

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

RAMIRO RODRIGUEZ, *Applicant*

vs.

**LAS VEGAS LA EXPRESS, INC.; STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ1424195 (LAO 0823410)
Oxnard District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Lien claimant, Angoal Medical Collections, Inc., seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 27, 2020.¹ By the F&O, the WCJ found that the lien claim is barred by laches and ordered lien claimant to take nothing.

Lien claimant contends that the WCJ erroneously found its lien was barred by laches although defendant did not prove prejudice from the delay in pursuing the lien.

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny the Petition.

We have considered the allegations of lien claimant's Petition for Reconsideration, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will rescind the F&O and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Applicant claimed injury to the neck, arms, back, shoulders, nervous system, depression and anxiety through February 20, 2003 while employed as a forklift operator by Las Vegas LA

¹ The F&O is dated February 26, 2020, but was not served until February 27, 2020.

Express. Defendant denied the claim in its entirety on May 7, 2003. (Lien Claimant's Exhibit No. 2, Notice of denial of claim, May 7, 2003.)

Julie Goalwin, Ph.D. evaluated applicant as the psychiatric qualified medical evaluator (QME) on June 21, 2003 and served her report on the parties on July 14, 2003. (Lien Claimant's Exhibit No. 3, Report of Dr. Goalwin, June 21, 2003.) Dr. Goalwin sold the receivables for her evaluation and report of applicant to Angoal Medical Collections on July 1, 2003. (Lien Claimant's Exhibit No. 5, Purchase Agreement from Angoal Medical Collections, July 1, 2003.) On July 14, 2003, Angoal Medical Collections filed a lien with a billing statement in the amount of \$2,915 for Dr. Goalwin's evaluation and report. (Lien Claimant's Exhibit No. 4, Lien and billing of Angoal Medical Collections, July 14, 2003.)

Janine Angelotti, D.C. evaluated applicant as the applicant's chiropractic QME on June 25, 2003. (Lien Claimant's Exhibit No. 7, Medical report of Dr. Angelotti, July 21, 2003, p. 1.) Dr. Angelotti conducted an NCV study of applicant as part of her examination. (Lien Claimant's Exhibit No. 8, NCV study of Dr. Angelotti, June 25, 2003.) Dr. Angelotti issued her report on July 21, 2003. (Lien Claimant's Exhibit No. 7, Medical report of Dr. Angelotti, July 21, 2003, p. 1.) Dr. Angelotti also filed a lien claim in the amount of \$2,845 for her evaluation and report on July 21, 2003. (Lien Claimant's Exhibit No. 9, Billing and lien of Dr. Angelotti, July 21, 2003 and July 25, 2003.)

Applicant's claim was dismissed for lack of prosecution on February 3, 2010.

The matter proceeded to trial on December 19, 2019 regarding Angoal Medical Collections' lien for Drs. Goalwin and Angelotti. (Minutes of Hearing, December 19, 2019, p. 2.) Several issues were identified as in dispute including laches. (*Id.*)

The WCJ issued the resulting F&O in which he found that the lien claim was barred by laches. All other issues were found to be moot and were not addressed in the F&O.

DISCUSSION

I.

To be timely, a petition for reconsideration must be filed with (i.e., received by) the Appeals Board within 25 days from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903;² Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10615(b),

² All further statutory references are to the Labor Code unless otherwise stated.

10940(a).) A petition for reconsideration of a final decision by a WCJ must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, § 10940(a).)

The Division of Workers' Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19).³ In light of the district offices' closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (*In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020.⁴ Therefore, the filing deadline for a petition for reconsideration that would have occurred during the district offices' closure was tolled until April 13, 2020.

Consequently, lien claimant's Petition was timely filed on April 13, 2020.

II.

The equitable doctrine of laches applies to proceedings before the Appeals Board. (See *Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401-402 [81 Cal.Comp.Cases 685] ["The appeals board has broad equitable powers with respect to matters within its jurisdiction. . . . Thus, equitable doctrines such as laches are applicable in workers' compensation litigation."].) The Appeals Board may apply the doctrine of laches to lien claims. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 68, fn. 11 [50 Cal.Comp.Cases 411] ["a lien claim may be barred by laches if there is unjustifiable delay"].)

The Supreme Court has detailed the requisite showing for a claim to be barred by laches:

As we pointed out in *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351 [82 Cal. Rptr. 337, 461 P.2d 617], the affirmative defense of laches requires unreasonable delay in bringing suit "plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Id.*, at p. 359, fns. omitted.) Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue. (*Id.*, at p. 361.) Generally

³ The March 16, 2020 DWC Newline may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

⁴ The April 3, 2020 DWC Newline regarding reopening the district offices for filing may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances...

(Miller v. Eisenhower Medical Center (1980) 27 Cal.3d 614, 624.)

It is acknowledged that there was a substantial delay between the lien claim's filing and lien claimant's pursuit of reimbursement. The WCJ in his Opinion on Decision and Report indicates that prejudice to defendant may be presumed by this delay. However, defendant must show that it was actually prejudiced by the delay.

The WCJ cited to *Wright v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 95 (writ den.) in support of his conclusion that the "destruction of the file and the protracted extent of delay constitute prejudice." (Opinion on Decision, February 26, 2020, p. 1.) In *Wright*, the employee filed two applications for adjudication of claims in 2004 for injuries sustained in 1962 and 1965. The claims were found to be barred by laches because the insurer's file was closed in 1970, the file was destroyed and the claims adjuster was deceased.

In this matter, defendant only offered two exhibits at trial to dispute the lien claim: an EAMS lien printout for the case and Elaine Taite's deposition transcript. No witnesses were offered by defendant. The WCJ presumed that defendant's file has been destroyed, but there is no evidence in the record to support this presumption. Moreover, defendant has not demonstrated how it was prejudiced by the delay. Consequently, the evidence does not support a finding that the lien is barred by laches.

In conclusion, we will rescind the F&O and return this matter to the trial level for further proceedings. The disputed issues between the parties may be addressed by the trier of fact in the first instance.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on February 27, 2020 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 17, 2022

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

PAPERWORK & MORE
RAMIRO RODRIGUEZ
STATE COMPENSATION INSURANCE FUND

AI/pc

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