

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

**ASMA PARVEEN, *Applicant***

**vs.**

**ALCON LABORATORIES; OLD REPUBLIC INSURANCE COMPANY,  
administered by CONSTITUTION STATE SERVICES, *Defendants***

**Adjudication Number: ADJ13245796  
Long Beach District Office**

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

Lien claimant, Premier Psychological Services, seeks reconsideration of the Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on March 7, 2024. By the F&O, the WCJ found, in relevant part, that applicant did not sustain industrial injury while employed by defendant, Alcon Laboratories, during the period April 4, 2009 through May 31, 2019, and disallowed lien claimant's lien claims. The WCJ also denied lien claimant's requests for reimbursement of its lien filing fee, as well as penalties and interest under Labor Code sections 4603.2 and 4622.<sup>1</sup>

Lien Claimant contends that the weight of the evidence supports a finding of compensable industrial injury and that the WCJ improperly denied its request for reimbursement of its lien filing fee, penalties, and interest.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

We have considered the allegations in the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, we will grant lien claimant's Petition for Reconsideration, rescind the WCJ's decision and substitute it with a new Findings and Order that finds the reports of Mark H. Michaels, Ph.D., reimbursable as a medical legal expenses and defers the issues of amount, penalties, interest, and filing fee. The parties should adjust these amounts, subject to proof, with jurisdiction reserved at the trial level if there is any dispute.

## **BACKGROUND**

Applicant claims to have sustained injury arising out of and in the course of employment (AOE/COE) to her neck, shoulders, arm, legs, wrist, back, and headaches while employed as an elevator tech by defendant during the period April 4, 2009 through May 31, 2019. Defendant initially denied applicant's claim, but ultimately settled the claim by way of a Compromise and Release (C&R) as approved by the WCJ on February 7, 2023.

On December 2, 2020, applicant's attorney submitted a Request for Authorization for a psychiatric evaluation by applicant's self-selected primary treating physician (PTP), Dr. Mark H. Michaels, Ph.D., from Premier Psychological Services. On January 27, 2021, Dr. Michaels issued an initial report, in which he performed a psychological evaluation and performed various diagnostic tests upon applicant. Applicant received self-procured treatment from Dr. Michaels commencing on March 10, 2021 to July 27, 2022.

On February 1, 2024, the parties proceeded to a lien trial. (Minutes of Hearing (MOH Lien Trial), February 1, 2024.) The issues presented for trial included: 1) injury AOE/COE to psyche, stress, and sleep; 2) psyche injury as a compensable consequence of alleged industrial orthopedic injuries; 2) lien claimant's entitlement to medical-legal expenses; 3) reasonableness of the requested medical-legal expenses; and 4) lien claimant's entitlement to statutory penalties, interest, and lien filing fees.

No testimony was presented during trial. The MOH states that lien claimant placed the following into evidence:

LIEN CLAIMANT'S 101: Primary treating physician (PTP) election letter, dated 12/10/2020.

LIEN CLAIMANT'S 102: Request for authorization, dated 12/2/2020.

LIEN CLAIMANT'S 103: PTP'S Initial Psychological Medical-Legal Evaluation of Mark H. Michaels, Ph.D., dated 1/27/2021.

LIEN CLAIMANT'S 104: PTP's Final Psychological Medical-Legal Evaluation of Mark H. Michaels, Ph.D., dated 9/7/2022.

LIEN CLAIMANT'S 105: PR-2 medical reports, totaling five, from Mark H. Michaels, Ph.D., dated 3/10/2021, 5/19/2021, 8/25/2021, 12/8/2021, and 7/27/2022.

LIEN CLAIMANT'S 106: Itemized billing statement with dates ranging from 1/27/2021 to 9/7/2022[.]

LIEN CLAIMANT'S 107: Demand letter, dated 10/19/2022.

LIEN CLAIMANT'S 108: Explanation of Review, Lien Claimant, dated 11/22/2023.

(MOH, February 1, 2024, p. 3-4.)

Defendant's exhibits included, but were not limited to, applicant's deposition transcripts dated December 11, 2020, April 5, 2021, September 28, 2021, and January 14, 2022, bill reviews, and multiple objection letters to Dr. Michaels's treatments. (MOH, February 1, 2024, pp. 4-5.)

On March 7, 2024, the WCJ issued the disputed F&O, finding, in pertinent part, that lien claimant failed to meet its burden to prove industrial injury and disallowed its lien, as well as its requests request for penalties, interest, and filing fee.

## **DISCUSSION**

Lien claimant first contends that the WCJ erroneously determined that it failed to prove injury AOE/COE or that applicant sustained a psychiatric injury as a compensable consequence of the alleged physical (orthopedic) injuries. We disagree.

A lien for medical treatment is allowable only when the treatment rendered is reasonably required to cure or relieve an injured worker from the effects of an industrial injury. (Lab. Code, §§ 4600(a), 4903(b).) A defendant will not be liable for a medical treatment where there is no industrial injury. (*Kunz v. Patterson Floor Coverings (Kunz)* (2002) 67 Cal.Comp.Cases 1588, 1593 (Appeals Board en banc).) Therefore, where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien

claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, at p. 1592; Lab. Code, §§ 3202.5, 5705.) Additionally, in *Torres v. AJC Sandblasting (Torres)* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc), we explained that sections 3202.5 and 5705 “require that [a] lien claimant prove that the treatment rendered was reasonable and necessary to cure or relieve the effects of the injury.” (*Id.* at p. 1121.)

As noted above, the WCJ first found that Dr. Michaels’s reporting did not constitute substantial medical evidence of injury AOE/COE or a compensable consequence psyche injury. For the reasons discussed below, we will affirm these findings.<sup>2</sup>

In this case, lien claimant relied solely upon the reports issued by Dr. Michaels to support its claims that applicant suffered injury AOE/COE to psyche, stress, and sleep, as well as a compensable consequence injury to her psyche based upon alleged orthopedic injuries. Upon review, we conclude that Dr. Michaels’s reports are conclusory and do not constitute substantial evidence of the alleged injuries. To qualify as substantial evidence, a physician’s report must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc).)

In his initial evaluation on January 27, 2021 (Lien Claimant Exh. 103), Dr. Michaels noted applicant’s statements that: she “underwent work related thumb surgery in 2014” and that she “developed work-related trigger finger.” In a portion of the initial report titled “History of Injury as Related by the Patient,” Dr. Michaels also noted that “Ms. Parveen states that she experienced industrial problems during her employment with Alcon Laboratories, while performing her usual and customary duties. She indicates that she experienced work-related stress, due to mistreatment

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<sup>2</sup> The WCJ also rejected Dr. Michaels’s reporting as substantial evidence on the grounds that: 1) Dr. Michaels did not utilize an interpreter to communicate with applicant during his evaluations, thus calling into question the reliability of the medical history obtained, and 2) Dr. Michaels discussed a different patient (“Ms. Moran”) in portions of his final report. We do not adopt this reasoning in affirming the WCJ’s decision. First, a review of the deposition transcripts submitted by defendant indicate that applicant was willing to, and capable of, communicating without an interpreter. (See Def. Exh. B, pp. 6-8.) Secondly, although the use of a different patient’s name may certainly have reduced evidentiary weight of the report, it is not argued that the substance of the discussion relates to applicant; thus, the occasional reference to “Ms. Moran” throughout the report is not, in itself, grounds to reject it as insubstantial.

from her supervisor....Ms. Parveen had a mini stroke in December 2019, she believes due to work stress...” (*Id.* at p. 3, underlining and capitalization in original.) In a subsequent portion of the initial evaluation titled “Presenting Physical and Psychological Complaints,” Dr. Michaels also indicated:

Ms. Parveen states that her symptoms have progressed, causing her more stress and inability to function fully, both at home and in the work arena. She presents today with physical symptoms directly related to her work situation. She reports that she experiences pain in her head, neck, shoulders, arms, hands, back and leg. Ms. Parveen reports that she has emotional and psychological symptoms as well. She states that she has anxiety attacks and feels depressed and tense. She also has difficulty sleeping, feels tired/fatigued and feels helpless....Ms. Parveen states that she was asymptomatic prior to her work-related problems, and reports that she now experiences psychiatric consequences as a result of her work-related problems, while employed by Alcon Laboratories.

(*Ibid.*)

In his final report, Dr. Michaels found that applicant sustained a compensable psychiatric injury that was 100% caused by “mistreatment/injuries,” citing what we can only assume to be the aforementioned portions of his initial evaluation and the corresponding portions in his final report. (Lien Claimant Exh. 104, pp. 2-3.) Dr. Michaels apportioned 60% of applicant’s psyche injury to “mistreatment at her job” and 10% to stress caused by the “circumstances of [applicant’s] work and her interactions with her supervisor....” (*Id.* at p. 22.).<sup>3</sup> According to Dr. Michaels,

The remaining...30% is apportioned to her reaction to her physical injuries, and the subsequent problems she has had due to those injuries....Ms. Moran<sup>4</sup> conveyed that she had undergone treatment for her physical injuries since approximately 2014, but has had more intensive treatment over the past few years. She further explained that the treatment she had participated in failed to alleviate her injuries...treatment for her emotional distress would necessarily be considered inherent in her claim. Also, such related psychological injuries would be apportioned 100% to her work related problems.

(Lien Claimant Exh. 104, pp. 22-23.)

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<sup>3</sup> “...It is concluded that, based upon available medical evidence, that Ms. Moran’s current emotional distress is partially caused by the mistreatment at her job. The proportion of her distress attributable to this action is 60%.”

<sup>4</sup> For reasons unexplained in the report, in throughout his apportionment discussion, Dr. Michaels occasionally referred to a patient named “Ms. Moran,” rather than applicant, whose name is Ms. Parveen.

It would thus appear that Dr. Michaels believed that 30% of applicant's psyche injury was a compensable consequence of her physical industrial injuries.

Applying section 3202.5, we conclude that the medical reports of Dr. Michaels were insufficient to establish injury AOE/COE. Consequently, we conclude that lien claimant failed to satisfy its burden to prove by a preponderance of the evidence that applicant sustained industrial injury to psyche, stress, or sleep, as alleged.

Lien claimant also failed to demonstrate that applicant sustained a psychiatric injury as a compensable consequence of an industrial orthopedic industry. In concluding otherwise, Dr. Michaels found, without the assistance of medical reporting by an Agreed Medical Evaluator (AME) or Qualified Medical Evaluator (QME) in the field of orthopedics, or similar medical evidence, that applicant did, in fact, sustain the physical injuries that she described to Dr. Michaels during their discussions. In his report, Dr. Michaels admitted that he was not capable of diagnosing physical injuries, stating: "Assessment of Ms. Parveen's physical functioning is beyond the scope of my expertise...." (Lien Claimant Exh. 104, p. 22.) In other words, Dr. Michaels assumed that applicant sustained one or more industrial physical injuries and opined that she also sustained a psychological injury as a compensable consequence. Without additional evidence to support Dr. Michel's underlying assumption, the report is not capable of proving or disproving a disputed medical fact. Thus, the WCJ's decision to reject Dr. Michaels's report as substantial medical evidence of a compensable consequence psyche injury is affirmed.

Nevertheless, we find lien claimant's reports are reimbursable as a medical legal expenses. Pursuant to the Labor Code, "Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible." (Lab. Code, § 4060(b).)

Rule 9793 states in relevant part that:

- c) "Comprehensive medical-legal evaluation" means an evaluation, which includes an examination of an employee, and which (A) results in the preparation of a narrative medical report prepared and attested to in accordance with Section 4628 of the Labor Code, any applicable procedures promulgated under Section 139.2 of the Labor Code, and the requirements of Section 10682 and (B) is either:
  - (1) performed by a Qualified Medical Evaluator pursuant to subdivision (h) of Section 139.2 of the Labor Code, or

(2) performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, *or the primary treating physician* for the purpose of proving or disproving a contested claim, and which meets the requirements of paragraphs (1) through (5), inclusive, of subdivision (h).

....

k) "Primary treating physician" is the treating physician primarily responsible for managing the care of the injured worker in accordance with subdivision (a) of Section 9785.

(Cal. Code Regs., tit. 8, § 9793.)

Labor Code Section 4064 states in part:

a) The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062...

(Lab. Code, § 4064(a).)

There is no dispute here that Dr. Michaels was a treating physician and that this was a denied claim.

Dr. Michaels reported on and discussed a disputed issue, causation of injury, on a denied case. Therefore, his reports constitute medical-legal reports obtained pursuant to section 4060 and are therefore reimbursable. We will amend the WCJ's decision to make this finding and to defer the issues of amount, penalties, interest, and filing fee. The parties should adjust these amounts, subject to proof, with jurisdiction reserved at the trial level if there is any dispute.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the Findings of Fact and Orders issued by the WCJ on March 7, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Orders are **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

### **FINDINGS OF FACT**

1. The reporting of Dr. Michaels was not substantial evidence.
2. Premier Psychological Services did not meet its burden to prove injury AOE/COE to psych, stress and sleep.
3. Premier Psychological Services did not meet its burden to prove that psych was a compensable consequence of orthopedic injuries.
4. The issue of whether Applicant's employment was the predominant cause of the alleged psychological injury is moot due to the finding of no injury AOE/COE.
5. The issue of whether good faith personnel action was the substantial cause of the alleged psychological injury is moot due to the finding of no injury AOE/COE.
6. The treatment services of Dr. Michaels were not reasonable and necessary.
7. The issue of reimbursement for lien filing fee is deferred.
8. The Lien of Premier Psychological Services for medical legal expenses is allowable, in an amount to be adjusted by the parties, subject to proof, with jurisdiction reserved at the trial level if there is any dispute.
9. The reporting of Dr. Michaels constitutes Medical-Legal reporting.
10. The issue of costs pursuant to Labor Code Section 4064 is deferred.
11. The issue of penalties and interests is deferred.
12. The issue of whether the Defendant waived its right to contest Medical-Legal expense charges is deferred.



**ORDER**

**IT IS FURTHER ORDERED** that Exhibit M is hereby admitted into evidence.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JUNE 3, 2024**

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

**ASMA PARVEEN  
PAPERWORK & MORE  
SILBERMAN VAN OST  
PREMIER PSYCHOLOGICAL SERVICES**

**PAG/cs**

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