attorney were present.

Even if applicant's attorney's interpretation of LC section 4903.2(b) is correct, Labor Code section 4903.2 is a codification of the "common fund" principle, whereby the creation of a common fund "created by the services of the attorney for the active litigant

required that a passive beneficiary be ordered to pay a proportionate share of the fee of the active litigant." (*Wyche v. Blood Bank of Alameda Contra Costa* (1993) 58 Cal.Comp.Cases 42, 45 [Appeals Board en banc].) Even where the requirements of section 4903.2 are met, any award is discretionary.

In this case, a determination of AOE/COE did not produce any common fund out of which the liens were satisfied. The cases wherein applicant's attorneys have successfully obtained fees from lien claimant's recoveries illustrate the creation of a common fund. In *Hoffman v. Best Overnight Express, Inc.* 2013 Cal. Wrk. Comp. P.D. LEXIS 110, the appeals board awarded fees out of EDD's recovery where applicant's attorney obtained a stipulation to pay temporary disability and reimburse EDD. Thus, the creation of the fund out of which EDD received reimbursement was due to efforts of applicant's attorney, and EDD was a passive beneficiary of his efforts.

Similarly, in *Martinez v. California Medical Facility*, 2018 Cal. Wrk. Comp. P.D. LEXIS 386, applicant's attorney was awarded fees from CCPOA Benefit Trust Fund's award of reimbursement for periods applicant was entitled to temporary disability, when applicant's attorney successfully obtained an award of temporary disability and an award of reimbursement for CCPOA.

In contrast, in this case, there was no "common fund" created by applicant's attorney out of which the lien claimants obtained a recovery. The "common fund" concept is reflected in LC section 4903.2 provision that "the amount of the attorney's fee out of the lien claimant's recovery shall be based on the extent of applicant's attorney's efforts **on behalf of the lien claimant**. The ratio of the amount of the attorney's fee awarded against the lien claimant's recovery to that recovery shall not exceed the ratio of the amount of the attorney's fee awarded against the applicant's award to that award." (emphasis added)

While applicant's attorney's efforts in litigating and obtaining a judgement that applicant's brain cancer did arise out of and in the course of his employment were essential in allowing the lien claimants to later pursue and recover on their liens, it cannot be said that those efforts were undertaken on behalf of the lien claimants. Additionally, there can be no proration because there has been no establishment of a "common fund" in favor of the injured worker and the lien claimant. The purpose of the "common fund"

principle is not to increase the overall fee for the attorney's services but to shift part of that fee to the passive beneficiary and reduce the fee to the injured worker. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (Brennan), 91 Cal. App. 3d 493, 500)

#### IV

#### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

**DEBRA SANDOVAL**  
Workers' Compensation Judge