

1                                   **WORKERS' COMPENSATION APPEALS BOARD**  
2   **STATE OF CALIFORNIA**  
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4   **ALICIA GARIBAY,**  
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6                                   *Applicant,*

7   *vs.*

8   **FEDERATED LOGISTICS, doing business as**  
9   **MACY'S, permissibly self-insured,**

10                                   *Defendants.*

Case No. ADJ3854111 (MON 0353849)  
(Long Beach District Office)

**ORDER DENYING  
PETITION FOR  
RECONSIDERATION**

11           We have considered the allegations of the Petition for Reconsideration and the contents of the  
12 report of the workers' compensation administrative law judge with respect thereto. Based on our  
13 review of the record, and for the reasons stated in said report which we adopt and incorporate, we will  
14 deny reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Reconsideration be, and it hereby is, **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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8 **MARGUERITE SWEENEY**

9 **I CONCUR,**

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12 **DEIDRA E. LOWE**

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15 **ALFONSO J. MORESI**



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17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **JUN 27 2013**

19  
20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **MEDICAL RECOVERY**  
23 **ORTHOGEAR**  
24 **PAULA DIONNE**

25 sye  
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STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ3854111

(Long Beach District Office)

ALICIA GARIBAY

-vs.-

FEDERATED LOGISTICS;  
MACYS REDONDO BEACH;

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE:

Mary Anne Thompson

DATE: 06/17/2013

**REPORT AND RECOMMENDATION**  
**OF WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE ON**  
**PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Lien Claimant, Orthogear, has filed a timely and verified Petition for Reconsideration to the 4-19-2013 Order which dismissed the lien for non-payment of the lien activation fee pursuant to Labor Code §4903.06. Lien Claimant asserts that it was improper for the lien conference to be scheduled and that lien claimant assumed that the lien conference would be taken off calendar and therefore the order dismissing the lien is improper. No Answer has been received.

II

BASIC FACTS

Applicant, born [REDACTED], alleged a CT from 2-28-2006 thru 5-2007, while employed by Macy's, permissibly self-insured, as a merchandise processor.

The underlying case has not been resolved by settlement or trial or dismissal.

On 8-1-2012, another lien claimant filed a Declaration of Readiness (DOR) for a lien conference including verification under Rule 10770.6. Thus, the case was set for a lien conference on 3-14-2013. The Board file appears to reflect notice to Orthogear.

Applicant's attorney filed an objection by letter dated 9-27-2012. He did not serve lien claimants with the objection. Orthogear did not object to the lien conference. Nevertheless, the lien conference was scheduled for 3-14-2013.

At the 3-14-2012 lien conference, many lien claimants appeared. Orthogear did not pay the lien activation fee per review of the EAMS system and therefore, the lien was dismissed on 4-19-2013.

### III

#### ISSUES AND ARGUMENTS

A. BECAUSE THE LIEN CONFERENCE WAS SET BEFORE THE UNDERLYING CASE WAS RESOLVED, SHOULD LIEN CLAIMANT BE EXCUSED FROM FILING THE LIEN ACTIVATION FEE?

As lien claimant so eloquently states, the lien conference was set because of a "bogus" Declaration of Readiness to Proceed (DOR).

Rule 10770.1 (a) provides in relevant part that a lien conference shall be set if a lien claimant who is a party under Rule 10301 (x)(3) files a DOR. Rule 10301 (x) (3) makes a lien claimant a party if the underlying case has been resolved. Here, clearly, the DOR was filed by a lien claimant when the underlying case was not resolved.

So what shall we do when faced with a "bogus" Declaration of Readiness (DOR)?

Labor Code §4903.06 provides that a lien activation fee shall be paid prior to the lien conference. Recently, in *Figuroa v. Employers Comp Ins*, the WCAB en banc held that Labor Code Section 4903.06 states that a lien shall be dismissed for failure to pay the lien activation fee

prior to the lien conference and found that breach of Defendant's duty to serve medical reports did not excuse the requirement of payment of the lien activation fee.

Therefore, because Labor Code §4903.6 was enacted as part of Legislation designed to specifically deal with the perceived lien crisis overwhelming the workers' compensation system and because Labor Code §4903.06 is very clear that the lien activation fee shall be paid, it is the understanding of this WCJ that even though the lien conference was set inappropriately, that the lien should be dismissed for failure to pay lien activation fee.

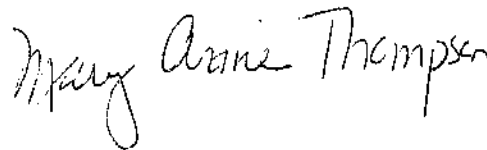
Remember, lien claimant admits to notice of the lien conference, but just assumed that it would go off calendar. This is not some unintentional mistake. Lien Claimant deliberately assumed that it didn't have to pay the lien activation fee and did not have to appear at a lien conference!!!! This shows a complete disregard for the authority of the WCAB and Rules 10770.1(d) and 10562.

#### IV

#### CONCLUSION

It is respectfully requested that the Petition for Reconsideration be dismissed. It is further suggested that sanctions may be in order.

DATE: 06/17/2013



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**Mary Anne Thompson**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

SERVICE:  
MEDICAL RECOVERY GARDENA, US Mail (Representative for Orthogear)  
PAULA DIONNE LOS ANGELES, US Mail

ON: 06/17/2013  
BY: Del Reyes