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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. LAO 636543
VNO 262835

RODRIGO BARAJAS,

Applicant,

vs.

PRICE CLUB;
HCM CLAIM MANAGEMENT,

Defendants,

OPINION AND DECISION
AFTER RECONSIDERATION

The Appeals Board granted reconsideration of the May 17, 1993 Order Denying Lien, Order Granting Restitution and Order Allowing Attorney's Fees to Defendant. The May 17, 1993 order states:

"This matter having been tried, all evidence having been presented, the lien balance of Walnut Doctors Group is denied; restitution of \$4,718.50 paid by Price Club; plus interest, is awarded to Price Club; defense attorney costs for hearing and trial brief of \$770.00 is awarded."

Lien claimant, Walnut Doctors Group, contended that (1) it was not afforded due process; (2) the award of attorney's fees as costs under Labor Code section 5811 constitutes a sanction unsupported in law; and (3) the disallowance of the lien was not justified because the workers' compensation judge (WCJ) improperly determined the issue of a contested claim when defendant did not meet its burden of proof that the employer lacked knowledge of the injury prior to the injured worker's self-procured medical treatment.

1 Reconsideration was granted in order to allow the Board to
2 further study the case facts and the applicable law. The Board
3 has not completed its study and for the reasons stated by the WCJ
4 in his Report and Recommendation with respect to the arguments on
5 due process, restitution, and disallowance of the lien only, we
6 affirm the WCJ's decision; however, with respect to the contention
7 on the \$770.00 to be paid for defendant's attorney's fees, for the
8 reasons stated herein, we will rescind that order for costs.

9 The compensation case was settled by an order approving
10 compromise and release in the amount of \$2,500.00. The defendants
11 agreed to pay or adjust the liens, including the lien of Walnut
12 Doctors Group for \$2,080.00. At the time of hearing, the
13 defendant claimed restitution for the \$4,719.50 it previously paid
14 to Walnut Doctors Group. The workers' compensation judge found
15 that Walnut Doctors Group had not met its burden of proof to
16 establish its lien. In particular, the workers' compensation
17 judge found that the lien claimant had not furnished a completed
18 form indicating that the claim was being contested by the
19 employer. The application previously filed indicated a claim form
20 was completed by the employer on February 4, 1991. There is no
21 indication of receipt of the form by the employer. Attached to
22 lien claimant's petition is a copy of the claim form with a return
23 receipt indicating that the form was received by Price Club on
24 February 11, 1993. Some of the lien claimant's charges are after
25 this date. However, this return receipt was not submitted into
26 evidence at the time of hearing. Lien claimant was represented at
27

1 the April 22, 1993 hearing but it does not appear any testimony
2 was taken.

3 Therefore, on this record, we affirm the WCJ's decision on
4 denial of the remainder of the lien claim and on restitution of
5 those sums previously paid by defendant to lien claimant.

6 With respect to the issue of lien claimant paying attorney's
7 fees Labor Code section 5811, does not specifically provide for
8 the sanction of payment of attorney's fees or costs under the
9 instant set of circumstances. In addition, to date, the Appeals
10 Board has not provided for such a sanction in its Rules of
11 Practice and Procedures. In the en banc opinion of Moran v.
12 Bradford Building Incorporated Bierly & Associates (1992) 57 Cal.
13 Comp. Cases 273 the Appeals Board noted that exercises of its
14 power should be through the rules making process, which is the
15 traditional method for providing for its constitutional and
16 judicial functions.

17 "The legislature has given the Board broad
18 power to enact Rules of Practice and Procedures
19 as well as specific statutory authorization
20 under the Reform Act."

21 The Appeals Board, we believe, is mandated not only to carry
22 out its constitutional and judicial functions of interpreting and
23 applying workers' compensation laws, but also to exercise its
24 rules making powers were necessary and appropriate to implement
25 such legislation, including the Reform Act. Therefore, we will
26 rescind the WCJ's decision on the issue of defense attorney's fees
27 because there is no statutory or Board rule authority for such
...

1 action.¹

For the foregoing reasons,

3 IT IS ORDERED that the May 17, 1993 order be, and the same
4 hereby is, AMENDED to read as follows:

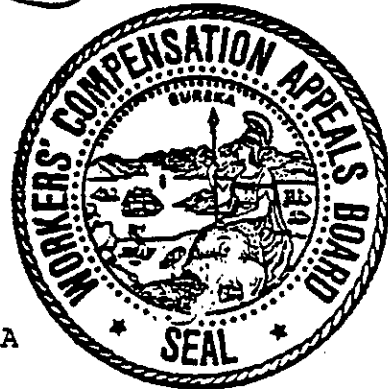
5 This matter having been tried all the evidence having been
6 presented, the lien balance of Walnut Doctors Group is denied;
7 restitution of \$4,719.50 previously paid by Price Club, plus
8 interest, is ordered paid by Walnut Doctors Group.

9 WORKERS' COMPENSATION APPEALS BOARD

10
11 *[Handwritten signature]*
12

13 I CONCUR,

14
15 *[Handwritten signature]*
16 NOT PARTICIPATING
17 Rick Dietrich Deputy



18 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

19 APR 11 1994

20 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
21 AS SHOWN ON THE OFFICIAL ADDRESS RECORD.

22
23 *[Handwritten signature]*
24

25 ¹Although this 1990 injury claim was filed in 1991, in passing we note that recently
26 enacted Labor Code section 5813, applicable to all applications filed after January 1,
27 1994, gives the Appeals Board the authority to assess attorney fees for frivolous
claims. In this case we note the workers' compensation judge has not found
fraudulent or frivolous conduct but has simply denied the lien and granted restitution
to the defendants. Therefore, even under the new legislation the attorney's fees
would not have been allowed as a sanction.

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. LA 636-543

RODRIGO BARAJAS,

Applicant

vs.

PRICE CLUB;
HCM CLAIM MANAGEMENT,

Defendants.

ORDER DENYING LIEN;
ORDER GRANTING RESTITUTION
WITH INTERST AND ORDER
ALLOWING ATTORNEY FEES,
TO DEFENDANT

This matter having been tried, all evidence having been presented, the lien balance of Walnut Doctors Group is denied; restitution of \$4,719.50 paid by Price Club, plus interest, is awarded to Price Club; defense attorney costs for hearing and trial brief of \$770.00 is awarded.

SO ORDERED.



THOMAS M. REDMOND
WORKERS' COMPENSATION JUDGE

DATE: MAY 17 1993

SERVED BY MAIL ON PERSONS SHOWN
ON THE OFFICIAL ADDRESS RECORD.

BY: 
Delia Morales

RODRIGO BARAJAS,

vs.

PRICE CLUB;
HCM CLAIM MGT.,

DATE OF INJURY:
C/T 2/90 - 12/27/90

WORKERS' COMPENSATION JUDGE:

THOMAS M. REDMOND

OPINION ON DECISION

Lien claimant failed to prove the validity of Walnut Doctors Group's claim by a preponderance of the evidence, Labor Code 3202.5. There was no notice given to the employer of a claim of injury, with proof of service. (DWC Form 1). The bills were incurred before the employer was allowed time properly investigate the claimed continuous trauma injuries. Lien claimant had no medical appointment letters from an attorney setting any evaluations.

Senate Bill 31, enacted into law April 3, 1993 states the requirements of the law. Lien claimant failed to comply and is also bound by the requirements as applies to attorney.

Restitution is granted to the employer for amounts paid in good faith. It is such good faith payments as made in this case that permits the system to work. Interest is allowed to the employer under Labor Code 5811 costs.

Attorney fees of \$770.00 are awarded as costs to defendant employer in recovering the amounts paid and preparation of a trial brief.

The other issues such as qualifications of the medical group are moot to resolution of the issues.



THOMAS M. REDMOND
WORKERS' COMPENSATION JUDGE

TMR:dm