**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**KERRI ROBINSON, *Applicant***

**vs.**

**FRANK D. LANTERMAN DEVELOPMENTAL SERVICES;**
**STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ4391030 (POM 0281596);**
**ADJ643599 (POM 0281599)**
**Pomona District Office**

# OPINION AND DECISION AFTER RECONSIDERATION

We previously granted the Petition for Reconsideration[1] filed by lien claimant, The Dental Trauma Center, Inc., (lien claimant) in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Lien claimant seeks reconsideration of the Findings and Order (F&O) issued on October 11, 2021, by a workers' compensation administrative law judge (WCJ) for case number ADJ4391030.[2] The WCJ found in pertinent part that dental treatment rendered prior to the date of Jerome N. Peterson, DDS's defense qualified medical evaluation (QME) of October 11, 2005 by lien claimant was reasonable and necessary to relieve applicant of the effects of the industrial injury; applicant did not require further medical treatment after she was found to be permanent and stationary by Dr. Peterson on October 11, 2005 because treatment rendered after that date would be due to her previous non-industrial injury in 1987, and not the industrial injuries.

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[1] Commissioner Sweeney, who previously served on the panel which granted reconsideration to further study the factual and legal issues in this case, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] Case numbers ADJ4391030 and ADJ643599 were consolidated at trial on June 22, 2021, but the issues were separately raised in each case, and lien claimant filed similar liens in both cases. Yet the WCJ only listed ADJ4391030 on the F&O, and *this means that the lien in ADJ643599 has not been adjudicated*. Moreover, lien claimant treated applicant for both dates of injury, and as medical treatment is not apportionable, a joint findings and order would be appropriate. ( See Granado v. Workers' Comp. Appeals Bd. (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647].)

In its Petition, lien claimant contends that the WCJ correctly found that treatment cannot be apportioned for treatment before the report of October 11, 2005, but then found that it could be apportioned for treatment after the report of October 11, 2005.

We received an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will affirm the F&O, except that we will amend it to defer the issue of whether medical treatment provided after October 11, 2005 was reasonable and necessary to cure or relieve applicant's injuries (Finding of Fact 4). We return the matter to the WCJ for further proceedings consistent with this opinion.

## BACKGROUND

Applicant sustained injury to her neck, back, psych, and dental while employed by defendant as a teaching assistant on July 26, 2004 (ADJ4391030) and August 3, 2004 (ADJ643599). The cases settled by way of a Joint Compromise and Release (C&R), and an Order Approving C&R issued on January 8, 2018.

On December 10, 2004, applicant was referred by primary treating physician (PTP) David H. Doty, M.D., to Mayer Schames, DDS, for a TMJ consultation and treatment. (Exhibit 3, PTP Referral From Dr. David Doty at Arrowback, December 10, 2004.) On January 4, 2005, applicant filed an amended claim form to add the additional body parts of "TMJ, TEETH, FACE, HEADACHES, SALIVARY CHANGES, BRUXISM." (Exhibit 5, DWC-1 Claim Form (Amended), January 4, 2005.)

Applicant was examined by Dr. Schames on January 4, 2005. (Exhibit 16[3], Consultation Report From Dental Trauma Center, January 4, 2005.) By way of history, applicant was injured

[3] There are five Exhibit 16s in the record in Electronic Adjudication Management System (EAMS) and yet, only one is listed in the Minutes of Hearing and Summary of Evidence on June 22, 2021, with several entries below Lien Claimant's 16. Each item should have been designated as its own exhibit and should have been assigned a different number. The Appeals Board has the authority to return the entire matter to the lower court and mandate that the WCJ organize the evidence in a clear manner. (See *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) ["It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence."].) The parties are reminded that each piece of evidence must be clearly identified and be clearly

at work on July 26, 2004, when she was assaulted by a patient and "was head butted." She reported that she "was struck in the left side of her head, face, and temple area. She developed an off-bite, and lost a molar tooth. She injured her neck and left shoulder. She has a throbbing pain behind her left eye, and she has throbbing and popping in her left ear." (Exhibit 16, Consultation Report From Dental Trauma Center, January 4, 2005, p. 2.) She was also injured at work on August 3, 2004 when she was assaulted by another patient. "She fell to her knees and her teeth squeezed together/clenching as she impacted the floor." (Exhibit 16, Consultation Report From Dental Trauma Center, January 4, 2005, p. 2.) She also reported that she had a gunshot wound to her face in 1987 "where she had pre-existing TMJ sounds and facial/TMJ area pain. Her mandible was reconstructed. These symptoms have been increased due to the industrial injuries." (Exhibit 16, Consultation Report From Dental Trauma Center, January 4, 2005, pp. 2-3.) Dr. Schames diagnosed myofascial pain, inflammation of the temporomandibular joint, bruxism, and xerostomia as a side effect of medications and/or from stress. (Exhibit 16, Consultation Report From Dental Trauma Center, January 4, 2005, p. 4.) Dr. Schames concluded that applicant's injury was caused by work because she had "a direct blow to the facial areas aggravating the myofascial pain, headaches, and bruxism," and had "objective classical textbook referral patterns of pain from the upper quadrant/cervical musculature referring pain into the facial areas which caused or aggravated the facial myofascial pain and bruxism." In addition, he noted that a usual pain response is to clench the teeth, and a side effect of the medication was "bruxism/clenching and grinding of the teeth can bracing of the facial musculature" and "xerostomia." (Exhibit 16, Consultation Report From Dental Trauma Center, January 4, 2005, p. 11.)

From January 11, 2005 through November 8, 2010, Dr. Schames continued to treat applicant for her industrially related dental injuries as follows: treatment of decayed teeth caused or aggravated by the industrially related xerostomia; physical medicine modalities for the patient's facial muscular condition. He continued to diagnose bruxism and myofascial pain.[4] (Exhibit 16, PR-2 Supplemental Periodic Reports of Dental Trauma Center (various dates), January 11, 2005 to November 8, 2010.)

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designated with a separate number (applicant or lien claimant) or a letter (defendant). Numbers and letters must not be re-used because it creates confusion for the parties and for the reviewing tribunal.

[4] All but three of the supplemental reports from Dental Trauma Center were marked with the same treatment and diagnosis.

On March 1, 2005, Dr. Schames issued a Permanent & Stationary report. (Exhibit 16, Permanent & Stationary Report of Dental Trauma Center, March 1, 2005.) With respect to further medical treatment, Dr. Schames opined that:

> As stated above, as long as the patient is taking medications on an industrial basis, which have the side effect of causing Xerostomia/qualitative changes in the saliva, continued gingival treatments, fluoride, Peridex, and saliva substitutes will be required. The patient will also require any dental treatment that has arisen, or may arise in the future as a consequence of the dry mouth, acidic salivary environment. Estimated cost for scaling of four quadrants, with prophylaxis and fluoride treatments, and diagnostic salivary flow tests, performed at least every three months, as recommended by the American Dental Association for Xerostomia/dry mouth conditions; can be estimated to cost $4,000.00 per year.
>
> The patient was instructed to wear the Musculo-Skeletal Trigeminal Appliance indefinitely at night and in stressful situations as a prophylactic measure due to their Myofascial Pain. This appliance will be required to be replaced throughout their lifetime on an as needed basis. Estimated time for replacement of this appliance is about once per year, at a cost of $2,000.00 for each appliance.
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> The patient has industrially decayed teeth that still requires continued treatment on an industrial basis, even though they have reached a plateau state in their pain complaint.
>
> **Please Note**: Even though the patient has reached a plateau state in my area of expertise, the patient still requires on-going palliative treatments in order to help the patient manage the pain and keep them at the plateau state. According to my understanding, this continued care is discussed in the following case: Interventional Pain Management, *Galileo Surgery Center vs. WCAB* (*Stratton*) (2001) 66 CCC 1472, Court of Appeal unpublished opinion. The Court of Appeal held that even though the palliative medical treatment did not provide the applicant with a lasting benefit, these palliative treatments were still reasonable and necessary to relieve the applicant from the effects of an industrial injury, where the applicant's treating physician referred the applicant to the lien claimant for pain management.
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> In the event of future exacerbation of the patient's injuries, the patient may need to resume therapy until the condition resolves.

(Exhibit 16, Permanent & Stationary Report of Dental Trauma Center, March 1, 2005, pp. 7-8.)

On October 11, 2005, Dr. Peterson evaluated applicant as a defense QME. (Exhibit B, Report of Defense QME Jerome N. Peterson, DDS, October 11, 2005.) Dr. Peterson concluded that applicant was permanent and stationary as of March 1, 2005 based on Dr. Schames report. He opined that applicant sustained "an aggravation of preexisting jaw and TMJ related disorder of restricted jaw

mobility" on July 26, 2004, and sustained a loss of her lower tooth on August 3, 2004. (Exhibit B, Report of Defense QME Jerome N. Peterson, DDS, October 11, 2005, p. 30.) According to Dr. Peterson, "based upon the information that has been made available, it was [his] opinion that 50% of the cause of applicant's current jaw and TMJ dysfunction was caused by a preexisting gunshot assault that occurred in 1987 which caused a fractured mandible, gunshot residue in the maxilla and mandible, and the need for multiple surgeries. . . . It is highly medically likely that the patient's current restricted mobility was 50% caused by her accident/assault in 1987 and 50% due to aggravation as a result of her accident on 7/26/04." (Exhibit B, Report of Defense QME Jerome N. Peterson, DDS, October 11, 2005, p. 31.) With respect to further medical treatment, he stated that:

> In my opinion, future treatment is not necessary as it relate[s] to the jaw. This is based upon the fact that the treatment rendered to date has given no benefit regarding the patient's jaw. The patient stated to me during her examination on 10/11/05 that her symptoms have remained the same following treatment by Dr. Schames. Even Dr. Schames stated in his P&S Report dated 3/01/05 that 'The patient received no improvement in my area of expertise with our treatment in regard to the patient's facial and jaw complaints.' Any future treatment regarding her jaw, in my opinion, would be due to her previous injury in 1987, and not due to her accident[s] on 7/26/04 or 8/03/02.
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> In my opinion, no future treatment is needed in regard to the issue of xerostomia since it is my opinion that this patient does not suffer from any dryness of the mouth at this time.

(Exhibit B, Report of Defense QME Jerome N. Peterson, DDS, October 11, 2005, p. 32.)

On June 22, 2021, as relevant herein, defendant and lien claimant proceeded to trial on the issue of the reasonableness and necessity of the treatment. The WCJ consolidated case numbers ADJ4391030 and ADJ643599 for hearing. (Minutes of Hearing & Summary of Evidence (MOH/SOE), 6/22/2021, 2:3-2:6.) In case number ADJ643599, the parties stipulated that applicant, while employed on August 3, 2004, as a teaching assistant by defendant sustained injury to her neck, back, psyche, and dental. (MOH/SOE, 6/22/2021, 2:9-2:13.) In case number ADJ4391030, they stipulated that applicant, while employed on July 26, 2004 as a teaching assistant by defendant, sustained injury to her neck, back, and psyche, and claimed injury to her knees, face, shoulders, and dental. (MOH/SOE, 6/22/2021, 3:2-3:6.)

## DISCUSSION
## I

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)[5] The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not "act on" the petition within 60 days of the petition's filing with the 'appeals board' and not within 60 days of its filing at a DWC district office. A petition for reconsideration is initially filed at a DWC district office so that the WCJ may review the petition in the first instance and determine whether their decision is legally correct and based on substantial evidence. Then the WCJ determines whether to timely rescind their decision, or to prepare a report on the petition and transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8, §§ 10961, 10962.)[6] Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then "act" on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. On other rare occasions, the case file may be transmitted, but may not be received and processed by the Appeals

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[5] The use of the term 'appeals board' throughout the Labor Code refers to the Appeals Board and not a DWC district office. (See e.g., Lab. Code, §§ 110, et. seq. (Specifically, § 110 (a) provides: "'Appeals board' means the Workers' Compensation Appeals Board. The title of a member of the board is 'commissioner.'").) Section 111 clearly spells out that the Appeals Board and DWC are two different entities.

[6] Petitions for reconsideration are required to be filed at the district office and are not directly filed with the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a "district office" as a "trial level workers' compensation court."].) Although the Appeals Board and the DWC district office are separate entities, they do not maintain separate case files; instead, there is only <u>one</u> *case file*, and it is maintained at the trial level by DWC. (Cal. Code Regs., tit. 8, § 10205.4.)

When a petition for reconsideration is filed, the petition is automatically routed electronically through the Electronic Adjudication Management System (EAMS) to the WCJ to review the petition. Thereafter, the entire case file, *including the petition for reconsideration*, is then electronically transmitted, i.e., sent, from the DWC district office to the Appeals Board for review.

Board within the 60-day period, due to an administrative error or other similar occurrence. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co.* v. *Indus. Acc. Com*. (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok*, *supra* 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.[7]

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, at p. 1108.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Ibid.*) The touchstone of the workers' compensation

[7] Labor Code section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].)

With that goal in mind, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) If a timely filed petition is never considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra* 1 Cal.3d 627, 635.) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra,* 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is doubly true when the Appeals Board's action in granting a petition for reconsideration has indicated to the parties that we will exercise jurisdiction and issue a final decision on the merits of the petition, and when, as a result of that representation, the petitioner has forgone any attempt to seek judicial review of the "deemed denial." Having induced a petitioner not to seek review by granting the petition, it would be the height of injustice to then leave the petitioner with no remedy.

In this case, the WCJ issued the Findings and Order on October 11, 2021, and lien claimant filed a timely Petition on October 29, 2021. According to EAMS, the case file was transmitted to the Appeals Board on July 20, 2022. However, for reasons that are not entirely clear from the record, the Appeals Board did not actually receive notice of and complete review of the Petition until October 10, 2022, and we granted the Petition that same day on October 10, 2022. Accordingly, the Appeals Board failed to act on the Petition within 60 days, through no fault of the parties. But by issuing the order granting reconsideration, we sent a clear signal to the parties

of our intention to exercise jurisdiction and issue a final decision after reconsideration. Neither party expressed any opposition to this course of action, and it appears clear from the fact that neither party sought judicial review of our grant of reconsideration that both parties have acted in reliance on our grant.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on defendant's petition was equitably tolled until 60 days after October 10, 2022. Because we granted the petition on October 10, 2022, our grant of reconsideration was timely, and we may issue a decision after reconsideration addressing the merits of the petition.

## II.

We now turn to the merits.

"[F]or the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a ***contributing cause*** of the injury … [Citation.]" (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 298 [80 Cal.Comp.Cases 489].) Further, "the acceleration, aggravation or 'lighting up' of a preexisting disease is an injury in the occupation causing the same." (*Id.* p. 301.)

Labor Code section 4600 subsection (a) provides:

> Medical, surgical, . . . and hospital treatment,. . . that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. (Lab. Code, § 4600.)

The employer is required to provide medical treatment "that is reasonably required to cure or relieve the injured worker from the effects of his or her injury… " (Lab. Code, § 4600) There is no apportionment of the expenses of medical treatment. If the need for medical treatment is partially caused by applicant's industrial injury, the employer must pay all of the injured worker's reasonable medical expenses. (*Granado, supra,* 69 Cal.2d 399.) The California Supreme Court explained in *Granado* that:

> If medical expense reasonably necessary to relieve from the industrial injury were apportionable, a workingman, who is disabled, may not be able to pay his share of the expenses and thus forego treatment. Moreover, the uncertainties

> attendant to the determination of the proper apportionment might cause employers to refuse to pay their share until there has been a hearing and decision on the question of apportionment, and such delay in payment may compel the injured workingman to forego the prompt treatment to which he is entitled. (*Id.* at p. 406.)

Additionally, we note that Labor Code section 4600 "consistently has been interpreted to require the employer to pay for all medical treatment once it has been established that an industrial injury contributed to an employee's need for it." (See *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1261 [82 Cal.Comp.Cases 679]; *Braewood Convalescent Hospital v. Worker's Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566] [employee suffering from pre-existing condition later disabled by industrial injury was entitled to treatment even for a non-industrial condition that was required to cure or relieve effects of industrial injury].)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ". . . a medical opinion 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Here, lien claimant correctly asserts that the WCJ correctly concluded that the treatment prior to October 11, 2005 cannot be apportioned. Yet, as to the treatment after October 11, 2005, the WCJ incorrectly apportioned Dr. Schames' treatment to applicant's prior non-industrial injury [1987 drive by shooting] based on the report of Dr. Peterson. Dr. Peterson's opinions about the need for future treatment are based on an incorrect legal theory that medical treatment can be apportioned, and therefore are not substantial evidence. In sum, as a matter of law, the issue of whether applicant's treatment for the industrial injury can be apportioned between the industrial

injury and a nonindustrial injury is simply irrelevant because if the treatment is reasonably related to the industrial injury, it is compensable.

Here, Dr. Peterson did not examine applicant after the QME visit on October 11, 2005, and she continued palliative treatment with Dr. Schames through December 2010. This lack of an adequate medical history means that Dr. Peterson's speculative comments about the need for medical treatment in the future even though he was evaluating applicant in October 2005 are not substantial evidence. Unless he examined applicant again to evaluate her current condition after the continuing palliative treatment from Dr. Schames, there is simply no basis to rely on his opinion.

**III.**

Lien claimants hold the burden of proof to establish entitlement to reimbursement for medical treatment liens. (*Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc).) This burden includes the burden to show that specific treatments and the charges for those treatments were reasonable and necessary. (*Id.* at 1121.)

Here, the WCJ couched Finding of Fact 4 as:

> Applicant did not require further medical treatment to cure or relieve from the effects of this injury after she was deemed permanent and stationary by the Defense Qualified Medical Examiner on October 11, 2005. All future medical care relating to dental issues was occasioned by the extensive jaw damage from the gunshot wound.

However, this issue is not whether applicant required further medical treatment after she was permanent and stationary. An award of future medical treatment means that an injured worker is entitled to medical care on the injured body part, subject to the protocols outlined in Labor Code section 4600, et seq, and 4616, et seq, up to such time as the matter is resolved by C&R. Thus, here, the issue is applicant's entitlement to medical treatment up to the date of approval of the C&R on January 18, 2018. Upon return, lien claimant must show that the treatments that applicant underwent were reasonable and necessary to "cure or relieve" her from the effects of the industrial injury. This means that by successfully demonstrating that the treatment provided applicant with palliative relief, lien claimant will likely meet their burden.

Thus, as our decision after reconsideration, we affirm the F&O, except that we amend it to defer the issue of whether medical treatment provided after October 11, 2005 was reasonable and

necessary to cure or relieve applicant's injuries (Finding of Fact 4). We return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on October 11, 2021 is **AFFIRMED**, **EXCEPT** that it is **AMENDED**, as provided below:

**FINDINGS OF FACT**

4. The issue of whether the medical treatment provided after October 11, 2005 by Dr. Mayer Schames of Dental Trauma Center was reasonable and necessary to cure or relieve applicant's injuries is deferred.

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

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

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

**October 22, 2024**

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

**SAAM AHMADINIA**
**SCIF STATE EMPLOYEES**
**BRISSMAN NEMAT**

**DLM/oo**

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