

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

HECTOR CARRILLO, *Applicant*

vs.

**TROON GOLF MANAGEMENT;
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, for
LEGION INSURANCE COMPANY, IN LIQUIDATION, *Defendants***

**Adjudication Number: ADJ4642758
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Lien claimant Basso Pharmacy seeks reconsideration of the Findings and Order (F&O) issued on October 10, 2024 by a workers' compensation administrative law judge (WCJ). The WCJ found in relevant part that lien claimant failed to file a declaration as required by Labor Code¹ section 4903.05, and thus, that the lien was dismissed with prejudice by operation of law on July 3, 2017.

Lien claimant contends that it was not required to file a declaration pursuant to section 4903.05 because the lien was filed in 2008, and it was never subject to the declaration requirement in section 4903.05(c)(1).

We received an Answer from defendant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, which recommends that we deny the Petition for Reconsideration.

We have reviewed the record in this case and considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on the reasons set forth below, we deny the Petition for Reconsideration.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

DISCUSSION

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 November 14, 2024, and 60 days from the date of transmission is Monday, January 13, 2025. This decision is issued by or on Monday, January 13, 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 November 14, 2024, and the case was transmitted to the Appeals Board on November 14, 2024. 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 November 14, 2024.

II.

Section 4903.05(c) states in pertinent part, as follows:

(1) **For liens filed on or after January 1, 2017**, any lien claim for expenses under subdivision (b) of Section 4903 that is subject to a filing fee under this section shall be accompanied at the time of filing by a declaration stating, under penalty of perjury, that the dispute is not subject to an independent bill review and independent medical review under Sections 4603.6 and 4610.5, respectively, that the lien claimant satisfies one of the following:

(A) Is the employee's treating physician providing care through a medical provider network.

(B) Is the agreed medical evaluator or qualified medical evaluator.

(C) Has provided treatment authorized by the employer or claims administrator under Section 4610.

(D) Has made a diligent search and determined that the employer does not have a medical provider network in place.

(E) Has documentation that medical treatment has been neglected or unreasonably refused to the employee as provided by Section 4600.

(F) Can show that the expense was incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

(G) Is a certified interpreter rendering services during a medical-legal examination, a copy service providing medical-legal services, or has an expense allowed as a lien under rules adopted by the administrative director.

(2) Lien claimants shall have until July 1, 2017, to file a declaration pursuant to paragraph (1) **for any lien claim filed before January 1, 2017**, for expenses pursuant to subdivision (b) of Section 4903 that is subject to a filing fee under this section.

(3) **The failure to file a signed declaration under this subdivision shall result in the dismissal of the lien with prejudice by operation of law.** Filing of a false declaration shall be grounds for dismissal with prejudice after notice.

(Lab. Code, § 4903.05(c)(1)-(3), emphasis added.)

In this case, it is undisputed that lien claimant filed a lien pursuant to section 4903(b) on April 17, 2008. The parties stipulated that lien claimant paid an activation fee of \$100.00 on December 28, 2015. (Minutes of Hearing/Summary of Evidence (MOH) and Amended MOH, October 10, 2024.) They further stipulated that lien claimant did not file a lien declaration pursuant to section 4903.05(c)(1). (*Ibid.*) The WCJ correctly found that as a result, lien claimant's lien was dismissed with prejudice by operation of law as of Monday, July 3, 2017.²

Nonetheless, lien claimant contends that:

Basso could not have legally filed such a declaration because its lien met none of the seven distinct requirements set forth in the Code. It had no obligation at the time of the original lien filing to consider any of these requirements because they in fact did not yet exist. So, based upon this decision, it can be logically concluded that the lien claimant was left with two unsavory choices; one, to commit perjury by signing a declaration they knew to be false and misleading or two, not file such a declaration and have their lien dismissed with prejudice. Contrary to the Opinion on Decision and the case cited in that opinion, this petitioner does not believe this was the legislative intent in crafting the additional language in subsection (c)(1) of Labor Code 4903.05.

(Petition for Reconsideration, p. 3, line 28 – p. 4, line 8.)

Sections 4903.05 and 4903.06 were added by Senate Bill (SB) 863 in 2012 and became effective January 1, 2013. Section 4903.05 was amended in 2016 by SB 1160 to add subdivision (c), the declaration requirement. The declaration requirement was described as an “anti-fraud measure.” (Sen. Rules Com., Off. of Sen. Floor Analysis, Analysis of Sen. Bill No. 1160 (2015-1016 Reg. Sess.), as amended August 29, 2016, p. 4.) The anti-fraud measures in SB 1160 were described in relevant part as follows:

- 14) Requires, for liens filed on or after January 1, 2017, a lien filer to specify in the lien filing the basis upon which the lien is authorized.
- 15) Requires these same data elements to be added to pre-existing liens, but allows until July 1, 2017, for lien filers to comply.

² Lien claimants had until Monday, July 3, 2017 at 5:00 p.m., to file a lien declaration. (*Henkel Corporation v. Workers' Comp. Appeals Bd. (Hernandez)* (2018) 3 Cal.Comp.Cases 1424, 1426 [2018 Cal.Wrk.Comp. LEXIS 64] (Appeals Bd. en banc) (writ den.); *Rodriguez v. Garden Plating Co.* (2017) 82 Cal.Comp.Cases 1390 [2017 Cal.Wrk.Comp. LEXIS 124] (Appeals Bd. en banc).)

16) Provides that the failure to comply with the requirements noted above results in a dismissal of the lien with prejudice (*Ibid.*)

The Analysis of SB 1160 commented on the anti-fraud measures contained in the bill as follows:

In a recent letter to the Commission on Health and Safety and Workers' Compensation, the author of SB 1160 identified fraud in the workers' compensation system as a fundamental challenge. Specifically, the letter cited the recent press coverage by the Center of Investigative Reporting, which detailed more than \$1 billion in fraudulent activity by a variety of medical providers. The schemes have one common feature: the use of the workers' compensation lien system to monetize the fraud. Despite the criminal charges, medical bills and workers' compensation liens from doctors charged or even convicted of medical fraud continue to be pursued. Please see Senate Labor and Industrial Relations Committee policy analysis for an example of these schemes.

Overall, DWC places the dollar amount of liens held by providers who have been charged or convicted of workers' compensation fraud at \$600 million – or 17% of all liens in the system.

SB 1160 addresses fraud in the workers' compensation lien process in three ways:

...

Second, SB 1160 requires all lien claimants to file a declaration as to which specific category provided under existing law allows the claimant to file a lien. As the statute that provides the specific categories for filing a lien is unchanged by SB 1160, the causes for filing a lien under existing law remain unchanged by SB 1160 – including denied industrial injuries. ***The only change is that a lien claimant must now file a declaration to support an assertion of rights.*** (*Id.*, at p. 6, italics in the original, bold added.)

The legislative intent for the amendment of section 4903.05 to add the declaration requirement was to impose that requirement on “all lien claimants.” (*Ibid.*) Section 4903.05(c)(1) addresses the declaration requirement for those liens filed after January 1, 2017, and section 4903.05(c)(2) addresses the declaration requirement for those liens filed before January 1, 2017.

Therefore, we will not – and cannot upset the legislative intent of the declaration requirement as requested by lien claimant. It is a cardinal rule of statutory construction that courts will choose that interpretation which most nearly effectuates the purpose of the Legislature. (Code Civ. Proc., § 1859.) ““Once a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.” [Citation.]”

(*Southland Mechanical Constructors Corp. v. Nixen* (1981) 119 Cal.App.3d 417, 430 [173 Cal.Rptr. 917].) “The courts resist blind obedience to the putative ‘plain meaning’ of a statutory phrase where literal interpretation would defeat the Legislature’s central objective.” (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d 605, 614 [200 Cal.Rptr. 575], fn. omitted.) (*Graham v. Workers’ Comp. Appeals Bd.* (1989) 210 Cal.App.3d 499, 507.)

Accordingly, lien claimant was subject to the requirement to file a declaration pursuant to section 4903.05(c)(2), and had until 5:00 p.m. on Monday, July 3, 2017 to do so. As a result, lien claimant’s lien was dismissed with prejudice by operation of law as of Monday, July 3, 2017 at 5:01 p.m.

To the extent that lien claimant asserts that it was unable to comply with the declaration requirement because it does not fit within any of the seven enumerated categories in section 4903.05, subdivision (c)(1), lien claimant’s argument is disingenuous and borders on frivolous, because in order to prevail on its burden on its lien, it would have had to show that its treatment was authorized by defendant ((c)(1)(C)) or that medical treatment was neglected or unreasonably denied by defendant ((c)(1)(E)). With respect to lien claimant’s reference to the website of the Department of Industrial Relations (DIR), while the DIR website provides a helpful public service, our decision is based on the record before us and the statutory framework in the Labor Code, and lien claimant’s apparent claim that it somehow relied on the website is unpersuasive.

We turn next to the issue of timeliness. To be timely, a petition for reconsideration must be filed and received by the Appeals Board within 20 days of the service of the final order, plus an additional five days if service of the decision is by any method other than personal service, including by e-mail or mail, upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10507(a)(1).) The time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers’ Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

If lien claimant believed that its lien was wrongly dismissed by operation of law for failure to comply with the declaration requirement of section 4903.05(c)(2), it should have sought reconsideration by Monday, July 24, 2017 (20 days after July 3, 2017 fell on Sunday, July 23, 2017).³

However, the issue before us is the WCJ's F&O of October 10, 2024. We agree with the WCJ that he correctly found that the lien was dismissed by operation of law for lien claimant's failure to file the required declaration, and we are without jurisdiction to disturb the order dismissing the lien.

Accordingly, we deny the Petition for Reconsideration.

³ To the extent that the panel in *Montelongo v. Gelson's Mkt* 2022 Cal. Wrk. Comp. P.D. LEXIS 41 (ADJ2192246) concluded that the petition for reconsideration was untimely, we respectfully disagree. Upon further consideration, we believe that the petition for reconsideration of the WCJ's decision was timely, so that it should have been denied. However, we agree with the overall conclusion of *Montelongo* that lien claimant should have sought reconsideration of the original order dismissing the lien by operation of law by Monday, July 24, 2017, and we agree that we are without jurisdiction to disturb that order.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order issued on October 10, 2024 by a workers' compensation administrative law judge is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 13, 2025

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

**BASSO PHARMACY
PINNACLE LIEN SERVICES
HERMANSON, GUZMAN & WANG, A P.C.
HINDEN & BRESLAVSKY, APLC**

AS/mc

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