

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

DAVID JOHNSON, JR., *Applicant*

vs.

**DIVERSITECH HOLDINGS, INC.; TRAVELERS AND EMPLOYBRIDGE,
insured by XL INSURANCE, administered by BROADSPIRE,
*Defendants***

**Adjudication Number: ADJ16511003
San Bernadino District Office**

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

Lien claimant Medland Medical seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 9, 2024, wherein lien claimant's lien was denied in its entirety. The WCJ found in pertinent part that lien claimant failed to meet its burden to show that applicant's claimed injury arose out of and in the course of his employment (AOE/COE) and thus failed to meet the threshold requirement for proving reasonableness and necessity of the medical treatment services provided; and failed to meet its burden of proof in regard to the issue of medical-legal charges asserted.

Lien claimant contends that the medical treatment provided by Omid Haghghinia, D.C., was reasonable and necessary and that Dr. Haghghinia's comprehensive medical-legal evaluation is reimbursable. We note that although lien claimant's Petition contended it was entitled to reimbursement for medical treatment services, it did not address the WCJ's threshold finding that applicant did not sustain compensable industrial injury.

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

We have considered the allegations of the Petition and the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed herein, we will grant lien

claimant’s Petition for Reconsideration, amend the F&O to find that lien claimant is entitled to reimbursement for the medical-legal evaluation, defer the issue of amount owed to lien claimant and return this matter to the WCJ for further proceedings and a new decision on the issue consistent with this opinion. We will otherwise affirm the F&O.

With regard to reimbursement of medical-legal services, Labor Code section 4060(b)¹ allows a medical-legal evaluation by the treating physician. 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. (See also, *Warren Brower v David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).)

The WCJ determined that the September 26, 2022 report of lien claimant provider physician Dr. Haghghinia was “without proof of when the claim of injury was actually made to the appropriate employer and when the DWC-1 was actually received by the appropriate employer[...].”(Opinion on Decision at p. 6.)

As we stated in our en banc opinion in *Colamonico*,

Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a “contested claim” existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).)

While the parties did not raise section 4620 as an issue at the lien trial, we note that a determination of whether a purported medical-legal expense involves a “contested claim” is a fact-driven inquiry. The public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence is applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal. App. 4th 654, 663 [84 Cal. Rptr. 2d 915, 64 Cal.Comp.Cases 624].)

(*Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059, 1062 (Appeals Board en banc).)

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We note that applicant filed an application for adjudication on August 4, 2022. Defendant denied applicant's claim on August 22, 2022 (L.C. Exhibit 16) and denied liability for medical treatment on September 1, 2022 (L.C. Exhibit 15). We find that these facts adequately establish a "contested claim" for the purposes of Section 4620.

The WCJ also denies recovery for the medical legal report because "[] the report asserts the incorrect date of injury (of 6/12/2022) instead of the amended date of injury (of 5/12/2022), and was never sought to be corrected or amended, the reporting itself does not meet the requirement of being capable of proving or disproving a disputed medical fact, the determination of which is essential to an adjudication of the employee's claim for benefits and is "useless as evidence" [...]" (Opinion on Decision at p. 6.) We are not persuaded that an incorrect injury date by itself renders the med-legal report "useless" and find that the medical-legal reporting is otherwise relevant, admissible and could provide a basis for a decision. (*Costa v. Hardy Diagnostic*, (2007) 72 Cal. Comp. Cases 1492, 1498-1499 (Appeals Board en banc); see also *Colamonico*, *supra* at 1062.)

Further, it does not appear to be disputed that Dr. Haghghinia was applicant's primary treating physician (PTP) at the time the September 26, 2022 medical-legal report was prepared and submitted. (L.C. Exhibit 8.) We also note that applicant's attorney's August 30, 2022 letter requesting the medical-legal reporting is attached to the report. (*Id* at 14.)

Based on our review of the record, we find that lien claimant is entitled to reimbursement for the cost of the medical-legal evaluation. We defer the issue of amount owed to lien claimant.

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. As noted above, 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].)

As stated in the Opinion on Decision:

Lien Claimant Burden of Proof on AOE/COE Disputed Cases

In cases where the case in chief settles via Compromise and Release with a good faith issue as to the industrial relationship of the applicant's injury before the liens are resolved (i.e., such as may be found in a settlement with a *Thomas* finding or where injury AOE/COE is specifically noted to be in issue), and the disputed medical treatment lien claims are subsequently tried, lien claimants step

into the shoes of the applicant and must meet their burden of proof and establish a prima facie case of entitlement to workers' compensation benefits in order to collect anything for medical treatment. This burden of proof is based upon a preponderance of the evidence.

In instances where a defendant asserts a good faith defense that would defeat the applicant's claim in its entirety, if successful, it may be necessary for the applicant to testify at the lien trial in order for the lien claimant to carry its burden of proof. Typically, purely medical disputes (where there is no disagreement over what happened to the applicant) and purely legal disputes (where there is no factual dispute only a dispute as to the application of the law to the facts) do not require the applicant's testimony. Factual disputes typically require the applicant's testimony, particularly when there is an issue as to whether the asserted injury arose out of or occurred in the course of employment. While lien claimants have the right to present witnesses and even may offer the applicant's deposition if they can show that applicant was unavailable to testify, if the nature of the dispute is such that applicant's testimony and a judge's determination that the testimony is credible is necessary for lien claimant to establish a prima facie case, and such testimony is not presented at trial, then the medical treatment lien claimant cannot meet its burden of proof and is not entitled to recover anything on their lien for medical treatment.

In the instant matter, the applicant was not present at the lien trial and lien claimant did not subpoena applicant to testify. Injury was initially denied in this matter based upon lack of medical evidence and employer level investigation, as noted in Broadspire's 7/10/2023 denial letter (Exhibit A). It is further noted in the C&R that the claim was denied based upon lack of employment, lack of substantial medical evidence and employer investigation. [...]

Accordingly, we grant lien claimant's Petition for Reconsideration, amend the F&O to find that lien claimant is entitled to reimbursement for the medical-legal evaluation, defer the issue of amount owed to lien claimant and return this matter to the WCJ for further proceedings and a new decision on the issue consistent with this opinion. We will otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant's Petition for Reconsideration of the Findings and Order of May 9, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of May 9, 2024 is **AFFIRMED** except it is **AMENDED** as follows:

FINDINGS OF FACT

3. Lien claimant, Medland Medical, met their burden of proof in regard to the issue of medical-legal charges asserted.
4. Medland Medical is entitled to reimbursement for the reasonable and necessary medical-legal evaluation. The amount of payment is deferred.

ORDER

Lien claimant, Medland Medical, shall take nothing by way of its lien for the costs of medical treatment.

It is hereby **ORDERED** that Medland Medical Group is to receive payment from defendant for the reasonable and necessary medical-legal evaluation. The amount of payment is deferred.

IT IS FURTHER ORDERED the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 2, 2024

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

**CLAIMLOGIX
MEDLAND MEDICAL**

LN/md

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