

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **OMAYRA GUERRERO,**

5 *Applicant,*

6 **vs.**

7 **EASY STAFFING; LUMBERMEN'S**
8 **UNDERWRITING ALLIANCE,**

9 *Defendants,*

10 **ADVANCE CARE SPECIALIST MEDICAL**
11 **CLINIC,**

12 *Lien claimant.*

Case No. **ADJ87 41561**
(Long Beach District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

13
14 We earlier granted the petition of lien claimant Advance Care Specialist Medical Clinic
15 (ACSMC) for reconsideration of the December 9, 2015 Order of the workers' compensation
16 administrative law judge (WCJ) who found that the ACSMC lien is "barred by statute of limitations per
17 Labor Code 4903.5(a) with prejudice."¹

18 ACSMC contends that the WCJ misapplied Labor Code section 4903.5(a) in dismissing its lien
19 because that it first provided services to applicant before July 1, 2013, and for that reason the three years
20 limitation period applied from the last date it provided service and not the 18 month limitations period
21 that applies to services provided "on or after July 1, 2013."²

22 An answer was not received.

23 The WCJ provided a Report And Recommendation On Petition for Reconsideration (Report)

24
25 ¹ The Order is not dated, but lien claimant avers that it issued at the lien conference on December 9, 2015.

26 ² Further statutory references are to the Labor Code unless otherwise stated. Section 4903.5(a) provides as follows: "A lien
27 claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after three years from the date the services
were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after
July 1, 2013."

1 recommending that reconsideration be denied.

2 Having carefully reviewed the record and considered the allegations of the petition for
3 reconsideration and the WCJ's Report, we affirm the WCJ's Order for the reasons stated in the Report,
4 which is incorporated by this reference, and for the reasons below.

5 The WCJ explains his view in the Report that the application of the three year or 18 month
6 limitations period in section 4903.5(a) depends upon the date when services were last provided. In this
7 case, it is stipulated that the last date services were provided was on September 23, 2013, and that is "the
8 date the services were provided." (Lab. Code, § 4903.5(a); *Kindelberger v. City of Los Angeles*
9 (ADJ586942/ADJ687483, May 24, 2013) [2013 Cal. Wrk. Comp. P.D. LEXIS 209] (*Kindelberger*)).
10 The September 23, 2013 last date of service is after the July 1, 2013 date referenced in section 4903.5(a),
11 and for that reason the ACSMC lien is subject to the 18 month limitations period established by that
12 statute. In that the lien claim was filed on August 19, 2015, which more than 18 months after the last
13 date services were provided on September 23, 2013, the lien claim is barred by section 4903.5(a).

14 Applying the 18 month limitations period in this case is not unreasonable because the
15 amendments to section 4903.5(a) became effective on January 1, 2013, and ACSMC had a reasonable
16 time within which to timely file its lien. In *Coachella Valley Mosquito & Vector Control Dist. v.*
17 *California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1091-1092, the Supreme Court
18 explained that it is not improper to apply a shortened time period to a cause of action if a party has a
19 "reasonable time" within which to timely file its claim, writing as follows:

20 Legislation that shortens a limitations period is considered procedural and
21 is applied retroactively to preexisting causes of action, so long as parties
22 are given a reasonable time in which to sue. (*Brown v. Bleiberg* (1982) 32
23 Cal.3d 426, 437 [186 Cal.Rptr. 228, 651 P.2d 815]; *Rosefield Packing Co.*
24 *v. Superior Court* (1935) 4 Cal.2d 120, 122-123 [47 P.2d 716]; *Carlson v.*
25 *Blatt* (2001) 87 Cal.App.4th 646, 650-651 [105 Cal.Rptr. 2d 42].) When
26 necessary to provide a reasonable time to sue, a shortened limitations
27 period may be applied prospectively so that it commences on the effective
date of the statute, rather than on the date the cause of action accrued.
(*Rubinstein v. Barnes* (1987) 195 Cal.App.3d 276, 281-282 [240 Cal.Rptr.
535]; *Niagara Fire Ins. Co. v. Cole* (1965) 235 Cal. App. 2d 40, 42-43 [44
Cal.Rptr. 889].)

1 The Appeals Board applied this principle when it addressed the expiration of the right to
2 vocational rehabilitation in *Weiner v. Ralphs Company* (2009) 74 Cal.Comp.Cases 736 (en banc). Citing
3 *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-123, the Appeals Board wrote as
4 follows:

5 By providing in April 2004 that section 139.5 would not be repealed until
6 January 1, 2009, the Legislature, in effect, 'saved' both pending and
7 impending vocational rehabilitation claims for a period of nearly five
8 years. This gave affected employees a reasonable time within which to
9 avail themselves of vocational rehabilitation before the repeal would take
10 effect. (74 Cal.Comp.Cases at 749; cf. *Villatoro v. Kern Labor*
Contracting (ADJ3637976, July 17, 2012) [lien claimant had reasonable
time to file claim before it was barred by new limitations period].)

11 The view of the dissent that the lien claim is timely if it is filed within the longer statutory period
12 was earlier rejected by a panel of the Appeals Board in *Archibald et. al. v. RCD Painting et. al. (Access*
13 *Mediquip)* (ADJ6827249, November 7, 2014) (*Archibald*). In upholding the WCJ's decision that the lien
14 claims in that case were time-barred under section 4903.5(a) because the services were provided before
15 July 1, 2013, but the liens were not filed within three years of the dates of service, the panel noted that
16 the 18 month limitations period in section 4903.5(a) applied to services "provided on or after July 1,
17 2013," writing further as follows:

18 Any alternative interpretation would be absurd...[and]...would lead to the
19 nonsensical result that, if services were provided on or after July 1, 2013, a
20 lien could be filed *either* three years after the date the services were
21 provided *or* 18 months after the date the services were provided. We
22 cannot attribute to the Legislature an intention to create two alternative
statutes of limitations for the exact same services. (3:21-4:3, italics in
original.)

23 Services were provided after July 1, 2013 by ACSMC. For that reason, section 4903.5(a)
24 obligated ACSMC to file its lien claim within 18 months after the last date of service in September 2013.
25 ACSMC did not file its lien within that reasonable period of time, and its claim was properly dismissed
26 by the WCJ for that reason.

27 ///

1 For the foregoing reasons,

2 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
3 Board that the petition of lien claimant Advance Care Specialist Medical Clinic for reconsideration of the
4 December 9, 2015 Order of the workers' compensation administrative law judge is **DENIED**.

5
6 **WORKERS' COMPENSATION APPEALS BOARD**

7
8 

9 **RONNIE G. CAPLANE**

10 **I CONCUR,**

11
12 

13
14 **JOSÉ H. RAZO**

15 **I DISSENT. (See Separate Dissenting Opinion.)**

16
17 

18
19 **MARGUERITE SWEENEY**



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

21 **MAR 18 2016**

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

24 **ADVANCE CARE SPECIALIST MEDICAL CLINIC**
25 **INNOVATIVE MEDICAL MANAGEMENT**
26 **DIETZ, GILMOR & CHAZEN**
27 **OMAYRA GUERRERO**

JFS/ara 

GUERRERO, Omayra

1 after July 1, 2013, is consistent with the panel decision in *Kindelberger*. In *Kindelberger*, the panel was
2 required to construe the phrase “the date services were provided” as used in section 4903.5(a) in response
3 to the defendant’s contention that the meaning of the phrase changed when the statute was amended to its
4 current form to include the two limitations periods.³ In *Kindelberger*, the defendant argued that the
5 amendment of the statute changed the meaning of “the date services were provided” to make the date
6 each individual service was provided subject to the limitation period that applied on that date. The panel
7 rejected that argument, noting in its decision that applying the construction urged by defendant “would
8 create a separate statute of limitations for each date of treatment rather than for the entire lien,” and
9 would require a careful lien claimant to “file a lien for each date of treatment rather than simply filing a
10 lien at the conclusion of the treatment, thereby flooding defendants and the Workers’ Compensation
11 Appeals Board with multiple extraneous liens.” (3:15-19.) The panel instead concluded in *Kindelberger*
12 that the phrase “the date services were provided” in section 4903.5(a) meant “the last date that treatment
13 was provided.”

14 The panel in *Kindelberger* did not conclude that the shorter 18 month limitations period in section
15 4903.5 applied when the last date of service was on or after July 1, 2013. To the contrary, the panel
16 expressly noted that its construction of the phrase “the date services were provided” was intended to
17 avoid the need for a lien claimant to file a lien claim for each date of treatment and instead allowed one
18 lien claim to be filed at the conclusion of the treatment.

19 Similarly, the majority’s reliance on the dicta in *Archibald*, that the Legislature did not intend to
20 create two alternative statutes of limitations for the exact same services, is misplaced. In *Archibald*, the
21 question of whether the two limitations periods in section 4903.5(a) might apply to the same claim was
22 not before the panel. Instead, it was held in *Archibald* that the lien claims at issue were time barred
23 because, “under amended section 4903.5(a), a section 4903(b) lien for medical treatment services
24 provided before July 1, 2013 must be filed within three years from the date the services were provided.”
25

26 ³ Prior to its January 1, 2013 amendment, section 4903.5(a) provided as follows: “No lien claim for expenses as provided in
27 subdivision (b) of Section 4903 may be filed after six months from the date on which the appeals board or a workers’
compensation administrative law judge issues a final decision, findings, order, including an order approving compromise and
release, or award, on the merits of the claim, after five years from the date of the injury for which the services were provided,
or after one year from the date the services were provided, whichever is later.” (Italics added.)

1 (4:4-5, italics in original.) The statement concerning the Legislature's intention and the existence of two
2 statutes of limitations in the current form of section 4903.5 was written in connection with the panel's
3 statement in its decision that the 18 month limitation period applies only to services provided on or after
4 July 1, 2013, a point that was irrelevant to the lien claims at issue in that case because all of those liens
5 involved the provision of surgical hardware in 2009 and 2010 and the untimely filing of liens more than
6 three years later in 2014. In short, the general observation of the panel in *Archibald* that the Legislature
7 did not create two statutes of limitations for the same services went beyond the facts and issues of the
8 case, and it is dictum not ratio decidendi. (See e.g. *Cohens v. Virginia* (1821) 19 U.S. 264, 399 (6 Wheat.
9 120, 179) [5 L.Ed. 257, 290]; *Hart v. Burnett* (1860) 15 Cal. 530, 598; *Achen v. Pepsi-Cola Bottling Co.*
10 (1951) 105 Cal.App.2d 113, 124; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, §§ 509-510, pp. 572-
11 575.) It also is not contrary to the construction of section 4903.5 that I would apply.

12 When services are provided on a continuous basis, the provider should only be required to file a
13 single lien claim. (*Kindelburger, supra.*) This can only be assured under the current statute by
14 construing the three year limitation period to apply to a lien for services continuously provided both
15 before and after July 1, 2013. I would reverse the December 9, 2015 Order of the WCJ in this case and
16 find that the ACSMC lien claim is timely filed.

17
18 
19 **MARGUERITE SWEENEY, Commissioner**

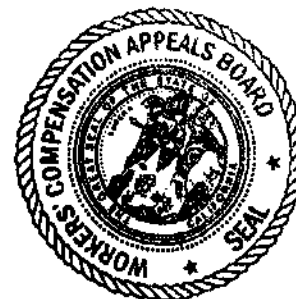
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **MAR 18 2016**

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

24 **ADVANCE CARE SPECIALIST MEDICAL CLINIC**
25 **INNOVATIVE MEDICAL MANAGEMENT**
26 **DIETZ, GILMOR & CHAZEN**
27 **OMAYRA GUERRERO**

JFS/ara *Dj*



1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **OMAYRA GUERRERO,**

5 *Applicant,*

6 vs.

7 **EASY STAFFING; LUMBERMEN'S**
8 **UNDERWRITING,**

9 *Defendants.*

Case No.

ADJ8741561

(Long Beach District Office)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION

10
11 Reconsideration has been sought by Lien Claimant with regard to the decision filed on December
12 9, 2015.

13 Taking into account the statutory time constraints for acting on the petition, and based upon our
14 initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to
15 further study the factual and legal issues in this case. We believe that this action is necessary to give us a
16 complete understanding of the record and to enable us to issue a just and reasoned decision.
17 Reconsideration will be granted for this purpose and for such further proceedings as we may hereafter
18 determine to be appropriate.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 For the foregoing reasons,

2 **IT IS ORDERED** that Reconsideration is **GRANTED**.

3 **IT IS FURTHER ORDERED** that pending the issuance of a Decision After Reconsideration in
4 the above case, all further correspondence, objections, motions, requests and communications *relating to*
5 *the petition* shall be filed only with the Office of the Commissioners of the Workers' Compensation
6 Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA
7 94102) or its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459), and shall *not*
8 be submitted to the district office from which the WCJ's decision issued or to any other district office of
9 the Workers' Compensation Appeals Board, and shall *not* be e-filed in the Electronic Adjudication
10 Management System (EAMS). Any documents relating to the petition for reconsideration lodged in
11 violation of this order shall neither be accepted for filing nor deemed filed.

12 / / /

13 / / /

14 / / /

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /

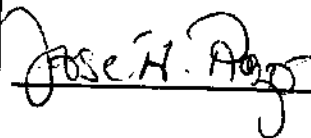
27 / / /

1 All trial level documents not related to the petition for reconsideration shall continue to be e-filed
2 through EAMS or, to the extent permitted by the Rules of the Administrative Director, filed in paper
3 form.¹ If, however, a proposed settlement is being filed, the petitioner for reconsideration should
4 promptly notify the Appeals Board because a WCJ cannot act on a settlement while a case is pending
5 before the Appeals Board on a grant of reconsideration. (Cal. Code Regs., tit. 8, § 10859.)

6 **WORKERS' COMPENSATION APPEALS BOARD**

7
8
9 I CONCUR,

10 
11 **MARGUERITE SWEENEY**

12 

13 **JOSÉ H. RAZO**

14 CONCURRING, BUT NOT SIGNING

15 **RONNIE G. CAPLANE**



16
17
18 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

19 **FEB 25 2016**

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

22 **ADVANCE CARE SPECIALISTS**
23 **DIETZ GILMOR & CHAZEN**
24 **INNOVATIVE MEDICAL MANAGEMENT**
25 **LUMBERMEN'S UNDERWRITING**

26 *pc*

27 ¹ Such trial level documents include, but are not limited to, declarations of readiness, lien claims, trial level petitions (e.g., petitions for penalties, deposition attorney's fees), stipulations with request for award, compromise and release agreements, etc.)

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

CASE NUMBER: ADJ8741561

OMAYRA GUERRERO

-vs.-

EASY STAFFING;
LUMBERMEN'S
UNDERWRITING

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

CRAIG A. GLASS

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

1. Applicant's Occupation : Laborer
2. Applicant's Age : 37
3. Date of Injury : 11/16/12
4. Parts of Body Injured : Neck, back, shoulder, psych and "circ sys"
5. Manner in which injury Occurred : Unknown
6. Identity of Petitioner : Lien claimant filed the Petition
7. Timeliness : The petition was **timely** filed.
8. Verification : Verification is **not** attached to the petition
9. Date of issuance of Award :

II

PETITIONERS' CONTENTIONS:

Petitioner, lien claimant Advance Care Specialist Medical Clinic, by and through its representative Innovative Medical Management, Inc., filed a timely, verified Petition for Reconsideration alleging that the undersigned WCJ misinterpreted Labor Code § 4903.5.

III

STATEMENT OF FACTS

Applicant Omayra Gurrero, while employed on 11/16/12, as a laborer, by Easy Staffing, insured by Lumbermen's Underwriting, allegedly sustained injury arising out of and in the course of employment to her Neck, back, shoulder, psych and "circ sys".

Lien claimant Advance Care Specialist Medical Clinic, provided goods/services to the applicant through and including 9/23/13.

At the hearing of 12/9/15, the parties entered into the following "Stipulations of Facts":

1. Lien claimant, Advance Care Specialist filed a line on August 19, 2015 per notice and request for allowance of lien.
2. The last date of services provided by Advance Care Specialist was September 23, 2013, per claimant's invoice.

Per 8 CCR 10770.1 (j), the matter was submitted to the Court for submission as to the "statute of limitations" regarding the filing of the lien of Advance Care Specialist.

The Court found as follows:

"Good Cause Appearing:

It is Ordered that the lien of Advance Care Specialist is barred by the Statute of Limitations per Labor Code, (section) 4903.5 (a). With prejudice.

The Court notes services were provided after 1/1/13 (sic) and no request for "second review" offered.

IT IS SO ORDERED

The Court notes that it intended to note services after 7/1/13 in its Order.

It is from this Order issued on 12/9/15 that Petitioner, lien claimant Advance Care Specialist Medical Clinic, by and through its representative Innovative Medical Management, Inc., files its timely "Petition for Reconsideration".

IV

DISCUSSION

Labor Code § 4903.5(a) states "A lien claim for expenses as provided in subdivision (b) of Section 4903 shall not be filed after three years from the date the services were provided, nor more than 18 months after the date the services were provided, if the services were provided on or after July 1, 2013. Cal Lab Code § 4903.5." Therefore, whether or not the lien of Advance Care Specialist Medical Clinic was timely filed depends on the date of service.

The Applicant continuously treated from a date uncertain through and including September 23, 2013. The undersigned WCALJ contends that in cases of ongoing treatment, the date services were provided for purposes of statute of limitations is last date that treatment was provided. The undersigned WCALJ did not find any binding authority to support his contention, however, the undersigned WCALJ was persuaded by the panel decision in *Charles Kindelberger v. City of Los Angeles*, W.C.A.B. Nos. ADJ586942 and ADJ687483, 2013 Cal. Wrk. Comp. P.D. LEXIS 209, in which the court stated:

"In the case of ongoing treatment, "the date the services were provided" is understood to be the last date that treatment was provided. Defendant contends that the changes in the time limits to file a lien under amended section 4903.5(a) also altered the construction of that phrase, so that it now means that the operative date is the individual date of service.

But no changes were made to that phrase when the statute was amended.

Moreover, the interpretation urged by defendant would create a separate statute of limitations for each date of treatment rather than for the entire lien. As a result, it is foreseeable that even while continuing to treat an applicant, a careful lien claimant would file a lien for each date of treatment rather than simply filing a lien at the conclusion of the treatment, thereby flooding defendants and the Workers' Compensation Appeals Board with multiple extraneous liens."

If the date of services is taken as the last date of service, September 23, 2013, the lien claimant had 18 months to file his lien, which expired February 12, 2015. Any filing after February 12, 2015, would be barred by operation of Labor Code § 4903.5. Since lien claimant's lien was filed on August 29, 2015, it is barred.

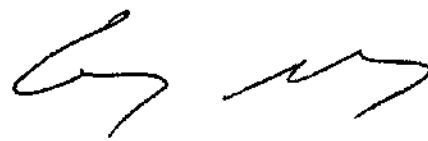
The Court notes that the WCAB granted a "Petition for Reconsideration" for further study on a matter with similar facts in Blanca Ruiz v. Best Western Hospitality, Inc. (ADJ8969505) on 11/17/15.

V

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the "Petition for Reconsideration" filed by Petitioner, Advance Care Specialist Medical Clinic, by and through its representative Innovative Medical Management, Inc., should be **denied**.

DATE: 1/12/16



CRAIG A. GLASS
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:
ADVANCE CARE SPECIALISTS LONG BEACH, US Mail
DIETZ GILMOR LONG BEACH, US Mail
INNOVATIVE MEDICAL MANAGEMENT ORANGE, Email