WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHELLE WHITE, *Applicant*

vs.

STRATEGIC OUTSOURCING, INC., professional employer organization for UNITED FACILITY SOLUTIONS, INC.; ACE AMERICAN INSURANCE COMPANY, administered by CANNON COCHRAN MANAGEMENT SERVICES, INC.; UNITED FACILITY SOLUTIONS, INC.; REDWOOD FIRE AND CASUALTY COMPANY, administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Number: ADJ12812938
Van Nuys District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 28, 2024

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

MICHELLE WHITE
MEDICAL LIEN MANAGEMENT
LAW OFFICES OF SAAM AHMADINIA
MEDVANTAGE ORTHOCARE
DENTAL TRAUMA CENTER
PACIFIC MRI
SOCAL IMAGING
ROSENBERG YUDIN

PAG/oo

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION

INTRODUCTION:

On April 5, 2024, the Defendant, Redwood Fire and Casualty Company, administered by Berkshire Hathaway Homestate Companies, filed a timely and verified petition for reconsideration dated April 5, 2024, alleging that the undersigned WCJ erred in his Partial Findings of Fact, Order and Notice of Intention to Appoint Independent Bill Review Expert dated March 20, 2024. The Defendant contends as follows:

1. The undersigned WCJ erred in finding, based on the treating physician's report of Mayer Schames, D.D.S., dated May 14, 2021, that the Applicant sustained an industrial injury to her teeth, jaw and temporomandibular joint (in the form of temporomandibular joint disease); and that

2. The treatment provided by Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center, failed to constitute reasonable medical treatment in accordance with Labor Code § 4604.5.

STATEMENT OF FACTS:

The Applicant, while employed during the period September 19, 2018 to October 19, 2019, as a security lead, by United Facility Solutions, Inc., claimed to have sustained an industrial injury to her cervical spine, lumbar spine, both shoulders, both knees, teeth, jaw and temporomandibular joint (in the form of temporomandibular joint disease).

On July 25, 2022, WCJ Mitchell Bushin issued his opinion and order approving compromise and release for $50,000.00.

Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center, filed a timely lien for $13,499.78 dated July 16, 2022.

The parties appeared before the undersigned WCJ for lien trial on March 18, 2024 requesting adjudication, among other issues, of the outstanding lien of Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center.

On March 20, 2024, the undersigned WCJ issued his Partial Findings of Fact, Order and Notice of Intention to Appoint Independent Bill Review Expert dated March 20, 2024, finding, in relevant part, that the Applicant sustained an industrial injury to her teeth, jaw and temporomandibular joint (in the form of temporomandibular joint disease). The undersigned WCJ found that the services by Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center, were reasonable medical treatment, but deferred the reasonableness of the medical charges pending further additional bill review evidence.

Aggrieved by this decision, the Defendant filed its petition for reconsideration.

DISCUSSION:

INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

For an applicant to meet his or her burden of proof by a preponderance of the evidence, pursuant to Labor Code § 3202.5, he or she must establish that an injury was caused by his or her employment and occurred while he or she was working. [Labor Code § 3600(a).]

An applicant is not required to prove the existence of an industrial injury beyond a reasonable doubt. Instead, an applicant merely needs to present substantial evidence showing that "industrial causation is reasonably probable" [McAllister v. Workers' Comp. Appeals Bd. (1968) 33 Cal. Comp. Cases 660, 665; Rosas v. Workers' Comp. Appeals Bd. (1993) 58 Cal. Comp. Cases 313, 322] and that work was a "contributing cause." [South Coast Framing v. Workers' Comp. Appeals Bd. (Clark) (2015) 80 Cal. Comp. Cases 489, 495.]

Where industrial causation requires an expert medical opinion, that expert medical opinion must provide a diagnosis of an applicant's physical injuries and determine whether his or her work conditions, with reasonable medical probability, contributed to those pathological findings resulting in the need for further medical treatment and/or temporary and/or permanent disability. [See Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613, 619-620 (Appeals Board en banc).]

A WCJ must rely on substantial medical evidence that has some degree of probative force [Simmons Co. v. Industrial Acc. Com. (Tringale) (1945) 10 Cal. Comp. Cases 235, 239] allowing him or her to draw a reasonable conclusion from it. [Judson Steel Corp. v. Workers' Comp. Appeals Bd. (Maese) (1978) 43 Cal. Comp. Cases 1205, 1208] Therefore, a physician must frame his or her medical opinion based on reasonable medical probability, must not be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. [Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604, 621 (Appeals Board en banc).] An aggrieved party's mere protestations of dissatisfaction with the conclusions of a physician's opinions cannot alone be a basis to assert a viable claim that a WCJ's decision relied on a lack of substantial medical evidence. [Lee v. Mitrant U.S.A. Corp. (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 610, 5 (Appeals Board noteworthy panel decision).]

Finally, while the WCAB may reject the findings of a WCJ and enter its own findings on the basis of its review of the record, [Labor Code § 5907] when a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight and should be rejected only on the basis of contrary evidence of considerable substantiality. [Lamb v. Workers' Comp. Appeals Bd. (1974) 39 Cal. Comp. Cases 310, 314.]

Here, the undersigned WCJ relied on the treating physician's report of Dr. Schames, dated May 14, 2021, on page 9, who wrote the following regarding causation:

> "Upon examination, I found that Ms. White presents with objective clinical findings of bruxism where Ms. White is clenching and bracing her facial musculature. The objective findings were teeth indentations/scalloping of the lateral borders of the tongue bilaterally. Ms. White also presents with wear of the surfaces of her teeth. Her facial muscles of mastication which are involved

> in bruxism were found to have pain upon palpation and I objectively felt taut bands within her facial muscles of mastication in my examination of Ms. White.
>
> Ms. White may not have been aware that she may have had prior episodes of bruxism which can be due to obstructions of the airway during sleep or due to a prior nonindustrial habit of bruxism due to extra-pyramidal occurrences in the brain. These preexisting episodes of bruxism can be present and not necessarily cause any facial pain, headaches, or TMJ area pain. However, it is with reasonable medical probability that the industrial exposure which caused Ms. White to have resultant orthopedic pain and emotional stressors would have aggravated any pre-existing bruxism, where the scientific literature has documented that a person can have bruxism in response to pain and in response to stress. Ms. White reports that she finds she is clenching her teeth and bracing her facial musculature not only in response to her orthopedic pain, but also in response to the resultant emotional stressors experienced."

Dr. Schames neither speculated nor guessed in providing his medical-legal opinion. He received an adequate medical history and conducted an adequate examination, relying on the Applicant's objective findings in rendering his conclusions. Since his opinion relied on germane facts and reasonable medical probability, it is substantial medical evidence. As such, in matters that require scientific medical knowledge, a WCJ may not reject them merely because an aggrieved party is dissatisfied with them. [E.L. Yeager Construction v. Workers' Comp. Appeals Bd (Gatten) (1968) 71 Cal. Comp. Cases 1687, 1693.]

Therefore, for the reasons set forth above, the undersigned WCJ did not err in finding industrial causation based on Dr. Schames's medical opinion.

REASONABLENESS OF THE MEDICAL TREATMENT

A defendant may defer utilization review for a medical treatment request "while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Labor Code § 4062" [Labor Code § 4610(l)] and may conduct retrospective review within 30 days after its liability for that disputed medical dispute becomes final. [Labor Code § 4610(m); Cal. Code Regs., tit. 8, § 9792.9(b)-(c)] However, it must notify the provider within five business days from the receipt of the request for authorization [Cal. Code Regs., tit. 8, § 9792.9(b)(1)] and must raise the medical dispute under § 4062 within the time limits prescribed by the statute.

Here, the Defendant Redwood Fire and Casualty Company, administered by Berkshire Hathaway Homestate Companies, issued a denial of the Applicant's workers' compensation claim on February 10, 2020, and failed to notify Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center, of the deferral of its requests for authorization. Accordingly, the Defendant waived its right to conduct retrospective utilization review.

Notwithstanding the Defendant being denied its right to retrospectively review the disputed medical treatment, pursuant to Torres v. AJC Sandblasting (2012) 77 Cal. Comp. Cases 1113

(Appeals Board en banc), lien claimants still hold the burden of proof to establish that their medical treatment was reasonable.

Labor Code § 4604.5 provides that the American College of Occupational and Environmental Medicine's Occupational Medicine Practice (ACOEM) Guidelines or any Medical Treatment Utilization Schedule (MTUS) adopted by the Administrative Director are presumed to be correct on the issue of reasonable of the medical treatment. The same section also states that this presumption is rebuttable by scientific medical evidence establishing that a variance from the ACOEM Guidelines or MTUS is reasonably required. Therefore, in order to meet this burden of proof, a lien claimant is required to show that the disputed medical treatment was reasonably necessary to cure or relieve from the effects of the injury and that this treatment was consistent with ACOEM Guidelines or the MTUS. [Frontline Medical Associates, Inc. v. Workers' Comp. Appeals Bd. (Lopez) (2015) 80 Cal. Comp. Cases 380 (writ denied)] This requirement applies retroactively to all open cases, regardless of the date of injury or the date of medical treatment. [Sierra Pacific Industries v. Workers' Comp. Appeals Bd. (Chatham) (2006) 71 Cal. Comp. Cases 714.] In this case, notwithstanding the articulated criticisms of the Defendant, based on the medical report of Dr. Schames dated May 14, 2021, on pages 12 to 13, he wrote as follows regarding medical necessity:

> "I must treat Ms. White with a daytime Occlusal Orthotic Device to treat her bruxism and resultant facial pain and/or TMJ Disorder. However, the scientific literature has documented that if a person like Ms. White wears a regular daytime Occlusal Orthotic Device during sleep, this may cause or increase any underlying obstructions of the airway that may be present which can be dangerous and life threatening.
>
> Therefore, the standard of care in dentistry is to also fabricate a highly specialized and unique Nocturnal Orthopedic Repositioning Device that not only treats the bruxism that occurs during the night, but this unique appliance would also prevent and/or manage any underlying obstructions of the airway that are present. (Journal of the California Dental Association, August 2016. Volume 44. No. 8 page 510) This appliance is fabricated and customized in our in-house dental laboratory, and is adjusted in person, as needed, over multiple weeks.
>
> The reader must understand that the Nocturnal Orthopedic Repositioning Device cannot be used during the daytime because of the inability to speak and function with it while it is in the mouth.
>
> Therefore, Ms. White requires an oral appliance for daytime use, as well as a separate oral sleep appliance for use at night.
>
> * * *
>
> [The Applicant also needs d]ental treatment of scalings of the teeth and gums with fluoride and saliva substitutes due to the industrially aggravated inflammation of the gums. The standard of care of the American Dental Association requires periodontal maintenance to be performed at least every 3 months."

As demonstrated above, the medical treatment by Mayer Schames, D.D.S., a California stock corporation doing business as The Dental Trauma Center, was reasonable and consistent with Labor Code § 4604.5. In addition, its medical reporting was reasonable in accordance with Cal. Code Regs., tit. 8, § 9785.

RECOMMENDATION:

The undersigned WCJ respectfully recommends denial of the Defendant's petition for reconsideration dated April 5, 2024.

Date: April 8, 2024

DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE