WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RAUL BAILON MARTINEZ, *Applicant*

vs.

VILLA PARK LANDSCAPE; OAK RIVER INSURANCE, *Defendants*

Adjudication Number: ADJ16834660
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant Medland Medical (lien claimant) seeks reconsideration of the December 31, 2024 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a landscaper from April 17, 2021 to April 17, 2022, sustained industrial injury to his bilateral upper extremities, and that compensation was not barred by Labor Code[1] section 3600(a)(10). The WCJ found, in relevant part, that lien claimant was not entitled to reimbursement of medical treatment or medical-legal reporting costs for services rendered prior to the denial of claim on January 13, 2023, and that lien claimant was entitled to payment for medical treatment services rendered after the claim denial, but that the evidentiary record was inadequate to determine the value for medical treatment services rendered after claim denial.

Lien claimant contends that they are entitled to reimbursement during the delay period pursuant to section 5402(c) because the employer failed to provide notice of its Medical Provider Network (MPN) and failed to comply with its statutory treatment and notice obligations following receipt of notice of applicant's claimed injury. Lien claimant also contends the reporting of Omid Haghighinia, D.C., was a valid medical-legal expense because the reporting addressed the compensability of a disputed claim. Lien claimant also claims entitlement to penalties for unreasonable delay in payment and statutory interest.

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

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. Based upon our preliminary review of the record, we will grant lien claimant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order 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. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

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 January 31, 2025, and 60 days from the date of transmission is April 1, 2025. This decision is issued by or on April 1, 2025, 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 January 31, 2025, and the case was transmitted to the Appeals Board on January 31, 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 January 31, 2025.

II.

We highlight the following legal principles that may be relevant to our review of this matter:

Lien claimant asserts entitlement to reimbursement for medical treatment services provided during the claim delay period through January 13, 2023. (Petition, at p. 4:18.) Lien claimant asserts applicant was entitled to self-procure medical treatment because his employer failed to provide adequate notice of its MPN when applicant was hired or via conspicuously posted workplace notices. (*Id.* at p. 5:24; Lab. Code, § 4616.3.) Lien claimant further contends defendant failed to establish medical control because it received notice of applicant's claimed injury but failed in its corresponding duties to set an appointment with a physician, issue an MPN letter in Spanish, or provide applicant with transfer of care/continuity of care notices. (*Id.* at p. 6:5.) Lien claimant further contends the reporting generated during the delay period addressed disputed issues including claim compensability, thus establishing lien claimant's right to reimbursement of medical-legal expenses. (*Id.* at p. 9:10.)

The WCJ's Report responds that the evidentiary record does not establish refusal or neglect of medical treatment on the part of the employer. (Report, at p. 3.) The WCJ observes that there is no evidence that applicant attempted to seek medical treatment through defendant's MPN, or that the defendant was negligent in providing such care. Even assuming *arguendo* that defendant did not establish medical control, the evidentiary record does not establish that the loss of control resulted in a neglect or denial of medical care to the applicant. (*Ibid*.)

We initially observe that a petition for reconsideration is properly taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903 .) A "final" order has been defined as one "which determines any substantive right or liability of those involved in the case." (*Rymer v. Hagler* (1989) 211 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered to be "final" orders because they do not determine any substantive question. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650, 655]; *Rymer, supra*, 211 Cal.App.3d 1180; *Kramer*, *supra*, 82 Cal.App.3d 45; see also, e.g., 2 Cal. Workers' Comp. Practice (Cont.Ed.Bar 4th ed. 2000) §§ 21.8, 21.9.)

Here, lien claimant challenges the WCJ's determination to defer the issues of the value of services provided after claim denial of January 13, 2023. (Petition, at p. 9:17; F&O, Order No. 2.) However, pursuant to *Maranian, supra*, 81 Cal.App.4th 1068, 1075, the WCJ's order for development of the record is an interim order that does not decide a substantive issue. Accordingly, insofar as lien claimant seeks relief from the order for development of the record, we are not persuaded that the issue is appropriately raised as subject to reconsideration under section 5900. (Lab. Code, § 5900(a).)

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) If an employer has established an MPN, injured workers are generally limited to treating with a physician from within the employer's MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an injured worker may self-procure medical treatment at the employer's expense. (Lab. Code, § 4600(a); *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82 [31 Cal.Comp.Cases 93].)

The burden of proof rests upon the party with the affirmative of the issue. (Lab. Code, § 5705.) Lien claimant avers applicant was entitled to seek treatment outside defendant's MPN. Consequently, lien claimant, standing in the shoes of applicant, holds the burden of proof to show a neglect or refusal to provide treatment by defendant. (See e.g., *Amezcua v. Westside Produce* (ADJ8027084, March 11, 2013) [2013 Cal. Wrk. Comp. P.D. LEXIS 93]; *Cornejo v. Solar Turbines* (ADJ4111589, ADJ1391390, ADJ2081394, ADJ4372783, September 24, 2013) [2013 Cal. Wrk. Comp. P.D. LEXIS 479].)

Section 4616.3 provides, in relevant part, that upon notice of an injury or the filing of a claim form "the employer shall arrange an initial medical evaluation and begin treatment as required by Section 4600." (Lab. Code, § 4616.3(a).) In addition, the employer must "notify the employee of the existence of the medical provider network established pursuant to this article, the employee's right to change treating physicians within the network after the first visit, and the method by which the list of participating providers may be accessed by the employee." (Lab. Code, § 4616.3(b).)

In *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc), an employer's failure to provide required notice to an employee of rights under the MPN resulted in a neglect or refusal to provide reasonable medical treatment that rendered the employer liable for the reasonable medical treatment self-procured by the employee. The legislature later codified the holding in *Knight* in section 4616.3(b), which provides that an "employer's failure to provide notice as required by this subdivision or failure to post the [MPN] notice as required by Section 3550 shall not be a basis for the employee to treat outside the network unless it is shown that the failure to provide notice resulted in a denial of medical care." The statute reflects the formulation in *Knight* that an applicant wishing to self-procure medical treatment outside the MPN at employer expense must establish *both* a failure of required notice and a corresponding neglect or refusal of medical treatment.

Thus, we must determine whether the employer, following notice of the claim filed by applicant, failed to meet its statutory obligations with respect to notice of its MPN, the employee's right to change physicians, and the method by which applicant could access the list of participating providers. We must further determine whether the employer appropriately complied with its affirmative obligations under section 4616.3(a) including arranging an initial medical evaluation and commencing treatment under section 4600. (Lab. Code, § 4616.3; see also, Cal. Code Regs.,

tit. 8, § 9767.6(a).) If the employer failed to meet its statutory notice obligations, pursuant to section 4616.3(b) and WCAB Rule 9767.6, we must determine whether the employer neglected or refused medical treatment during the delay period such that applicant was entitled to self-procure medical treatment. (*Knight, supra*, 71 Cal.Comp.Cases 1423.)

In addition, 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).) In *Colamonico v. Secure Transportation* (84 Cal.Comp.Cases 1059) [2019 Cal. Wrk. Comp. LEXIS 111] (Appeals Bd. en banc), we observed that "lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a 'contested claim' existed at the time the service was performed," and that section 4620(b) sets forth the parameters for determining whether a contested claim existed. We noted that, "[e]ssentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim." (Lab. Code, § 4620(b).)

Here, lien claimant avers that the reporting issued by Omid Haghighinia, D.C., was "essential to addressing the issue of compensability for benefits." (Petition, at p. 4:10.) Accordingly, and pursuant to section 4620(b), we must determine whether lien claimant has met its burden of establishing the employer's knowledge of a pending claim for benefits, and whether the employer affirmatively or constructively denied the claim or failed to act with reasonable diligence regarding the claim. (*Colamonico, supra*, 84 Cal.Comp.Cases 1059, 1062.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely

developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id*. at p. 404.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

III.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci*. *Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57

Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

IV.

Accordingly, we grant lien claimant's Petition for Reconsideration, and order 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.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on December 31, 2024, 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 28, 2025

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

MEDLAND MEDICAL
ENGLAND PONTICELLO & ST. CLAIR

SAR/abs

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