WORKERS' COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

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DOUG BROCK.

Applicant,

VS.

Defendants.

COUNTY OF PLACER, permissibly self-

HOLDINGS INSURANCE SERVICES.

insured, adjusted by INTERCARE

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Case No.

ADJ8897986

OPINION AND ORDER **DENYING PETITION FOR** RECONSIDERATION

(Sacramento District Office)

Lien claimant Med-Legal seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 11, 2019. As relevant herein, the WCJ denied lien claimant's lien and found that lien claimant was not entitled to its lien filing fee. In the Opinion on Decision, the WCJ stated that: 1) two invoices for U.C. Davis Medical Center records had been paid in full; 2) an invoice for Miners Family Health Center records was also paid in full; 3) defendant provided a recalculation of the charges for invoice 1209334 for Dr. Kurtis Fox's records (Fox Invoice) and paid the recalculated amount on October 1, 2014; and 4) lien claimant was not entitled to its lien filing fee because it did not obtain an award equal to or greater than its settlement demand.

Lien claimant contends that defendant waived any objections to the reasonableness or necessity of another invoice for U.C. Davis Medical Center records for \$1,384.36 served on November 17, 2014, (November 17, 2014 U.C. Davis Invoice) by failing to lodge a timely objection; that defendant failed to respond with a final written determination within 14 days of lien claimant's timely objection on November 6, 2014, related to the Fox Invoice;² that lien claimant is entitled to penalty and interest on its

¹ The WCJ issued a prior F&O on November 30, 2018, in which he addressed the November 17, 2014 U.C. Davis Invoice. Lien claimant did not raise the November 17, 2014 U.C. Davis Invoice as an issue when it sought reconsideration on December 21, 2018, of the November 30, 2018 F&O. In the instant Petition for Reconsideration, lien claimant has raised for the first time the November 17, 2014 U.C. Davis Invoice.

² Section 4622(b)(3) states, "[w]ithin 14 days of the request for second review, the employer shall respond with a final written determination on each of the items or amounts in dispute, including whether additional payment will be made. (Lab. Code, § 4622(b)(3).)

invoices; and that lien claimant is entitled to reimbursement of its lien filing fee.

Defendant filed an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

FACTUAL BACKGROUND

The parties stipulated that applicant, while employed during the period of December 7, 2011, to December 7, 2012, as a correctional officer by defendant, claims to have sustained injury arising out of and in the course of employment to his neck, knee, back, psyche, and hips. (Minutes of Hearing (MOH), August 8, 2019, p. 2:7-10.)

Lien claimant initially sought payment for seven invoices: five invoices for records from U.C. Davis Medical Center, which includes the November 17, 2014 U.C. Davis Invoice (Exhibits 16, 17, 20-22, Invoices, August 12, 2013, January 23, 2014, November 10, 2014, and November 12, 2014); one invoice for records from Miners Family Health Center on April 22, 2014 (Ex. 18, Invoice, April 22, 2014); and the one invoice for the records from Dr. Kurtis Fox (Ex. 19, Invoice, August 19, 2014). Lien claimant specifically addresses the Fox Invoice (Invoice 1209334) and the November 17, 2014 U.C. Davis Invoice (Invoice 1243809) in this Petition.

On September 15, 2014, defendant objected to the reasonableness and necessity of the services in the Fox Invoice and calculated that \$91.63 was the reasonable amount for the copying services. (Ex. F, Objection to Invoice 1209334, September 15, 2014.)

On November 6, 2014, lien claimant purportedly responded to defendant's September 15, 2014 objection to the Fox Invoice. (Ex. 26, Med-Legal Response to Objection, November 6, 2014.)

On June 20, 2015, lien claimant served a 30-day settlement demand to resolve its lien for \$994.21. (Ex. 24, 30-Day Settlement Demand, June 20, 2015.)

On November 30, 2018, a WCJ issued a Findings and Order, denying reimbursement of all seven invoices. In the Opinion on Decision on November 30, 2018, the WCJ concluded that four invoices,

which included the Fox Invoice, were barred by the 18-month statute of limitations; and that the remaining three invoices, which included the November 17, 2014 U.C. Davis Invoice, were not barred by the 18-month statute of limitations. The WCJ, however, found that defendant had paid the reasonable cost of these three invoices and denied lien claimant's lien.

On December 21, 2018, lien claimant filed a Petition for Reconsideration only raising the statute of limitations issue.

On February 22, 2019, the Appeals Board granted lien claimant's Petition, concluded that lien claimant's four invoices were not barred by the statute of limitations, rescinded the November 30, 2018 Findings and Order, and returned the matter to the trial level for further proceedings.

On August 8, 2019, a WCJ held another hearing, and the parties submitted the matter on the prior record.

On October 11, 2019, in a second F&O, the WCJ denied reimbursement of the four invoices addressed by the Appeals Board. In the Opinion on Decision, the WCJ explained that defendant provided a recalculation of the Fox Invoice, which it paid in full; and the other three invoices had also been paid in full.

In the instant Petition, lien claimant raised four issues as described above.

DISCUSSION

I.

In the February 22, 2019 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, the panel rescinded the entire November 30, 2018 Findings and Order.³

Lien claimant argues that defendant objected to the November 17, 2014 U.C. Davis Invoice on February 18, 2015, more than 60 days after the invoice was served on November 17, 2014. According to lien claimant, defendant waived all objections to the reasonableness or necessity of incurring this expense pursuant to section 4622(e)(1), WCAB Rule 10451.1(f)(1), and Otis v. City of Los Angeles (1980) 45

³ We address lien claimant's argument regarding the November 17, 2014 U.C. Davis Invoice, even though this invoice was not raised as an issue in lien claimant's initial Petition for Reconsideration on December 21, 2018. Since the F&O was rescinded in its entirety, lien claimant can raise all issues now and section 5904 does not apply. (Lab. Code, § 5904.)

Cal.Comp.Cases 1132 [1980 Cal. Wrk. Comp. LEXIS 3527] (Appeals Board en banc). (Lab. Code, § 4622(e)(1); Cal. Code Regs., tit. 8, § 10451.1(f)(1).)

On November 14, 2019, subsequent to lien claimant's November 5, 2019 Petition, the Appeals Board issued an en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 [2019 Cal. Wrk. Comp. P.D. LEXIS 388] (Appeals Board en banc) clarifying lien claimant's burden of proof pursuant to sections 4620 and 4621. As relevant herein, we held in *Colamonico* that a defendant does not waive an objection based on section 4620 or 4621 by failing to raise these objections in accordance with section 4622; and that our holding in *Otis* was inconsistent with section 4622 and not applicable to the statutory framework of sections 4620, 4621, or 4622.

Based on the reasoning as clarified in *Colamonico*, lien claimant's argument for the reimbursement of the November 17, 2014 U.C. Davis Invoice is not persuasive.

II.

Assuming a lien claimant has met its burden of proof pursuant to sections 4620 and 4621, the analysis shifts to the reasonable value of the services pursuant to section 4622. A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant essentially has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. If a defendant does not pay the invoice in full within 60 days, "the portion of the billed sum then unreasonably unpaid shall be increased by 10 percent, together with interest thereon at the rate of 7 percent per annum retroactive to the date of receipt of the bill and report by the employer." (Lab. Code, § 4622(a)(1).) If a defendant pays the invoice in full within 60 days, it will avoid additional costs in the form of a penalty and interest.

Should a defendant decide to pay less than the full amount within the 60-day window, it can still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment.⁵ Section 4622 requires that a defendant's EOR comply with section 4603.3. (Lab. Code, §§

⁴ If the invoices are served by mail, the time period for a California defendant to respond is extended five calendar days. (Cal. Code Regs., tit. 8, § 10507(a)(1).)

⁵ Should a defendant decide to pay nothing, the defendant still must provide an explanation in an EOR.

4622(a)(1), (e)(1); 4603.3.) This is defendant's burden of proof. If a defendant does not pay a proper medical-legal invoice in full and fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider's billing. (Cal. Code Regs., tit. 8, § 10451.1(f)(1)(A).) A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest. A lien claimant has the burden of proof of the reasonable value of its services.

On the other hand, should a defendant provide a timely, compliant EOR in response to a lien claimant's invoice, and a lien claimant is not satisfied with the amount paid, then a lien claimant must either request a second bill review or file an objection to the EOR, depending on whether the dispute is subject to Independent Bill Review (IBR). (See section 4622(b)(2) and (c).) If IBR is not applicable, then a lien claimant has 90 days to object to a defendant's EOR; and then a defendant shall file a petition and a declaration of readiness to proceed with the appeals board within 60 days of service of a lien claimant's objection. (Lab. Code, § 4622(c).)

Here, the Fox Invoice was served by mail on August 25, 2014. As the copying services in the Fox Invoice were performed prior to July 1, 2015, IBR is not relevant, and the framework laid out in section 4622(c) is applicable.

On September 15, 2014, defendant objected to the reasonableness and necessity of the copying services in the Fox Invoice and determined that \$91.63 was a reasonable amount for the services. Lien claimant purportedly responded to defendant's objection on November 6, 2014. The issue, however, is that there is no evidence, such as a proof of service or testimony from a witness, that lien claimant's purported response to defendant's objection was actually sent to defendant on or about September 15, 2014. Thus, lien claimant has not satisfied its burden of proof that it objected to defendant's objection within the 90-day window pursuant to section 4622(c). "If the provider does not object to the denial within 90 days, neither the employer nor the employee shall be liable for the amount that was denied." (Lab. Code, § 4622(c).) For these reasons, defendant is not liable to lien claimant for any amount, above what defendant already paid related to the Fox Invoice.

Lien claimant argues that it is entitled to penalty and interest. Lien claimant's argument consists of two sentences: "Defendant did not timely object and failed to object and did not make any payments," and "In the instant case, defendant failed to object timely and objected timely, but failed to issue a final written determination." Lien claimant failed to identify which invoices defendant allegedly failed to object to, which invoices defendant allegedly objected to untimely, and which invoices defendant allegedly did not make any payments. Additionally, it is unclear if lien claimant is also requesting the imposition of a penalty and interest on invoices that defendant paid less than the full amount. Thus, lien claimant has failed to sustain its burden of proof that it is entitled to a 10 percent penalty and 7 percent interest. Furthermore, we note that lien claimant's statements are inconsistent with each other as well as with its summary of facts in its Petition. Despite lien claimant's statement that defendant "did not make any payments," lien claimant conceded in its summary of facts that lien claimant provided a reduced payment for two invoices. Lastly, lien claimant failed to make references to the record in compliance with WCAB Rule 10842(b)(2) (Cal. Code Regs., tit. 8, § 10842(b)(2)). There is no reference to any documentary evidence in its arguments for penalty and interest.

As for lien claimant's lien filing fee, there is no evidence that lien claimant is entitled to an award equal to or greater than \$994.21. (See Ex. 24; Lab. Code, § 4903.07.) Thus, lien claimant has not met its burden of proof that it is entitled to its lien filing fee.

Accordingly, we will deny lien claimant's Petition for Reconsideration.

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1 For the foregoing reasons, IT IS ORDERED that lien claimant's Petition for Reconsideration of the WCJ's October 11, 2 3 2019 Findings and Order is **DENIED**. 4 5 WORKERS' COMPENSATION APPEALS BOARD 6 8 9 I CONCUR, 10 11 DEIDRA E. LOWE 12 PARTICIPATING, BUT NOT SIGNING 13 14 15 **MARGUERITE SWEENEY** DATED AND FILED AT SAN FRANCISCO, CALIFORNIA 16 17 JAN 0 6 2020 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR 18 ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD. 19 **COUNTY OF PLACER** 20 **DOUG BROCK** 21 INTERCARE HOLDINGS INSURANCE SERVICES **MED-LEGAL PHOTOCOPY** 22 TWOHY DARNEILLE & FRYE 23 24

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