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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. LAO 776073

GUM HO HAN,

Applicant,

vs.

**HAITAI AMERICA, INC.; CIGA for
FREMONT INSURANCE, in liquidation,**

Defendant(s).

**OPINION AND ORDERS
DENYING LIEN CLAIMANT'S
PETITION FOR RECONSIDERATION
AND DISMISSING LIEN CLAIMANT'S
PETITION FOR RECONSIDERATION**

Lien claimant, Robert M. Gromis, M.D. and lien claimant, Better Resources, each seek reconsideration of the Supplemental Findings, Award and Orders issued July 27, 2007 wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained an admitted industrial injury to his back, spine, upper and lower extremities and shoulders, "and claimed to have sustained injuries aoe/coe to 'internal/hypertension/diabetes'". The WCJ also found that "lien claimants and defendants elected to not litigate parts of the body injured" and that "the reasonable value of services of R. Gromis, M.D., compensable in 2003 - 2/11, 3/17, 4/28, 6/18, 7/30, 9/10 and 11/30 - and in 2004 - 1/14, 2/25 and 9/2 - is \$2,725." The WCJ further found that "Better Resource provided reasonable and necessary Korean interpreting services for applicant at WCAB hearings 12/22/05 and 6/16/05, the reasonable value of which is \$550.00."

The WCJ concluded the decision as follows:

"11. Better Resource provided reasonable and necessary Korean interpreting services at medical examinations requested by defendants, at AMEs Berman 6/15/04, G. Markowitz, M.D. 10/11/04, and at T. Moldawer, M.D. 9/18/03, the reasonable value of which is \$825.00.

12. Better Resource provided reasonable and necessary Korean interpreting services at applicant's deposition 12/9/05, for which the reasonable value is \$275.00.

1 13. Better Resource provided reasonable and necessary Korean
2 interpreting services at medical examination 9/18/03 with Dr.
Moldawer in the reasonable sum of \$275.00.

3 14. Defendants are not liable for the expense of Korean
4 interpreting services provided by Better Resource in applicant's
attorney's offices 2/4/05 and 6/2/05.

5 15. There is inadequate evidence of interpreting services provided
6 by Better Resource at examinations by T. Moldawer, M.D. other
7 than 9/18/03, Jamie Miles Yanai, Dr. Garcia, or at Valley
8 Presbyterian Hospital, Center for Rehab Medicine, Sherman Oaks
Hospital, Tower Imaging, or with Herlinda C. Reyes.

9 16. Lien claimants Gromis and Hepps were timely served with
10 defense medical reports.

11 17. There is no evidence when reports and bills of lien claimants
12 Hepps and Gromis were properly served on defendants.

13 18. Better Resource was paid \$10,025.00 by defendants as of
14 12/1/03.

15 19. Defendants did not unreasonably delay payment of \$1,925.00
due Better Resource.

16 20. There is insufficient evidence of bad faith actions sanctionable
17 by Labor Code 5813.

18 SUPPLEMENTAL AWARD AND ORDERS

19 AWARD IS MADE in favor of Hepps Prescription Pharmacy,
20 \$2,900.53 less credit for sums previously paid, and in favor of R.
Gromis, M.D., \$2,725.00, less credit for sums paid.

21 IT IS ORDERED the balance of lien claims of Hepps Prescription
22 Pharmacy, Robert Gromis, M.D. and Better Resource are denied,
23 and these claimants take nothing further herein."

24 Lien claimant, Robert M. Gromis, M.D., contends that the WCJ erred by failing "to
25 properly review and consider petitioner's evidence" arguing that petitioner should have been
26 awarded \$12,673.00. Finally, lien claimant also contends that the WCJ's decision fails to set forth
27 the basis for the award regarding petitioner's lien and "does not make any mention in her opinion

1 that bills for Dr. Gromis where [sic] offered into evidence and basis [sic] why [sic] it was not
2 considered.” Defendant filed an answer.

3 Lien claimant, Better Resource, contends that the WCJ erred: (1) by finding that
4 defendants “elected not to litigate parts of the body injured” arguing that lien claimant did claim
5 that applicant sustained injury to “internal (hypertension/diabetes)”;

6 that inadequate evidence supported lien claimant’s lien arguing that lien claimant submitted
7 invoices and defendant did not provide evidence in rebuttal; (3) by failing to make a finding on the
8 issue of “market rate” for lien claimant’s services arguing that defendant did not rebut petitioner’s
9 evidence of the market rate; (4) by finding that defendant did not unreasonably delay payment of
10 petitioner’s lien claim arguing that defendant authorized lien claimant’s attendance “at 2 AMEs
11 and at applicant’s deposition and with Dr. Moldower”; and (5) by failing to sanction defendant
12 pursuant to Labor Code sections 5813 and 4603.2(b). Defendant filed an answer. Lien claimant’s
13 request to file a supplemental brief in the form of a letter was granted.

14 We have considered the allegations of lien claimants’ petitions and the WCJ’s Report and
15 Recommendation on Petition for Reconsideration (Report) with respect thereto. Based upon our
16 review of the record, and for the reasons stated in the WCJ’s Report, which we adopt and
17 incorporate, we will deny lien claimant, Better Resource’s, petition. Addressing lien claimant,
18 Robert Gromis, M.D.’s, petition, we will dismiss the petition because petitioner failed to serve
19 defendant with a copy of the petition for reconsideration and file proof of service.

20 We note that a failure to serve documents in a WCAB proceeding in the manner required
21 by statute or the board’s regulations is not a mere irregularity but rather an omission of substance
22 which denies a fundamental right. *Hartford Acc. & Indemnity Co. v. WCAB (Phillips)* (1978) 86
23 Cal.App.3d 1, 3, 43 Cal.Comp.Cases 1193. Dismissal is the appropriate remedy for non-service of
24 the petition on a litigant entitled to receive it. *MCA, Inc. v. WCAB (Stott)* (1981) 46
25 Cal.Comp.Cases 621 (writ denied); *Fisher v. WCAB* (2001) 66 Cal.Comp.Cases 517 (writ denied).

26 Pursuant to Labor Code section 5905 and California Code of Regulations, title 8, section
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10850, petitioner was required to serve the petition on defendant in this matter but failed to do so. Consequently, we will dismiss the petition.

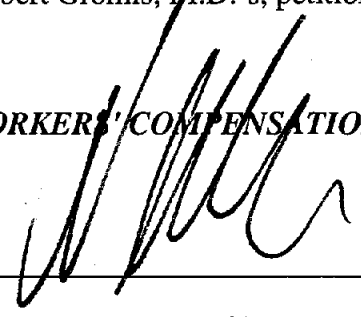
Even if lien claimant's petition had not been dismissed for failure to serve defendant, we would have denied lien claimant's petition on the merits as set forth in the WCJ's Report which we adopt and incorporate.

For the foregoing reasons,

IT IS ORDERED that lien claimant, Better Resource's, petition is **DENIED**.

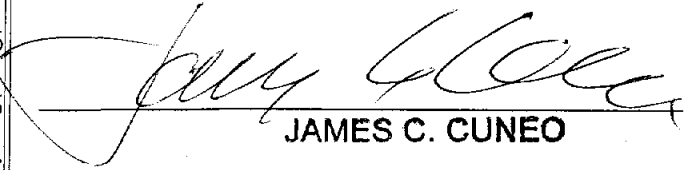
IT IS ORDERED that lien claimant, Robert Gromis, M.D.'s, petition is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD



WILLIAM K. O'BRIEN

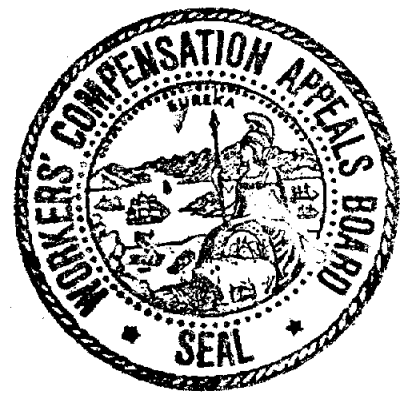
I CONCUR,



JAMES C. CUNEO

CONCURRING, BUT NOT SIGNING

JANICE JAMISON MURRAY



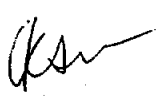
DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCT 19 2007

SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:

*Glauber, Berenson & Salazar
Wall, McCormick & Baroldi
Donald Braun, Esq.
Kevin Fisher, Esq.*

JSlara



HAN, Gum Ho