

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

MARIBEL VARGAS, *Applicant*

vs.

**WORKFORCE MANAGEMENT GROUP, INC.; SOUTHEAST PERSONNEL
LEASING, INC.; STATE NATIONAL INSURANCE COMPANY, administered by
PACKARD CLAIMS ADMINISTRATION, INC., *Defendants***

**Adjudication Number: ADJ17259034
Anaheim District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Lien claimant, Medland Medical, has petitioned for reconsideration of the Findings, Award and Order issued and served by the workers' compensation administrative law judge (WCJ) in this matter on April 4, 2024. In that decision, the WCJ found that lien claimant failed to prove that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the "neck, hand, trunk, back, and unclassified" during the period September 26, 2020 through October 4, 2022. The WCJ awarded lien claimant the sum of \$2,255.46 for the April 19, 2023 date of service plus a 25% penalty and interest, and disallowed the remaining dates of service.

Petitioner contends that the WCJ erred in finding that lien claimant did not prove industrial injury based upon the medical-legal reporting of applicant's treating physician. Further alleged is that, once injury was found, the WCJ should have awarded payment for reasonable medical treatment provided by lien claimant as the medical-legal reporting of Omar Haghghinia D.C., was an un rebutted comprehensive medical report, and was the only substantial medical evidence capable of proving industrial injury..

Defendant did not file an answer to lien claimant's petition.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We also received lien claimant's request to file a proposed response to the Report along with said response. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We accept and review lien claimant's supplemental response.

We have considered the Petition for Reconsideration (Petition), the contents of the Report, lien claimant's supplemental response, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant lien claimant's Petition for Reconsideration. Our order granting the Petition is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note the following in our review:

The WCJ stated in her Opinion on Decision (Opinion) the following:

Before the court can address the lien of Medland Medical, the court must address the issue of injury AOE/COE. The trial record contains no evidence of injury AOE/COE and that is an additional aspect of lien claimant's burden of proof.

Lien claimant steps into the shoes of the Applicant, and has the burden to prove injury arising out of and occurring in the course of employment. Applicant did not testify at trial nor provide substantial medical evidence to establish an injury AOE/COE. Lien claimant did not meet its burden of proof and it is found Applicant did not sustain injury arising out of and occurring in the course of employment.

When an Applicant alleges an industrial injury, and the allegation is disputed by the employer, a medical-legal evaluation is often sought in order to resolve the dispute. Whether or not the court finds injury AOE/COE, medical-legal costs can be deemed reasonable and necessary, and therefore, payable. Lien claimant's initial report of 4/19/23 is being characterized as a medical-legal evaluation.

(Opinion, pp. 1-2).

In their Petition, lien claimant asserts:

The report of Dr. Omid Haghghinia D.C. is evidence obtained by a party, that proves injury out of and in the course of employment on a contested claim that was denied in full. There has been no evidence provided by the defendants to rebut the medical-legal report of Omid Haghghinia D.C. There has been no evidence obtained to show that a false history had been taken by Dr. Haghghinia, D.C., a licensed physician, who is himself a certified Qualified Medical Examiner. The defendant had the right to dispute this report and obtain evidence, and their remedy was to obtain Panel QME to resolve the continued dispute. They had the right to depose the applicant, depose other witnesses, or provide their investigation reports showing what evidence they relied upon to deny the applicant's case; no other evidence was sought or presented to refute the Applicant statements provided to Dr. Haghghinia D.C.

Dr. Haghghinia's report is comprehensive, complies with Labor Code 4628, and is the only substantial medical evidence capable of proving injury. He diagnosed the applicant's cervical, lumbar, bilateral wrists, and bilateral foot injuries, providing the causation as a continuous trauma injury from September 26, 2020 to September 26, 2022, while working for her employer. He further states it is his opinion with a reasonable degree of medical probability that the patient suffered a CT injury in the course and scope of their employment.

(Petition, at pp. 4-5).¹

¹ It is noted that in their Petition, lien claimant refers to the evidence by EAMS Doc. ID number and not by the Exhibit number or letter as set forth in the Minutes of Hearing/Summary of Evidence. For future reference, lien claimant is advised to comply with WCAB Rule 10945, which sets forth the requirements for a petition for reconsideration, which states, in relevant part:

§ 10945. Required Content of Petitions for Reconsideration, Removal, Disqualification and Answers.

...

(b) Every petition and answer shall support its evidentiary statements by specific references to the record.

...

(2) References to any documentary evidence shall specify:

(A) The exhibit number or letter of the document;

(B) Where applicable, the author(s) of the document;

(C) Where applicable, the date(s) of the document; and

(D) The relevant page number(s) (e.g., "Exhibit M, Report of John A. Jones, M.D., 6/16/08 at p. 7.");

(Cal. Code Regs., tit. 8, § 10945.)

The WCJ further addresses the dispute as to whether lien claimant met their burden of proving industrial injury in her Report, stating:

Lien claimant did not have Applicant testify to rebut these statements. The nature of the dispute in this matter was that Applicant's testimony was necessary for lien claimant to establish a prima facie case. Lien claimant did not meet its burden and, therefore, is not entitled to recover anything on its lien for medical treatment. (Report, p.3.)

II.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313].)

Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra*, 68 Cal.2d at pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the

conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based). (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either

“determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

“No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...”

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

IV.

Accordingly, we grant lien claimant’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov .

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings, Award, and Order issued on April 4, 2024 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 24, 2024

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

**MEDLAND MEDICAL
STATEWIDE LAW
CBE LAW GROUP**

LAS/abs

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