

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

Case No. ADJ9966679

WILLY JIMENEZ,

Applicant,

vs.

VALLARTA SUPERMARKETS; SAFETY
NATIONAL CASUALTY CORPORATION
Administered by CORVEL CORPORATION,

Defendants.

**FINDINGS AND
ORDER**

CITYWIDE SCANNING SERVICE, INC.

Cost Petitioner.

The above entitled matter having been heard and regularly submitted, the Honorable Jerilyn Cohen, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. WILLY JIMENEZ, while employed on 4-05-2015 as an Assistant Grocery Manager at Victorville, California, by Vallarta Supermarkets, insured by Safety National Casualty Corporation Administered by Sedgwick Claims Management Services sustained injury arising out of and occurring in the course of employment to the neck, right shoulder, and lumbar spine.
2. An Order Approving Compromise and Release for the case in chief issued 2-26-2016.

3. Cost Petition is denied. Cost Petitioner CITYWIDE SCANNING SERVICE, INC. shall take nothing regarding its petition.
4. The services of Cost Petitioner were not med-legal services pursuant to Section 4620, rendering the subpoenas invalid, and the services and costs unreasonable and unnecessary.
5. It is found that there was no medical entitlement of Cost Petitioner pursuant to Sections 4620 and 4621.
6. The issues of Defendant's compliance with Section 4622, CCR 10786(a) and (e), Section 4603.3, and 9794 are moot.
7. Cost Petitioner's assertion of estoppel against Defendant is found invalid.
8. In preparing and serving the subject subpoenas, then filing and pursuing the Cost Petition, Cost Petitioner Citywide Scanning Service, Inc. engaged in tactics that it knew or should have known, would cause unreasonable delay, and cause the Court to expend time, energy and resources without good cause, and cause defendant to incur expense without justification.
9. The activities undertaken by Cost Petitioner Citywide Scanning Service, Inc. were egregious and frivolous, warranting sanctions by this Court in the amount of \$500.00, payable within twenty (20) days to the General Fund:

Secretary and Deputy Commissioner
Workers' Compensation Appeals Board
P.O. Box 429459,
San Francisco, CA 94141-9459,
Tax Identification Number 94-3160882
And Attention: Secretary and Deputy Commissioner Anne Schmitz.

The case name and number must be included on the memo portion of the check.

10. The activities undertaken by Cost Petitioner Citywide Scanning Service, Inc. against Defendant were egregious and frivolous, warranting an Order of costs by this Court in the amount of \$500.00, payable within twenty (20) days to the Defendant Safety National Casualty Corporation Administered By Corvel Corporation.

ORDER

IT IS ORDERED that:

- a. The COST PETITIONER CITYWIDE SCANNING SERVICE, INC. take nothing related to the Petition for Costs.
- b. The COST PETITIONER CITYWIDE SCANNING SERVICE, INC shall pay sanctions in the sum of \$500.00 to the General Fund pursuant to Finding of Fact Number 9.
- c. The COST PETITIONER CITYWIDE SCANNING SERVICE, INC shall pay costs to the Defendant in the sum of \$500.00 pursuant to Finding of Fact Number 10.

DATE: 2/25/2022



Jerilyn Cohen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

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

CASE NUMBER: ADJ9966679

WILLY JIMENEZ

vs.

VALLARTA SUPERMARKETS;
SAFETY NATIONAL CASUALTY
CORPORATION

COST PETITIONER:

CITYWIDE SCANNING SERVICE,
INC.

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

Jerilyn Cohen

DATE:

2-24-2022

OPINION ON DECISION

MEDICAL-LEGAL COSTS

A medical legal expense is employed to prove or disprove a disputed claim. Here the Order for subpoena services was dated 5-21-2015, Exhibit 1. The Application for Adjudication was filed at 8:00 a.m. *the very same date* according to EAMS, Joint Ex. KK. According to the proof of service, the Application for Adjudication was served by U.S. Mail on 5-20-2015 on the third party administrator for the carrier, Sedgwick CMS. Thus it is not physically possible that the defendants were aware of the filing of the case. The statutory 5 days for mailing had barely begun. There is no evidence of service by email. There can be no disputed claim when the party who may dispute it is not yet aware of the claim.

It is unreasonable to request medical legal expenses before the claim form or the Application has reached the defendants. Similarly, the defendants have a right to investigate for the first 90 days

after the Application is actually received to determine if they wish to deny. Here Cost Petitioner attempts to deprive the defendants of that due process right to discovery.

It is noted that since Cost Petitioner is in the business of serving subpoenas, they are required to be aware of the legal requirements regarding service. If they intend to seek reimbursement from the defendants, Cost Petitioner has the responsibility to inquire as to when the Application was filed and the Claim Form served. They fail to do so at their peril.

Since the Application for Adjudication was served by mail one day before the order for services issued, there was no disputed claim on the date of the order for services. The Cost Petition is denied in its entirety.

The undersigned does not reach the issue of the many alleged defects in the subpoenas themselves, the validity of the EOR's, the lack of a Motion to Quash, or the appropriate fee schedule because those issues are moot.

ESTOPPEL

Cost Petitioner at trial argued that defendants are estopped from asserting there is no contested claim because the Application for Adjudication checked boxes putting issues in dispute. Cost Petitioner is incorrect. The Applicant's assertion is not disputed until a defendant takes action to dispute it. Here the defendant was not even aware of the Application at the time so did not have the opportunity to register a dispute. Further, none of the elements required for estoppel are present. There is no estoppel.

PENALTY

The undersigned is dismayed at the business practices at work here. In particular, after becoming aware that the Order was received within one day of the filing of the Application and thus there could not yet be a disputed claim, Cost Petitioner nevertheless continued to pursue this claim to trial, taking the time and resources of the Board and defendants over the course of many years. Defendant filed an Objection seeking penalties on 3-9-2021.