

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

TOMAS ALCARAZ, *Applicant*

vs.

**PSLQ, INCORPORATED; CALIFORNIA CONTRACTORS NETWORK, administered
by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ15462224
Anaheim District Office**

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

Lien claimant Medland Medical (lien claimant) seeks reconsideration of the Findings and Order (F&O) of July 29, 2024, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and in the course of employment to his left shoulder and did not sustain injury to his lumbar spine, neck, left hand, left knee, left index finger or left middle finger during the period from April 1, 2011 through October 15, 2021, while employed as a concrete finisher for defendant. Further, the WCJ found that lien claimant is not entitled to recovery and that their entire lien is disallowed.

Lien claimant contends that the medical treatment and the medical-legal services were reasonably and necessarily self-procured by applicant when defendant denied applicant's claim. Lien claimant filed a supplemental pleading titled "Proposed Answer to the WCJ Opinion and Recommendation on Lien Claimant's Petition for Reconsideration" (supplemental pleading) pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964), which we accept and consider.

We have not received an Answer from defendant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the supplemental pleading and the contents of the Report. Based on our review of the record, and for

the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this opinion. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

BACKGROUND

Applicant claimed that while employed by defendant as a concrete finisher on October 15, 2021, he sustained a specific injury to his back, shoulders, knee (patella), arm, hand, fingers, neck, internal and multiple body parts.

On November 16, 2021, defendant issued a delay notice. (Exhibit A, 11/16/21.)

An Application for Adjudication (Application) was filed on November 23, 2021, and applicant received medical treatment through his employer's medical provider network (MPN). (Lien Claimant's Exhibits H-M, 10/20/2021.)

On January 14, 2022, applicant's new attorney filed an amended Application dated January 11, 2022, claiming a cumulative injury from April 1, 2011 to October 15, 2021, and adding the following body parts: hands, wrists, stress, fingers, sleep. (Lien Claimant's Exhibit 1, 1/11/2022.)

On January 14, 2022, defendant issued a notice of denial of applicant's claim of "October 13, 2021." (Lien Claimant's Exhibit 14, 1/14/2022.)

On February 15, 2022, applicant's attorney designated Omid Haghghinia, D.C., as applicant's Primary Treating Physician (PTP). (Lien Claimant's Exhibit 2, 2/15/2022¹.) In the same letter, applicant's attorney indicated that a medical-legal evaluation would be sought from Dr. Haghghinia.

On March 7, 2022, Dr. Haghghinia examined applicant and issued a medical-legal report for applicant's claimed injury of April 1, 2011 to October 15, 2021. (Lien Claimant's Exhibit 6, 3/7/2022.) The report is addressed to applicant's attorney and defendant American Claims Management. The report begins by saying that:

This Medical-Legal report is issued pursuant to Labor Code §§4620, *et seq.* and 5307.6, and California Code of Regulations § 9793(c)(2), which defines a comprehensive medical- legal evaluation as an evaluation of an injured worker which results in the preparation of a narrative medical report, and is performed by **the primary treating physician** for the purpose of proving or disproving a

¹ The original Exhibit 2 lists the date as 2021, but applicant's attorney filed a subsequent document correcting the error and explaining that the date is actually 2022, which is Exhibit 3.

contested claim; and California Code of Regulations § 9793(h)(2), which provides **that the report is obtained at the request of a party or parties** for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party who requested the comprehensive medical-legal evaluation report.

This patient **alleges injuries to body parts which are in dispute**. I have conducted a Medical- Legal evaluation to determine if the injuries to these body parts occurred because of the industrial injuries referenced above.

Pursuant to California Code of Regulations §9793(b)(1), a contested claim is one in which the claims administrator has rejected liability for a claimed benefit. (Emphasis in original and emphasis and underline added)

(Lien Claimant's Exhibit 6, March 7, 2022, p. 2.)

After evaluating applicant, Dr. Haghghinia concluded that applicant had sustained industrially related injuries, and that there was a need for ongoing medical care. By way of history, Dr. Haghghinia stated that:

The patient states that in 2012, while performing his usual and customary job duties, he began to experience back, shoulder, arm, knee, hand, wrist, and finger pain. He also developed stress and a sleep disorder. The patient attributes the onset of his symptoms to strenuous activity performed during his 8-hour shifts. The patient had to pour, smooth and level fresh concrete. He states he had to be pulling an aluminum float that is 16 feet long to level out concrete. He had to kneel to use the trowel or screed to smooth out concrete. He also had to lift and carrying heavy machinery such as the power vibrator to compress concrete.

His pain further worsened on 10/15/2021. On this day, he was leveling the concrete using the 16 feet float. After repetitively using float, he began to feel a sharp pain along with throbbing on left shoulder. He reported having pain to the foreman. An injury report was made. The patient was allowed to rest the remainder of the day.

The following day he began feeling numbness on his arm radiating to the fingers. He was referred to a clinic by employer but is unable to recall the name. No testing was done. He was recommended physical therapy. He completed about 6 sessions.

The patient claims clinic no longer wanted to treat him, so he sought legal advice.

No further treatment has been rendered.

(Lien Claimant's Exhibit 6, March 7, 2022, pp. 2-3.)

Dr. Haghghinia diagnosed injury to applicant's left shoulder with pain radiating into the hand and index and middle fingers; lumbar spine; and left knee. He recommended x-rays of the left shoulder, left knee and lumbar spine to rule out abnormalities within these body parts; and physio/chiropractic therapy. (Lien Claimant's Exhibit 6, March 7, 2022, p. 12.) With respect to causation, Dr. Haghghinia opined as follows:

Mr. Alcaraz is a 51-year-old right-handed male who presents evaluated today upon referral and request by their attorney for a Primary Treating Physician's Comprehensive Medical- Legal Evaluation with regard to a continuous trauma injury that occurred from April 01, 2011 to October 15, 2021 while working for PSLQ. He was employed since November 01, 2010, as a construction laborer and has not worked for any other employers since he began working there. The patient's job duties included: operating a power vibrator to compress concrete; pouring, smoothing, and leveling the top surface of freshly poured concrete using rake, trowel, float, and screed; applying sealing and hardening components; other duties as assigned. The patient worked 8 hours per day, 5 days a week. His job required repetitive walking and standing and prolonged kneeling and squatting to perform his job. As he had to work with concrete, so his job also required heavy lifting, up to about 50 pounds (a bag of concrete), which he had to move around at times. Previously, the patient worked for Galvan Finishing as a construction laborer. The patient has not worked since October 15, 2021 due to employer stating he could not work until a doctor saw him.

He stated that beginning of 2012, while performing his usual and customary job duties, he began to experience some pain and discomfort in his left shoulder, low back and knee mainly on the left side. He blamed this pain and discomfort because of type of work that he had done, prolonged walking and standing, working with heavy material such as concrete. On October 15, 2021, he really aggravated the pain and discomfort of the left shoulder while he was using a 16-foot float to level the concrete.

He reported the injury to his foreman. He was referred to the clinic for evaluation. He is not able to recall the name of the clinic. He was given six visits of the therapy with some improvement. Then, they stopped the treatment. The reason was unknown for the patient, so he sought legal advice. No other therapy has been given. As of today, he continues to have pain and discomfort in the left shoulder. Radicular pain is noted with active mobility of the left shoulder to the left hand and fingers with numbness at the left index and middle fingers. The patient also has some pain and stiffness at the low back region. Pain appeared to be static at the low back. No radicular pain to the lower extremity currently. Pain noted also at the left knee region. The patient can do partial squat due to the pain. Clicking noted with mobility of the left knee during flexion actively and passively.

Based on the physical examination performed today, review of the history of the injury with the patient, the patient's description of their job duties, and the length

of time that this patient has been employed by the above-referenced employer, it is my opinion with a reasonable degree of medical probability that the patient has suffered a continuous trauma injury in the course and scope of their employment resulting in the above listed diagnoses.

Given the patient's current symptoms, physical findings and the nature of his injury, I believe that this patient's current condition and complaints are the direct result of his continuous trauma from April 01, 2011 through October 15, 2021.

(Lien Claimant's Exhibit 6, March 7, 2022, pp. 11-12.)

Lien claimant issued numerous bills for medical treatment from March 7, 2022 through August 3, 2022. (Lien Claimant's Exhibits 12 & 13, March 28, 2023.)

On March 29, 2022, defendant accepted applicant's injury claim of "October 13, 2021." (Defendant's Exhibit B, March 29, 2022.)

On March 30, 2022, defendant issued an Explanation of Review and Objection to non MPN Treatment. (Defendant's Exhibit G, March 30, 2022.)

On October 24, 2022, the parties entered into a settlement of by way of a C&R. In Paragraph 3, the C&R lists ADJ15462224 and identifies a cumulative injury from April 1, 2021 to October 15, 2021 to applicant's arms, wrists, hands, fingers, back, shoulders, knees, internal, upper extremities and lower extremities.² Paragraph 9 states that: "There is a serious and legitimate dispute regarding AOE/COE. Had this matter proceeded to trial, defendants would have presented witnesses and evidence to establish that the applicant did not sustain an injury AOE/COE." On November 4, 2022, the WCJ issued an Amended Order Approving Joint Compromise and Release.

On December 8, 2022, Medland Medical filed a lien on behalf of Dr. Haghiginia.

On July 11, 2024, lien claimant and defendant proceeded to trial. The issues in dispute were:

1. Parts of the body injured: Lumbar spine, neck, left wrist, left hand, left knee, left index and middle fingers;
2. The lien of Medland Medical Group for treatment and medical-legal expenses in the amount of \$11,825.12;
3. Other issues: 1. Whether the defendant properly objected to Medland Medical Group's treatment and medical-legal services and bills; 2. Whether applicant

² There are three other injuries listed in Paragraph 3, April 27, 2018, May 1, 2019, and August 16, 2021, but there are no ADJ numbers, and without those numbers, the WCJ should not have approved the C&R. The Amended Order Approving lists ADJ16861999; ADJ16861982; ADJ16858733; and ADJ15462224.

treated outside defendant’s Medical Provider Network in violation of Labor Code Section 4616.3(b) even though there was no denial of care; and 3. Whether Medland Medical Group can charge for medical-legal services pursuant to California Code of Regulations Title 8 Sections 9794 and 9795, the Official Medical Fee Schedule.

DISCUSSION

I.

Former Labor Code section 5909³ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 30, 2024, and 60 days from the date of transmission is October 29, 2024. This decision is issued by or on October 29, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

³ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 30, 2024, and the case was transmitted to the Appeals Board on August 30, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 30, 2024.

II.

Section 4060(b) 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.

The Labor Code sections discussed above do not include the limitations set forth in AD Rule 9793(h). It is clear that the intent of section 4060(b) when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of reasonable and necessary medical-legal reports that are performed by the treating physician. Moreover, the Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from their primary treating physician, and in turn, the report from that physician is a medical-legal expense for which the defendant is liable. (*Warren Brower v David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).)

We note that on February 15, 2022, applicant's attorney designated Dr. Haghghnia as applicant's PTP, and on March 7, 2022, Dr. Haghghinia examined applicant and issued a medical-legal report. Based on the record before us, it appears that the March 7, 2022 report was a medical-legal report, however, the issue of whether the medical-legal expenses may be recovered must be considered by the WCJ in the first instance.

A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (§§ 4620, 4621, 4622(f); *American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd. (Hurtado)* (1995) 36 Cal.App.4th 1626 [60 Cal.Comp.Cases 559].) Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof pursuant under sections 4620 and 4621, and once a lien claimant has established these elements, it then may proceed to address the reasonable value of its services under section 4622.

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).) 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).)

Here, on January 14, 2022, applicant filed an amended Application claiming a cumulative injury from April 1, 2011 to October 15, 2021. Also on January 14, 2022, defendant denied liability for applicant's claimed injury of "October 13, 2021."⁴ On March 7, 2022, PTP, Dr. Haghghina, examined applicant and issued a medical-legal report for the purpose of proving applicant's cumulative injury claim. Moreover, on October 24, 2024, the parties entered into a C&R, which stated that "There is a serious and legitimate dispute regarding AOE/COE." Based on the record before us, we believe that lien claimant met its burden to show that the claim is a "contested claim," however, again we will return the matter to the WCJ to consider in the first instance. As explained above, once lien claimant has met its burden of proof pursuant to sections 4620 and 4621, and the analysis then shifts to the reasonable value of the services pursuant to section 4622.

⁴ There is no evidence that defendant ever denied applicant's claimed injury for the period from April 1, 2011 to October 15, 2021.

III.

We now turn to the issue of defendant's liability for the medical treatment provided to applicant by Dr. Haghghinia.

“[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.)

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. (§ 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... “ (§ 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. (See *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399.)

Additionally, we note that 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.” (*Heggin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Lien claimants hold the burden of proof to establish entitlement to reimbursement for medical treatment liens. (*Torres, supra*, 77 Cal.Comp.Cases 1113.) This burden includes the burden to show that specific treatments and the charges for those treatments were reasonable and necessary. (*Id.* at 1121.) Here, Dr. Haghghinia evaluated applicant for his claim of cumulative injury and provided treatment. Based on the record before us, it appears that defendant eventually accepted liability for a specific injury to applicant’s shoulder of October 2021, and that defendant asserted that it had an MPN. When a defendant accepts liability for a claimed injury, it is clear that it may require an applicant to treat within the MPN. Here, defendant denied applicant’s cumulative injury, and it is not clear from the record whether defendant ever authorized treatment for applicant’s specific injury of October 2021. Yet defendant’s denial of liability for Dr. Haghghinia’s medical treatment is based on an assertion that he is not in the MPN. Upon return, the WCJ should consider whether the medical-legal report is substantial evidence to support a finding of cumulative injury, and whether lien claimant’s treatment was reasonable and necessary.

Accordingly, we grant lien claimant’s Petition for Reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that lien claimant’s Petition For Reconsideration of the of July 29, 2024 Findings & Order is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the July 29, 2024 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 29, 2024

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

**DIETZ GILMOR & CHAZEN
MEDLAND MEDICAL GROUP**

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*