

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **ELIA HINKS,**

5 *Applicant,*

6 **vs.**

7 **PAVLO, WEINBERG & ASSOCIATES;**
8 **STATE COMPENSATION INSURANCE**
9 **FUND,**

10 *Defendants.*

Case Nos. ADJ2499103 (VNO 0376180)
ADJ3239580 (VNO 0376181)
(San Francisco District Office)

OPINION AND ORDER
GRANTING RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

11 Lien claimant, MH Express Pharmacy (lien claimant), seeks reconsideration of the Order
12 Dismissing Lien Claim for Failure to Pay Lien Activation Fee issued by the workers' compensation
13 administrative law judge (WCJ) on March 21, 2013, wherein the WCJ dismissed its lien with prejudice
14 because it failed to submit proof of timely payment of the activation fee at the lien conference in
15 accordance with Labor Code section 4903.06(a)(4).¹

16 Lien claimant contends that the WCJ erred in dismissing its lien, arguing that it paid its lien
17 activation fee in the companion case, ADJ2499103.

18 We have considered the Petition for Reconsideration, and we have reviewed the record in this
19 matter. The WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report),
20 recommending that the petition be denied.

21 For the reasons set forth herein, we will grant reconsideration, rescind the March 21, 2013
22 decision dismissing lien claimant's lien, and return the matter to the trial level WCJ.

23 **FACTS**

24 Applicant claimed that she sustained industrial injury to her head, back, shoulder, lower
25 extremities and multiple body parts while employed by defendant on January 6, 1996 (ADJ2499103) and
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27 ¹ Unless otherwise stated, all further statutory references are to the Labor Code.

1 from January 6, 1998 to August 25, 1998 (ADJ3239580).

2 On January 7, 2004, lien claimant filed a lien in ADJ2499103.

3 The Report notes that the specific injury case (ADJ2499103) may have been dismissed without
4 prejudice on March 7, 2006. Lien claimant contends in its verified Petition for Reconsideration that it
5 was never notified of the dismissal.

6 A lien conference was held on March 21, 2013 in ADJ3239580.

7 Lien claimant paid the lien activation fee in ADJ2499103 on March 15, 2013, six days prior to the
8 March 21, 2013 lien conference.

9 On March 21, 2013, the WCJ issued the Order Dismissing Lien Claim for Failure to Pay Lien
10 Activation Fee with prejudice. The WCJ notes in her Report that there was no lien activation fee paid
11 prior to the lien conference in ADJ3239580. Lien claimant seeks reconsideration.

12 DISCUSSION

13 Section 4906.03(a), enacted by Senate Bill (SB) 863 (Stats. 2012, ch. 363 § 64), provides, in
14 pertinent part, as follows:

15 "Any lien filed pursuant to subdivision (b) of Section 4903 prior to
16 January 1, 2013, and any cost that was filed as a lien prior to January 1,
17 2013, shall be subject to a lien activation fee unless the lien claimant
18 provides proof of having paid a filing fee as previously required by
19 former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.

20 The lien activation fee is \$100.00. (Lab. Code, § 4906.03(a)(1).)

21 Section 4906.03(a)(4) provides as follows:

22 "All lien claimants that did not file the declaration of readiness to
23 proceed and that remain a lien claimant of record at the time of a lien
24 conference shall submit proof of payment of the activation fee at the lien
25 conference. If the fee has not been paid or no proof of payment is
26 available, the lien shall be dismissed with prejudice."
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1 Administrative Director (AD) Rule 10208, subdivision (a); (Cal. Code Regs., tit. 8, § 10208(a)),²
2 provides,

3 “Any lien filed pursuant to Labor Code section 4903(b) filed prior to
4 January 1, 2013, and any cost filed as a lien prior to January 1, 2013, shall
5 be subject to a lien activation fee in the sum of one hundred dollars (\$
6 100.00), payable to the Division of Workers' Compensation prior to filing a
7 Declaration of Readiness to Proceed for a lien conference by that party,
8 prior to appearing at a lien conference for a case, or on or before January 1,
9 2014, whichever occurs first. The \$100 fee is payment for the activation of
10 a lien. A lien activation fee is required for each lien filed prior to January 1,
11 2013, and for each cost filed as a lien prior to January 1, 2013; however,
12 where one or more liens or one or more costs filed as lien is filed in one or
13 more cases involving the same injured worker and same service or services
14 by the same lien claimant, only one lien activation fee is required.”

15 In this matter, the WCJ found that because lien claimant failed to submit proof of payment of the
16 activation fee at the lien conference, its lien must be dismissed with prejudice according to section
17 4906.03(a). However, AD Rule 10208 states that a lien claimant only pays one lien activation fee where,
18 as here, a “lien is filed in one or more cases involving the same injured worker” for the same services by
19 “the same lien claimant.” Therefore, we will grant reconsideration, and rescind the March 21, 2013
20 decision dismissing lien claimant’s lien.

21 Accordingly, we will grant the Petition for Reconsideration, rescind the March 21, 2013 Order
22 Dismissing Lien Claim for Failure to Pay Lien Activation Fee, and return the matter to the trial level for
23 further proceedings as necessary and a new decision by the WCJ consistent with this opinion.

24 For the foregoing reasons,

25 **IT IS ORDERED** that lien claimant’s Petition for Reconsideration of the March 21, 2013 Order
26 Dismissing Lien Claim for Failure to Pay Lien Activation Fee, is **GRANTED**.

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² Unless otherwise stated, all further regulatory references are to the California Code of Regulations.

