

Closed file
UNICARE 1010
RECEIVED

APR 17 1995

CASE NO: AHM ~~60487~~ KENNETH L. PETERSON

SENOVIO PINEDA vs.

R.D. OLSON CONSTRUCTION;
UNICARE INSURANCE CO.

Workers' Compensation Judge:
JANET M. COULTER
Date: April 14, 1995

INTERNATIONAL MEDICAL FINANCIALS
Representative for Petitioner, BIJAN ZARDOUZ, M.D.

LAW OFFICES OF KENNETH L. PETERSON
By: KENNETH L. PETERSON, ESQ.
Attorney for Defendants

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE

ON

PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant, Senovio Pineda, was employed by R.D. Olson Construction Company on February 7, 1991 when he claimed to have sustained injury in the course of his employment to his neck, back, right arm, headaches, and right leg. The matter proceeded to trial and a Findings and Order issued on July 13, 1994. It was found that applicant did not sustain an injury arising out of and occurring

in the course and scope of his employment. On the basis of that finding, a take nothing issued and all liens for both treatment and medical-legal charges were denied.

Petitioner is an entity who claims to represent the interests of Bijan Zardouz, M.D. one of the lien claimants. Dr. Zardouz filed a lien for medical-legal services in the amount of \$1,781.00. Based on the false and inaccurate history recounted by applicant, it was found that all medical-legal liens would be denied.

It is from this portion of the Findings and Order that Petitioner has filed an untimely, unverified Petition for Reconsideration. The Petition claims that the Judge acted without or in excess of her powers and that the evidence does not justify the finding of fact.

II

DISCUSSION

Petitioner's first argument is a due process argument in which it claims that the "NIT procedure denies it its due process rights to a hearing". That may arguably be true, however, it is not an issue in this case. At all times, Petitioner was apprised of the proceedings in this case. Dr. Zardouz was given notice of all conference and trial dates which were set in this matter. Dr. Zardouz's representative appeared at the Mandatory Settlement Conference on 2/18/93 and at trial calendars on June 29, 1993, October 12, 1993, and April 20, 1994. The trial proceeded on April 20, 1994 with Dr. Zardouz's representative in

attendance. As Dr. Zardouz was represented at trial there was no need to issue a Notice of Intention.

Petitioner's next point is that the "threshold requirement of demonstrating good cause based on an evidentiary record" before "hearing" of the case in chief places an undue burden to the prejudice of lien claimant'. That contention makes absolutely no sense as there was no requirement that lien claimant demonstrate good cause prior to a hearing. This matter proceeded to trial and all issues were decided along with the case in chief.

Petitioner complains that the "summary denial procedure does not permit proper preparation for litigation nor access to the opportunity for a hearing". There was no summary denial. Petitioner was present at all stages of the proceedings and, specifically, at the trial in this matter.

As to the remaining contentions, there certainly was evidentiary basis to disallow the lien claims. Applicant's testimony was found to be totally without credibility. As the history given to Dr. Zardouz was completely false and inaccurate, the report which was filed was totally worthless to provide evidence on any of the issues in this case.

Petitioner contends that contested lien claims should be addressed after the worker's case in chief has been resolved. That is contrary to the Policy & Procedure Manual and common sense. Expediency and judicial economy require that all issues of a case be decided at one time.

Petitioner claims that it did not have an "opportunity to investigate

discover, develop and present evidence in a separate hearing on its lien claim". It is accurate that there was not a separate hearing on petitioner's lien claim. However, there was a hearing and, as petitioner was apprised of all phases of development of the case, it clearly had every opportunity to "investigate, discover, develop and present evidence" if it so chose. Clearly, they chose not to do anything until after a decision issued denying their lien.

Petitioner goes on to cite Labor Code § 4904 and 4906 and its prohibition to disallow a lien without a hearing as well as Title 8, California Code of Regs., Reg. § 10500 requiring service of all orders, etc. They seem to be claiming again that they were not given notice or an opportunity to be heard when the true fact is that they were given notice, they did appear, and they did have an opportunity to be heard.

It appears that the Petition filed in this case is nothing more than a form. Very little, if any, of the contentions of Petitioner apply to be the case at bar. The entity that filed the Petition is either unaware or uninterested in what occurred at the trial level and has filed a Petition that has no bearing on this case.

In reality, I do not even know if this entity has standing to be file the Petition on behalf of Dr. Zardouz. Throughout the proceedings, Dr. Zardouz was represented by Lien Collections, Inc. who filed a letter dated March 13, 1995 which was a "authorization to be WITHDRAW our NOTICE OF REPRESENTATION". At no time thereafter, did the WCAB receive a Substitution

of Attorney form indicating that Dr. Zardouz is now represented by International Medical Financials.

III

RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be denied as it is both untimely and unverified. Further, it is respectfully requested that the Board consider imposing sanctions pursuant to be Labor Code §5813 for the filing of a frivolous Petition.

It should also be noted that a copy of the Petition for Reconsideration will accompany the Report and Recommendation of Workers' Compensation Judge when it is served on defense attorney. This action is being taken as the proof of service does not indicate that defense attorney has been served.



Janet M. Coulter
Workers' Compensation Judge

ANAHEIM, CALIFORNIA

Served by mail on persons shown
on the Official Address Record:

Date _____

By _____