WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAUSTO VALIENTE, ***Applicant,*** **vs.** **CUSTOM FURNITURE & CABINETS INC.; AMERICAN ALL RISK LOSS,** ***Defendants.***	**Case No. ADJ7271105** **(Long Beach District Office)** **OPINION AND ORDER GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL**

Defendant has filed a timely, verified Petition for Removal, requesting that the Appeals Board rescind the Order dated January 17, 2013, wherein the workers' compensation administrative law judge (WCJ) ordered this matter off calendar, stating: "Defer issues of service of medicals; petition is needed. Both need to meet-confer to try to resolve dispute." Petitioner contends that the case should have been continued to lien trial because lien claimant Joyce Altman Interpreters (LC) had declared under penalty of perjury in its Declaration of Readiness to Proceed (DOR) dated November 16, 2012, that it had completed discovery; that LC should have filed a petition pursuant to Labor Code section 4903.6(d)[1] prior to the lien conference on January 17, 2013; and that the WCJ should have ruled on LC's discovery request at the conference. LC has not filed an answer.

Applicant's case was dismissed by Order Dismissing Case dated November 8, 2012. On November 16, 2012, LC filed a DOR requesting a lien conference. The case was set for lien conference on January 17, 2013. Meanwhile, on January 1, 2013, section 4903.6(d) became operative. That section provides: "With the exception of a lien for services provided by a physician as defined in Section 3209.3, no lien claimant shall be entitled to any medical information, as defined in subdivision (g) of

[1] Unless otherwise specified, all statutory references are to the Labor Code.

Section 50.05 of the Civil Code, about an injured worker without prior written approval of the appeals board. Any order authorizing disclosure of medical information to a lien claimant other than a physician shall specify the information to be provided to the lien claimant and include a finding that such information is relevant to the proof of the matter for which the information is sought."

LC, who is not a physician, did not file a petition for an order authorizing disclosure of medical information prior to the lien conference. Nonetheless, at the lien conference LC demanded service of medical records. The WCJ took the matter off calendar and deferred the issue of service of medical records pending the filing of a petition.

In order to obtain an order pursuant to section 4903.6(d), LC must file a petition specifying the medical information to be provided and the relevance of that information to the proof of the reasonableness and necessity of the services that are the subject of LC's lien. Since the statute requires a written approval, the WCJ was correct to defer the issue pending the filing of a petition, assuming that defendant had indeed requested such a ruling from the bench.

However, the case should again be set for a lien conference, so that all outstanding liens can be resolved or set for trial. Therefore, we grant defendant's Petition for Removal, and return this matter to the trial level to be set for lien conference. All lien claimants who remain lien claimants of record, who are not physicians, and who wish to obtain medical information, including LC, shall file petitions for authorization of disclosure of that medical information within thirty days of the date of service of this decision. The WCJ shall rule on the petitions prior to the lien conference, so that the lien claimants can get the medical information to which they are entitled. No lien claimant who has not filed a petition for authorization of disclosure of medical records shall be heard to demand service of medical records at the next lien conference.

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For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order dated January 17, 2013, is **RESCINDED.**

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order the hearing off calendar. Second, the judge should have at the time of the hearing, heard and ruled upon the merits of one of the lien claimant's request for medical records, and noted such in the record. Third, at most, the lien conference should have been continued, instead of the OTOC's legal effect of having all parties, including defendant, barred from filing another DOR for 90 days.

B. *Lack of Urgent Need for Continuance at the Time of the January Lien Conference*

The law and practical realities do not support the Petition for an order to return this matter to a lien conference.

First, whatever the impropriety of the DOR in November 2012, it was done by only one of the numerous other lien claimants in this case. Defendant does not urge that proceedings against or with that lien claimant should be bifurcated from all of the other liens, and that sort of need for extraordinary measures is not apparent. Nor should the discovery rights of all of the other liens have been cut short whatever the impropriety of one of them.

Second, at the time of DOR, Rule 10608 remained in effect. The record is undeveloped as to whether any of the liens made Rule 10608 requests for records before January 1, 2013, although the judge's intuition is that they almost certainly were. Most bills seem to have stock language indicating that if the bill is not paid in full, it is to be considered a 10608 request for medical records. If it is true defendant received such requests, and did nothing in the two months between dismissal of the case in chief and 1/1/2013, it raises an interesting legal issue that may eventually have to be resolved, here or elsewhere.

Third, it would not be appropriate for an oral ruling on a motion made at time of hearing for medical records (other than what was made, which was that it was denied without prejudice). Section 4903.6(d) and the proposed regulations suggest that a petition is required, in part, so that applicant is placed on notice that the records are being sought, and can voice objections if desired. That is apparently why although the regulations give several options for a judge to consider in responding to a petition, an order granting the petition is not permitted. At most, a Notice of Intent to grant the petition may be issued.

Fourth, although defendant reasonably complains about how this case has been further delayed, this is both as intended by the Legislature in the 90-day rule against new DORs, and the practical reality of at least the Long Beach Board. It would appear that between what the Labor Code says and how the Long Beach Board is (inadequately) resourced and equipped, parties' understandable desire for quick and speedy justice is not going to happen.

C. *And a Word About Maintain Records of Proceedings*

Defendant has also complained that the judge declined defendant's request for an extended recordation of the proceedings at the lien conference.

As the Court of Appeal keeps reminding us, we ought to look at how the rest of the judicial system approaches matters. This works not only in properly interpreting legal terms of art, but also how to handle legal proceedings, and the duties expected of parties and the court alike.

The Superior Courts admittedly do a much better job that the Appeals Board in maintaining records, particularly of preliminary proceedings, using a couple of devices in existence for decades. [1] Court reporters or tape recorders making note of everything stated in hearings by the judge and parties. (If someone does not like the results of the hearing and wants to seek an

extraordinary writ with the Court of Appeal, they are invited to pay for transcription of the proceedings and make specific reference to relevant portions in the petition.) [2] Procedurally required filings that must be done by parties (some jointly, some separately) in anticipation of the equivalent of settlement conferences and trial-setting conferences. By doing these things, the Superior Courts place much of the burden on the parties to make as detailed a record of what is at issue at hearings, and what occurred at hearings. This is admittedly a lot of work for litigants to do, and it is at minimum an urban legend that this is what drives many lawyers to become workers' compensation practitioners.

Of course, it is conceivably possible to place all of those duties upon the judge – the judge as transcriber of proceedings, in effect. And, if the judge's hearing load on any given day were light enough, it could happen. After all, judges have now been enlisted to act somewhat as the court cashier on lien conferences, confirming payment of the liens appearing, and dismissing those who do not appear and who do not pay.

This is not a practical solution at the Long Beach Board, not with 40 lien conferences daily, plus all the additional cashier work noted above, and with walkthrough petitions and settlements. Although parties have a right to correct recordation of hearings, they are also entitled to see the judge without undue delay in a queue, particularly where liens representatives typically represent clients at several hearings at a time, and they need to spend as little time as possible waiting in line to see the judge. Therefore, for many rights, the parties have to do some work to ensure their protection, and often work they'd rather not do.

Thus, in this judge's opinion, if he has told the parties that he does not have the time they think he has to act as their transcriber, there is another option: they can be their own transcriber. They can walk away and allow the judge to deal with other cases, while those parties meet and confer further to come up with a mutually acceptable written statement of what has occurred. Of course, they can come back if they have further argument – after they have again waited their turn in line.

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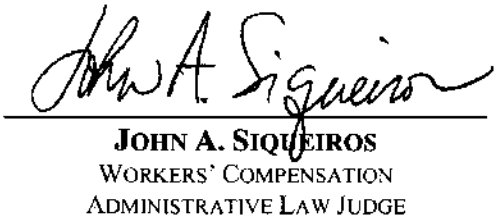
IV.
RECOMMENDATION

The judge recommends that the Appeals Board deny the Petition for Removal.

DATE: February 25, 2012



JOHN A. SIQUEIROS
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served on parties below as shown on the
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