

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. MON 217378**

5 **BRUCE STEPHENSON,**

6 *Applicant,*

7 **vs.**

8 **LOS ANGELES COUNTY SHERIFF'S**
9 **DEPARTMENT; FIRM SOLUTIONS,**

10 *Defendant(s).*

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

11
12 Lien claimant, Blue Cross of California, seeks
13 reconsideration of the Findings and Order issued by a workers'
14 compensation administrative law judge (WCJ) on April 30, 2001,
15 in which the WCJ ordered that petitioner's lien claim be denied.
16 In the Opinion on Decision, the WCJ stated that the doctrine of
17 laches was the basis for denying the lien claim. Lien claimant
18 contends (1) that the doctrine of laches is not applicable because
19 there was neither unreasonable delay nor prejudice to defendant;
20 (2) that the WCJ erred in relying on two writ denied cases
21 involving laches; (3) that defendant's knowledge of the lien claim
22 precludes the application of laches; and (4) that Labor Code
23 sections 4904 and 4905 require the payment of a valid lien claim
24 even if it is not filed with the WCAB.

25 Applicant, a deputy sheriff, sustained stipulated cumulative
26 industrial injury to the cervical spine from March 1972 to
27 October 1996, resulting in stipulated permanent disability

1 of 41% and in the potential need for further medical treatment.
2 The Stipulations with Request for Award states that there are no
3 lien claims against compensation and is silent concerning
4 petitioner's lien claim. On October 24, 1997, the WCJ issued an
5 Award made pursuant to the stipulations of the parties.¹

6 On July 24, 1997, lien claimant wrote to defendant stating
7 that it understood that "this case has been accepted as an
8 industrial injury. Therefore, you are responsible for paying the
9 related claim(s)." The letter was accompanied by an itemized list
10 of treatment dates and amounts.

11 In April 1999, defendant made a partial payment of \$2,700.82.
12 The record reflects ongoing correspondence both before and after
13 this payment, in which, inter alia, petitioner requested copies of
14 the settlement agreements and medical reports and documentary
15 evidence.

16 On June 22, 1999, Blue Cross of California filed a Notice and
17 Request for Allowance of Lien together with an itemization of
18 charges, reflecting treatment from December 1995 through
19 November 1996.

20 On February 8, 2001, the matter was submitted for decision on
21 the record after the filing of trial briefs.

22 On April 30, 2001, the WCJ issued the decision,
23 finding that the lien claim was barred by the doctrine of laches.

24 In *Bell v. Workers' Comp. Appeals Bd.* (1987) 52 Cal. Comp.
25 Cases 72 (writ denied), cited by the WCJ, a lien claimant's motion

26 ¹ On April 7, 1998, the WCJ issued an Order amending the stipulations,
27 resolving the issues of commutation, penalties, and attorney's fee. There is
no mention of lien claims in the order.

1 to set aside a compromise and release in which defendant believed
2 it had bought its peace, was barred by the doctrine of laches when
3 the lien claimant had filed a claim, but waited seven years to act
4 on it. This is readily distinguished from the present case,
5 where the lien claim was presented to defendant before the
6 stipulations were submitted to the WCJ, where the parties
7 conducted an ongoing correspondence concerning the lien claim,
8 and where defendant apparently failed to furnish a copy of the
9 stipulations or associated medical documents to lien claimant,
10 despite its ongoing requests.

11 In *Midas Recovery Services, Inc. v. Workers' Comp. Appeals*
12 *Bd. (Baker)* (1995) 60 Cal. Comp. Cases 783 (writ denied), also
13 cited by the WCJ, a lien claim was not allowed when it had been
14 filed approximately a year after the approval of a compromise and
15 release agreement, and when no showing was made that defendant had
16 prior notice of the lien claim. In applying the doctrine of
17 laches, the WCJ stressed that had Midas timely presented its
18 claim, it would have been considered. However, the WCJ found that
19 Midas did not timely file and serve a Notice and Request for
20 Allowance of Lien. Midas was unable to offer evidence to the
21 contrary. This case is also readily distinguishable from the
22 present case in which defendant was aware of the lien claim before
23 it entered into the stipulations, and actively participated in
24 correspondence concerning the claim.

25 Where a defendant was aware of treatment costs and an award
26 of benefits issued in favor of the employee, a lien claimant was
27 not untimely in filing its lien six months after the date of the

1 Findings and Award, and the doctrine of laches was not applicable.
2 (*Bethlehem Steel Corporation v. Workers' Comp. Appeals Bd.*
3 (*Gras*), (1987) 50 Cal. Comp. Cases 186 (writ den.))

4 In *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.*
5 (*Rucker*) (1989) 54 Cal. Comp. Cases 5 (writ denied), the WCJ
6 properly dismissed a medical care provider's lien claim and denied
7 its petition to set aside a compromise and release that made no
8 provision for payment of the provider's outstanding bill when
9 there was no evidence that the insurance company was aware of the
10 provider's bill and the insurance company had acted in good faith
11 and made all reasonable inquiries before settling the matter.

12 In the present case, defendant was notified and presumed to
13 be aware of the lien claim as of July 24, 1997, prior to the
14 execution of the stipulations. The Award pursuant to the
15 stipulations was issued on October 24, 1997. The record reflects
16 that Blue Cross requested that defendant furnish a copy of the
17 stipulations and medical evidence, but did not receive it.
18 This could potentially give rise to the inference that defendant
19 was not acting in good faith in attempting to resolve the lien
20 claim, and has come into court with unclean hands, a bar to the
21 remedy of laches.

22 After reviewing the record and the applicable law, we
23 conclude that the doctrine of laches is not applicable to this
24 case. Therefore, we will grant the petition for reconsideration,
25 rescind the WCJ's decision and return the matter to the trial
26 level for further proceedings and decision on the merits of the
27 lien claim and related issues.

1 For the foregoing reasons,

2 IT IS ORDERED that lien claimant's Petition for
3 Reconsideration, filed May 24, 2001, be, and it hereby is,
4 GRANTED.

5 IT IS FURTHER ORDERED, as the Board's decision after
6 reconsideration, that the Findings and Order issued
7 April 30, 2001, is RESCINDED, and the matter is returned to the
8 workers' compensation administrative law judge for further
9 proceedings and new decision.

11 WORKERS' COMPENSATION APPEALS BOARD

12
13 *James C. Cuneo*
14 _____
15 JAMES C. CUNEO

15 I CONCUR,

16
17 *Colleen S. Casey*
18 _____
19 Colleen S. Casey
20 *William K. O'Brien*
21 _____
22 WILLIAM K. O'BRIEN



22 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

23 JUL 20 2001 *Official*

24 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL
25 ADDRESS RECORD, EXCEPT LIEN CLAIMANTS BUT INCLUDING PETITIONING
26 LIEN CLAIMANT, BLUE CROSS OF CALIFORNIA.

26 csl