

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

ALEXIS KHAREL, *Applicant*

vs.

**EASTRIDGE WORKFORCE SOLUTIONS;
AMERICAN HOME ASSURANCE administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ16497715
Los Angeles District Office**

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

Lien claimant Spectrum Medical Group seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of April 18, 2024, wherein it was found in pertinent part that defendant had no liability for self-procured medical treatment expenses and no liability for the comprehensive medical-legal evaluation. The WCJ thus issued an order that lien claimant take nothing by way of its lien claim.

Lien claimant contends in relevant part that the medical-legal evaluation was provided by the primary treating physician Amin Nia, D.C.; that a contested claim existed at the time of the medical-legal evaluation; and that the services were reasonable and necessary at the time that they were incurred.

We received an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration from the WCJ, which recommends that the Petition be denied.

Lien claimant submitted a request to file a supplemental pleading and a supplemental pleading. We grant lien claimant's request and have considered the supplemental pleading. (See Cal. Code Regs., § 10964.)

We have reviewed the record, and we have considered the allegations of the Petition, the Answer, and the supplemental pleading, and the contents of the Report. Based on our review and for the reasons discussed below, we will grant reconsideration, affirm the WCJ's decision, except that we defer the

issue of whether defendant is liable for the cost of the medical-legal evaluation by lien claimant. (Findings of Fact 3 and 4; Order.)

FACTUAL BACKGROUND

Applicant claimed injury to her right foot when she stepped on a piece of glass in her employer's parking lot on May 17, 2022, while employed by defendant as a quality assurance worker. Thereafter, she claimed a cumulative injury to various body parts while employed during the period May 23, 2022, through June 17, 2022, as a result of working in a standing position on the injured foot. The claim form is dated July 11, 2022, and an Application for Adjudication was filed on August 1, 2022.

On August 26, 2022, Amin Nia, D.C., examined applicant and prepared a report. (Lien Claimant's Exhibit 10). The report is addressed to applicant's attorney and AIG Insurance. The report begins by stating that:

This Medical-Legal report is issued pursuant to Labor Code §§4620, *et seq.* and 5307.6, and California Code of Regulations § 9793(c)(2), which defines a comprehensive medical-legal evaluation as an evaluation of an injured worker which results in the preparation of a narrative medical report, and is performed by **the primary treating physician** for the purpose of proving or disproving a **contested claim**; and California Code of Regulations § 9793(h)(2), which provides **that the report is obtained at the request of a party or parties** for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party who requested the comprehensive medical-legal evaluation report.

This patient alleges injuries to body parts which are in dispute. I have conducted a Medical- Legal evaluation to determine if the injuries to these body parts occurred as a consequence of the industrial injuries referenced above.

Pursuant to California Code of Regulations §9793(b)(1), a contested claim is one in which the claims administrator has rejected liability for a claimed benefit. (Emphasis in original.)

(Exhibit 2, p. 1.)

After evaluating applicant, Dr. Nia concluded that applicant had sustained an industrial injury, but that there was no need for further medical treatment and no permanent disability. She stated that:

Patient sustained an injury outside of the workplace when she stepped on an piece of glass in a parking lot which pierced through her shoe and caused laceration of the right distal foot between the second and third toe. She was seen at emergency

room on the same day. Her wound was cleaned and was advised to follow-up with her primary care physician and to monitor for any possible infection. She was seen at the urgent care a day or 2 later. She was given a work restriction of not standing for one week. She only worked for half a day with her restriction and then was relieved of her duties. She returned to work about a week later. She was asked by employer to work in standing position. Since she needed the job she continued working in prolonged standing position for about 2 to 3 weeks. She claims this has caused numbness of the fourth and fifth toe. She has followed up with her primary care physician for this and has been referred to a podiatrist. The podiatrist diagnosed her with neuropathy and referred her to a neurologist. She is currently pending a neurological appointment sometimes in December 2022. It should be noted I have not received any of the medical records. Patient only brought in the copy of the podiatrist report noted above and a CD with her x-rays of the right foot obtained by the podiatrist. X-ray images reviewed by myself today and no abnormalities were noted.

In my opinion the prolonged standing between 5/23/2022 to 6/17/2022 while working for above named employer has only exacerbated her non-industrial laceration of the right foot and has not resulted in any new injuries or disabilities. Today's examination of the right foot is within normal limits with no abnormalities noted. I will need all medical records including the ones from emergency room and urgent care for review. I will also recommending future medical records by the neurologist to be forwarded for my review as well.

(Exhibit 2, p. 9.)

That same day, applicant also selected Spectrum and Dr. Nia as her primary treating physician. On the document, a box is checked stating that: "My claim has been contested by the employer and the issue of causation should be addressed." (Lien Claimant's Exhibit 2).

Also on August 26, 2022, defendant filed an Answer essentially denying all claims.

On November 17, 2022, the parties entered into a Compromise and Release (C&R) and an order approving issued on December 16, 2022. As relevant herein, the parties agreed that defendant would pay \$12,000.00 in settlement of the case. The parties stipulated in Paragraph 9 as relevant herein that: "Defendant contends that: settlement is based on injury AOE/COE being denied . . ."

On March 19, 2024, lien claimant and defendant proceeded to trial. The issues raised were defendant's liability for self-procured medical treatment expenses, the comprehensive medical-legal evaluation, and penalties and interest.

On April 18, 2024, the WCJ issued the F&O. With regard to reimbursement of medical-legal services, the WCJ concluded that: "neither the reporting of Dr. Nia nor the billing of

Spectrum (Lien Claimant's Exhibit 4) demonstrates that any treatment was furnished to the worker. . . . In order for a physician to perform a medical-legal as PTP, the physician must actually be the treating physician. . . . There is no evidence of any request to Dr. Nia / Spectrum to perform a comprehensive medical-legal evaluation." (Opinion on Decision, p. 3.)

In his Report, the WCJ describes the issues raised by lien claimant in the Petition as follows:

Petitioner lien claimant Spectrum Medical Group contends that defendant did not furnish medical treatment to applicant, that applicant presented a contested claim, that applicant did sustain an industrial injury, that applicant was entitled to self-procure medical treatment and a medical-legal report, that Spectrum's Armin Nia, D.C. was applicant's primary treating physician and reasonably provided a medical-legal evaluation, that defendant did not deny petitioner's charges, that petitioner is entitled to penalty and interest, that failing the foregoing petitioner should be reimbursed on a quantum meruit basis and that petitioner should be award costs and fees.

DISCUSSION

In its Answer, defendant denied applicant's claim of injury on August 26, 2022, and in the C&R of November 17, 2022, defendant again denied all claims. It does not appear to be disputed that Dr. Nia was applicant's primary treating physician (PTP) at the time the August 26, 2022 medical-legal report was prepared and submitted because applicant signed the designation of Dr. Nia and Spectrum as her primary treating physician and acknowledged that her claim was contested and that an evaluation was appropriate. Moreover, applicant presented herself for the evaluation on August 26, 2022, and the report of the evaluation states that it was obtained at the request of a party, and it was sent to applicant's attorney and to defendant.

Labor Code section 4060(b) allows a medical-legal evaluation by the treating physician.¹ Section 4620(a) defines medical-legal expense as "any costs and expenses...for the purpose of proving or disproving a contested claim." Section 4064(a) provides that the employer is liable for the cost of a comprehensive medical evaluation that is authorized by section 4060.

AD Rule 9793(h) states:

(h) "Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or

¹¹ Unless otherwise stated, all further statutory references are to the Labor Code.

disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:

- (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
- (2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
- (3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.
- (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
- (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793(h).)

Notably, none of these three Labor Code sections discussed above include the limitations set forth in AD Rule 9793(h).

It is clear that the intent of section 4060(b) when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of reasonable and necessary medical-legal reports that are performed by the treating physician. Moreover, the Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from their primary treating physician, and in turn, the report from that physician is a medical-legal expense

for which the defendant is liable. (*Warren Brower v David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).) Thus, the issue of whether the medical-legal expenses may be recovered must be considered by the WCJ in the first instance.

Furthermore, we are not persuaded that the record supports the conclusion that applicant did not designate Dr. Nia as her primary treating physician. She appeared for the evaluation and was evaluated by Dr. Nia, and she acknowledged that it was a medical-legal evaluation and that Dr. Nia was her primary treating physician. We also observe that there is nothing in the Labor Code that states that a physician is not a “treating” physician until after they have provided treatment. The purpose of the designation is to advise the parties that an injured worker has selected a primary treating physician.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Based on our review of the record, it appears that the WCJ's application of AD Rule 9793(h) failed to consider sections 4060(b), 4064(a), and 4620(a). In addition, we do not believe that the finding of no liability for the medical-legal evaluation is fully supported by the present record, and it may be that application of A.D. Rule 9783 to otherwise preclude recovery for medical-legal reporting by a primary treating physician is not correct.

Therefore, we defer the issue of whether lien claimant is entitled to reimbursement for the cost of the medical-legal evaluation.

We will not disturb the WCJ's finding that lien claimant is not entitled to reimbursement for medical treatment services because lien claimant did not prove that applicant sustained compensable industrial injury. We note that lien claimant did not challenge or address the finding as to AOE/COE in the Petition. (Lab. Code, § 5904 [Petitioner is deemed to have waived an issue that is not raised in the petition for reconsideration].)

Accordingly, we amend the F&O to defer the issue of whether defendant is liable for the cost of the medical-legal evaluation by Dr. Nia, and otherwise affirm the F&O. (Findings of Fact 3 and 4, Order.)

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the April 18, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 18, 2024 Findings and Order is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

3. The issue of whether defendant is liable for the comprehensive medical-legal evaluation furnished by lien claimant Spectrum Medical Group is deferred.
4. No penalty or interest attaches to any unpaid charges for self-procured medical treatment by Spectrum Medical Group. The issue of whether penalty or interest attaches to any unpaid charges for the comprehensive medical-legal evaluation of Spectrum Medical is deferred.

ORDER

IT IS ORDERED that the lien of Spectrum Medical Group for self-procured medical treatment is disallowed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR

CONCURRING, NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2024

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

SPECTRUM MEDICAL GROUP, INC,
AIG CLAIMS
BROADSPIRE
COSTFIRST CORP

AS/mc



I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *MC*