WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LIANG JIN HAO, ***Applicant***

vs.

GRAND HARBOR RESTAURANT, INC.;
EVEREST NATIONAL INSURANCE, ***Defendants***

Adjudication Number: ADJ11686539
Oxnard District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimant Optimal Health Medical Center (lien claimant) seeks reconsideration of the Findings and Order (F&O) issued on December 11, 2024, wherein the workers' compensation administrative law judge (WCJ) found that lien claimant failed to meet its burden of establishing that applicant, while employed as a kitchen helper from November 11, 2015 to November 4, 2018, sustained industrial injury to his wrist, shoulder, arm and respiratory system. The WCJ disallowed the lien, accordingly.

Lien claimant contends that the medical reporting in evidence supports a finding that applicant sustained injury arising out of and in the course of injury (AOE/COE).

We have not received an answer from any party. 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 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 discussed below, we will grant reconsideration, rescind the F&O, and substitute new findings that lien claimant has sustained its

burden of proving injury AOE/COE, and deferring issues of the timeliness and value of the lien claim.

FACTS

Applicant claimed injury to his wrist, shoulder, arm, and respiratory system while employed as a kitchen helper by defendant Grand Harbor Restaurant from November 11, 2015 to November 4, 2018. Defendant denies all liability for the claimed injury.

Applicant selected Andrew Shen, M.D., as his primary treating physician, and received treatment from secondary treating physician Henry Kan, D.C. The parties selected Harry Warren, D.C., as the Qualified Medical Evaluator (QME).

On November 1, 2021, applicant and defendant resolved the case in chief by way of Compromise and Release agreement.

On October 22, 2024, lien claimant and defendant proceeded to trial and framed issues of injury AOE/COE, parts of body injured, liability for self-procured medical treatment, the lien of Optimal Health, and whether the lien was barred under Labor Code[1] section 4903.5. The parties submitted only documentary evidence, and the WCJ ordered the matter submitted for decision the same day.

On December 9, 2024, the WCJ issued his F&O, determining in relevant part that lien claimant did not sustain its burden of establishing injury AOE/COE, and ordering the lien disallowed. (Finding of Fact No. 1; Order.) The Opinion on Decision explained that the medical reporting in evidence offered nothing other than conclusory statements regarding industrial causation and failed to explain the mechanism of alleged injury. (Opinion on Decision, at p. 2.)

Lien claimant's Petition responds that the WCJ analysis appeared to be limited to two reports only, and that the conclusions reached in the F&A were not based on the totality of the evidence in the record. (Petition, at p. 4:3.)

[1] All further references are to the Labor Code unless otherwise noted.

DISCUSSION

I.

Former section 5909 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 December 23, 2024, and 60 days from the date of transmission is February 21, 2025. This decision is issued by or on February 21, 2025, so that we have timely acted on the petition as required by Labor Code 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 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 December 23, 2024, and the case was transmitted to the Appeals Board on December 23, 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 December 23, 2024.

II.

Generally, a lien for medical treatment is allowable when the treatment rendered is reasonably required to cure or relieve an injured worker from the effects of an industrial injury (Lab. Code, §§ 4600(a), 4903(b)) but a defendant will not be liable for medical treatment where there is no industrial injury. (*Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588, 1593 (Appeals Board en banc).) Therefore, where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and it must establish industrial injury by a preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.Cases at p. 1592.) In addition, a lien claimant has the burden of proving all the elements necessary to establish the validity of its lien. This includes the burden of showing that the treatment it provided applicant was "reasonably required to cure or relieve" him from the effects of his injury as required by section 4600 (Lab. Code, § 5705 ("[t]he burden of proof rests upon the party or lien claimant holding the affirmative of this issue;" Lab. Code, § 3202.5 ("[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence;" *Zenith Insurance Company v. Workers' Comp. Appeals Bd.* (*Capi*) (2006) 138 Cal.App.4th 373 [71 Cal.Comp.Cases 374].) This also includes the burden of establishing the reasonableness of their medical charges. (*Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc).)

We note initially that the report of the WCJ accords the greater weight of the evidence to the report of QME Dr. Warren, who finds no industrial injury. The WCJ observes that applicant's treating reports lack a comprehensive medical history, and that the "absence of a complete history, specifically that applicant suffered from lung cancer, supports reliance upon the medical reporting with the greatest evidentiary weight, which was that of PQME." (Report, at p. 2.)

To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth reasoning

to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, we do not find the reporting of the QME to be substantial evidence. The report does not reflect an appropriate review of applicant's medical and vocational history, and offers no discussion of applicant's daily job duties, including his lifting, carrying, sitting or standing requirements. Moreover, the report appears to be internally inconsistent insofar as it diagnoses possible strains/sprains to the right shoulder, right wrist, and right elbow, but then opines that "the diagnosis of shoulder, elbow, and wrist are not valid." (Ex. B, Report of Harry Warren, D.C., dated April 25, 2019, at p. 9.) The QME's analysis of causation is limited to a single sentence that "cooks do not get lung cancer by leaning over a stove." (*Ibid*.) The QME cites to no medical evidence in support of his conclusions, reviews no medical literature addressing applicant's contentions, and offers no substantive discussion that reflects an understanding of the scope of the injury alleged, or an analysis of the relationship between applicant's work exposures and his alleged injuries. Because the QME's reporting does not reflect a reasonable understanding of the medical issues alleged or an accurate medical and vocational history, and because the report discloses no substantive analysis of the medical issues presented, we conclude that the QME reporting does not rise to the level of substantial evidence.

However, and irrespective of the deficiencies in the QME reporting, the burden of affirmatively establishing injury AOE/COE rests with the lien claimant. (*Kunz, supra*, 67 Cal.Comp.Cases at p. 1592.)

In support of its evidentiary burden, lien claimant offers the reporting of primary treating physician (PTP) Andrew Shen, M.D., whose initial report notes a history of applicant "working as a cook for the past 3 years." (Ex. 4, report of Andrew Shen, M.D., dated November 26, 2018, at p. 1.) Applicant's position was noted to require "prolonged standing and cooking," including "walking and standing for 6-8 hours per day," and lifting up to 65 lbs. (*Ibid*.) The gradual onset of applicant's symptoms was "first noticed 11/11/2015 to 11/4/2018," and "the pain is aggravated by lifting, pulling, pushing, reaching and carrying." (*Id.* at p. 2.) Applicant's job duties entailed "many repetitive movements" including a requirement that applicant "stand while using his upper extremities to deep fry food," and that applicant was "required to do a lot of lifting, carrying, pushing, and pulling." (*Ibid.*) Dr. Shen offered initial diagnoses including sprains to the right

rotator cuff, right elbow, and right wrist, in addition to acknowledging applicant's lung cancer diagnosis. (*Id.* at p. 3.)

Similarly, Dr. Shen's Permanent and Stationary report of May 20, 2019 noted an interim history of pain in the right elbow, increased with cutting activities or lifting heavy objects, while applicant's right shoulder pain was "mostly resolved." (Ex. 5, report of Andrew Shen, M.D., dated May 20, 2019, at p. 1.) The PTP again notes applicant's history of working as a cook for three years, in a position that required "prolonged standing and cooking." (*Ibid.*) Following a clinical examination that was positive for reduced range of motion in the right upper extremity and diminished grip strength (*Id.* at pp. 2-6), the PTP concluded that applicant "sustained an injury while at work and is experiencing continuing trauma," and that the "patient's condition is consistent with industrial causation of cumulative trauma from usual and customary duties as described above." (*Id.* at p. 6.) The PTP identified injury to the "right rotator cuff capsule," and sprains to the right elbow and right wrist. (*Ibid*.)

Dr. Shen's interim report of August 30, 2021 reiterated the physician's opinion that "[p]atient's position requires the patient to be in prolonged standing and cooking," including being in a "seated position 1-2 hours per day," but otherwise "walking and standing for 6-8 hours per day [and] lift up to 65 pounds." (Ex. 6, report of Andrew Shen, M.D., dated August 30, 2021, at p. 1.) Following his clinical examination and a review of applicant's job duties, the PTP again concluded that "[b]ase[d] on review patient's usual and customary duty and the duration of his employment [i]t is within reasonable medical probability that his condition is consistent with industrial cumulative trauma." (*Id.* at p. 2.)

The medical reporting of applicant's PTP thus contains a reasonable medical and vocational history that acknowledges the claimed injury, reviews applicant's job duties and daily exertional levels, accomplishes a competent physical examination, and analyzes the relationship between applicant's work exposures and the established medical diagnoses. Because the medical opinions of the PTP are framed in terms of reasonable medical probability, are based on an accurate history and an examination, and set forth reasoning to support the expert conclusions reached, the reporting of Dr. Shen constitutes substantial medical evidence establishing injury AOE/COE. (Gatten, supra, 145 Cal.App.4th 922, 928; *Escobedo, supra,* 70 Cal.Comp.Cases 604.)

Thus, and based on the reporting of PTP Dr. Shen, we are persuaded that lien claimant has sustained its burden of establishing injury AOE/COE to the right shoulder, arm, and wrist.

Accordingly, we will grant reconsideration, rescind the F&O, and substitute new findings of fact that applicant sustained injury AOE/COE to the right wrist, right shoulder and right arm, and defer all other issues including the value of the services rendered by lien claimant, and any issues relating to the timeliness of the filing of the lien. We will return this matter to the trial level for the WCJ to conduct further proceedings and to issue a new decision. When the WCJ issues his new decision, any person aggrieved may seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of December 11, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of December 11, 2024 is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Liang Jin Hao, while employed during the period November 11, 2015 through November 4, 2018, as a kitchen helper at Temple City, California, by Grand Harbor Restaurant, sustained injury arising out of and occurring in the course of employment to his wrist, shoulder, and arm.
2. The issue of the nature and extent of the injury, including injury alleged to the respiratory system, is deferred.
3. The issue of the reasonable value of the lien of Optimal Health Medical Center is deferred.
4. The issue of whether the lien of Optimal Health Medical Center was timely filed is deferred.

ORDERS

a. Lien Claimant's Exhibit 6 is admitted in evidence.

b. Defendant's Exhibits A and C are admitted into evidence.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSE H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 21, 2025

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

LIANG JIN HAO
LAW OFFICES OF JEI CI DING, INC.
WORKERS COMP

SAR /bp

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