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FACTS

This case involves two claims of injury. In ADJ3823776, applicant claimed that, while employed by defendant as a food service worker from December 5, 2005 to December 5, 2006, sustained an industrial injury to her low back. In ADJ3287103, applicant claimed that, on December 1, 2006, she sustained an industrial injury to her right shoulder, cervical spine, lumbar spine, and psyche. Both cases were resolved by way of Stipulations with Request for Award, and orders approving issued on October 10, 2012.

On November 10, 2009, OLS filed a \$14,755.00 lien on behalf of Dr. Olajide, with the lien reservation number 0004237964. Both the Public Information Search Tool and the record in EAMS reflect that no lien activation fee was paid for this lien.

On November 21, 2012, OLS filed a \$16,335.00 lien on behalf of PCH, with the lien reservation number 0006228012. The Public Information Search Tool indicates that a lien activation fee was paid for this lien on February 12, 2013, which the record in EAMS confirms.¹

On November 21, 2012, OLS also filed a Declaration of Readiness to Proceed, requesting that a lien conference be scheduled. The matter was set for a lien conference on February 12, 2013, to begin at 8:30 a.m.

The Pre-Trial Conference Statement (PTCS) lists two lien claimants, PCH and Dr. Olajide. (PTCS, p. 3.) Additionally, the PTCS contains a stipulation that OLS, "as representative for Pacific Chiropractic" paid the lien activation fee between 9:55 a.m. and 11:21 a.m. on February 12, 2013. (PTCS, p. 2.)

At 8:32 a.m. on February 12, 2013, the parties appeared for a lien conference, at which the WCJ (a) scheduled a lien trial for May 28, 2013, and (b) dismissed Dr. Olajide's lien. The WCJ noted in his February 12, 2013 Order that he checked for payment of the lien activation fee for Dr. Olajide's lien using the Public Information Search Tool at 9:55 a.m. on the date of the hearing, and that there was no

¹ Although Ms. Inness's claims were consolidated into one matter, it appears that OLS filed the lien on behalf of Dr. Olajide in ADJ3287103, while it filed the lien on behalf of PCH in ADJ3823776.

1 record of payment. (See also Report, p. 4.)

2 Lien claimants timely sought reconsideration, contending that the WCJ erred in dismissing
3 Dr. Olajide's lien. In its Petition, OLS argues that Dr. Olajide and PCH are one and the same entity, with
4 one lien in the amount of \$16,335.00 outstanding, and the lien activation fee paid on February 12, 2013
5 should have been applied to that outstanding lien.

6 DISCUSSION

7 Under Labor Code section 4903.06, subdivisions (a) and (a)(1), any lien filed before
8 January 1, 2013 is subject to a \$100.00 lien activation fee unless the lien claimant "provides proof of
9 having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the
10 Statutes of 2003." A lien claimant must include proof of payment of the lien activation fee with its
11 declaration of readiness to proceed. (Lab. Code, § 4903.06(a)(2).) A lien claimant who does not file a
12 declaration of readiness to proceed must submit proof of payment of the activation fee at the lien
13 conference. (Lab. Code, § 4903.06(a)(4).) If a lien claimant does not pay the activation fee or submit
14 proof of payment of the activation fee, the lien "shall be dismissed with prejudice." (*Ibid*; see also
15 *Figueroua v. B.C. Doering Co.* (2013) 78 Cal.Comp.Cases 439 (Appeals Board en banc) (lien activation
16 fees "must be paid prior to the commencement of a lien conference, which is the time that the conference
17 is scheduled to begin, not the time when the case is actually called").)

18 Here, it appears that OLS has filed two liens, one on behalf of Dr. Olajide and one on behalf of
19 PCH. Both liens were filed before January 1, 2013, and are therefore subject to the requirements of
20 Labor Code section 4903.06. OLS paid one lien activation fee, although it is not entirely clear at what
21 time (the WCJ's Report states that the payment was made between 9:55 a.m. and 11:21 a.m. on
22 February 12, 2013, while the PTCS reflects a payment time of 9:55 a.m. on February 12, 2013). Further,
23 although an OLS hearing representative – O. Uwadia – appeared at the February 12, 2013 lien
24 conference on behalf of PCH, there is no indication in the Minutes of Hearing that this hearing
25 representative also represented Dr. Olajide at the lien conference, informed the WCJ that PCH and Dr.
26 Olajide are the same entity, or objected to the dismissal of Dr. Olajide's lien.

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1 In light of the confusion surrounding these liens, we will grant OLS's Petition, rescind the WCJ's
2 Order, and return the matter to the WCJ. Upon return, the WCJ should vacate the date of the lien trial
3 currently on calendar and schedule a new lien conference to address the above issues, at which OLS
4 should be prepared to demonstrate to the WCJ that it has met its burden under Labor Code section
5 4903.06. We note, however, that this does not give OLS, Dr. Olajide, or PCH additional time to pay an
6 additional lien activation fee; instead, they must show timely payment as required under Labor Code
7 section 4903.06 and *Figueroa*. We also note that, if OLS intended to file two separate liens, each before
8 January 1, 2013, Labor Code section 4903.06 requires the payment of two lien activation fees.

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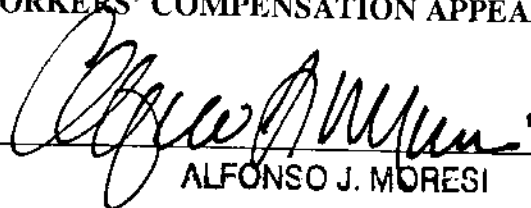
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1 For the foregoing reasons,

2 **IT IS ORDERED** that lien claimant's Petition for Reconsideration of the May 16, 2013 Order
3 Dismissing Lien Claim for Failure to Pay Lien Activation Fee Prior to Lien Conference is **GRANTED**.

4 **IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers'
5 Compensation Appeals Board, that the May 16, 2013 Order Dismissing Lien Claim for Failure to Pay
6 Lien Activation Fee Prior to Lien Conference is **RESCINDED** and the matter is **RETURNED** to the
7 WCJ for further proceedings and a new decision by the WCJ consistent with this opinion.

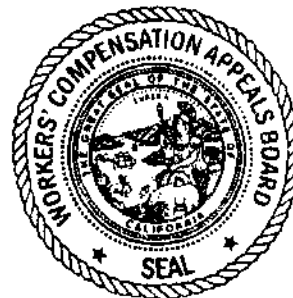
8 **WORKERS' COMPENSATION APPEALS BOARD**

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11 **ALFONSO J. MORESI**

12 I CONCUR,

13 
14 **CRISTINE E. GONDAK** **DEPUTY**

15
16 CONCURRING, BUT NOT SIGNING
17 **DEIDRA E. LOWE**



18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20
21 **JUL 26 2013**

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

24 **G. OLAJIDE, D.C.**
25 **PACIFIC CHIROPRACTIC HEALTHCARE**
26 **OPTIMUM LIEN SERVICES**
27 **LAW OFFICES OF SCHLOSSBERG & UMHOLTZ**

28 **RB/sye**

29 **INNISS, Jemma**