WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TERESA AVILA, *Applicant*

vs.

L.A. TIMES;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ1408322
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order (F&O) issued on April 30, 2025 by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found in part that the parts of body injured include the lumbar spine only, however, this does not limit the scope of treatment under Labor Code section 4600; applicant was entitled to coverage for treatment expense; the treatment provided by Sleep Treatment Clinic (lien claimant) was reasonably required; the record needs to be developed on the issue of whether the charges were reasonable; the Labor Code section 4903.05 Declaration was not false; lien claimant did serve a request for authorization (RFA); the defendant did not issue a timely utilization review response to the RFA; the defendant did not timely and properly defer utilization review; and the issue of disregarding the RFA of a secondary treater is not relevant.

Defendant contends, in pertinent part, there is no substantial evidence that applicant suffered industrial injury in the form of nature and extent to sleep, oral or cranial; there is no substantial evidence that treatment provided by lien claimant was reasonable or necessary to cure or relieve from the effects of the industrial lumbar spine injury; lien claimant's Labor Code section 4903.05(c) declaration was false as there is no documentation that medical treatment has been neglected or unreasonably refused to applicant; and defendant is not liable for lien claimant's services because no primary treating physician (PTP) issued an RFA for their services nor was

Mayer Schames, D.D.S., or David Schames, D.D.S., designated to be a secondary treating physician.

We have not received an Answer from lien claimant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code[1] 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 § 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 June 3, 2025 and 60 days from the date of transmission is Saturday, August 2, 2025, a weekend. The next

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

business day that is 60 days from the date of transmission is Monday, August 4, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision was issued by or on August 4, 2025, 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 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 WCJ, the Report was served on June 3, 2025, and the case was transmitted to the Appeals Board on June 3, 2025. 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 June 3, 2025.

II.
BACKGROUND

On February 22, 2007, a second Award of Stipulations with Request for Award issued. Applicant was awarded medical treatment to cure or relieve the effects of injury to her lumbar spine. (03/25/2025 MOH/SOE at p. 2:4-6.) On April 12, 2017 an Order Approving Compromise and Release issued resolving the case.

The WCJ's Report states as follows:

> During the time between the Stip. Award in 2007 and the Compromise and Release of 12 April 2017, the applicant continued with treatment which included treatment with a neurologist at TRISTAR ORTHOPEDICS, Dr. Hubbard. On or about 28 August 2015 Dr. Hubbard issued a Request for Authorization (RFA)

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

requesting authorization for a, among other things, an "internist consult for insomnia." See Exhibits 12 and 13. There was no response to this request on the record of this trial and there is no evidence that STATE FUND ever responded to this RFA.

On or about 16 November 2015, Dr. Hubbard provided STATE FUND with an RFA attaching a PR-2 medical report, noting that applicant had sleep disordered breathing (SDB,) obstructive sleep apnea (OSA) and two other breathing-related diagnoses. See Exhibit 11. There was no response to this RFA either.

Additionally, the lien claimant in this case, SLEEP TREATMENT CLINIC also served an RFA dated 18 August 2015 requesting authorization for an obstructive airway oral appliance on an emergency basis. See Exhibit 3.

In response to this RFA, defendant sent a letter dated 21 August 2015 and signed by an Annike D. Dunlap who is signing for Michelle Bullock, the claims adjuster on the file. In it, the person signing the document denies all treatment from Dr. Schames on the grounds that he is not the primary treating physician. See Exhibit C. There is no evidence that this RFA was ever referred to Utilization Review (UR.) There is also no evidence of any other communication at that time by STATE FUND to Dr. Schames.

Dr. Schames then sent an Initial Consultation Report dated 01 September 2015 (Exhibit 2) which appears not to have been served until 24 November 2015 when SLEEP TREATMENT CLINICS served its second Request for Authorization (RFA.) In it, Dr. Schames attaches his 01 September 2015 narrative report justifying the need for the Obstructive Airway appliance. He also requests authorization for periodontal scaling. The proof of service contains the proper Pinedale Post Office address for STATE COMPENSATION INSURANCE FUND. (See Exhibit 1.)

The only response to from STATE FUND is an EOR dated 16 November 2016 stating various objections that do not fit the facts of this case. (See Exhibit B.) There does not appear to be any other response to the 24 November 2015 RFA.

On or about 16 November 2015, Dr. Hubbard of Tristar Orthopedics (Exhibit 11) which again requested testing related to breathing and sleep. There was no response at all to Dr. Hubbard's / Tristar Orthopedics' second RFA.

On 12 August 2016, SLEEP TREATMENT CLINICS filed its lien in this case which included the appropriate declarations required at the time including the Labor Code § 4903.8 declaration and the Rule 10770.5(a) declaration. Also in 2016, the Legislature passed Labor Code § 4903.05(c) which was signed into law providing for another declaration. The lien claimant responded by filing a document entitled Supplemental Lien Form and § 4903.05(c) Declaration dated 20 April 2017. In it, Dr. Schames states that he, "HAS DOCUMENTATION THAT MEDICAL TREATMENT HAS BEEN NEGLECTED OR UNREASONABLY REFUSED TO THE EMPLOYEE AS PROVIDED IN LABOR CODE § 4600."

(06/03/2025 Report at pp. 2-4.)

III.

Contrary to defendant's contention, the WCJ did not find that applicant suffered industrial injury in the form of nature and extent to sleep, oral or cranial. (05/20/2025 Petition for Reconsideration at p. 2:17-18.) Rather, the WCJ found that applicant was entitled to the medical treatment provided by lien claimant under section 4600, which states that:

> Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, 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.

(§ 4600(a).)

Next, defendant contends that there is no substantial evidence that treatment provided by lien claimant was reasonable or necessary to cure or relieve from the effects of the industrial lumbar spine injury. At time of treatment provided by lien claimant, Richard Hubbard, M.D., served as the applicant's PTP.

Initially, on August 11, 2011, applicant reported symptoms including insomnia that she believed developed due to her industrial lumbar spine injury to her medical treatment provider. (Exhibit 9 at p. 3.) As an activity of daily living, applicant's sleep function was reported as follows: "The patient is unable to maintain a restful sleep. The patient has frequent sleep wake schedules, affecting daytime attention and concentration; alertness, energy level; causing irritability and nocturnal sleep pattern." (*Id*. at p. 5.)

Thereafter, Dr. Hubbard referred applicant for a two-night Sleep Disordered Breathing Respiratory Diagnostic Study (SDBR Study). (Exhibit 10 at p. 1.) On July 29, 2015, Gurdip Flora, M.D., issued a Sleep Disordered Breathing Respiratory Diagnostic Study and Report that stated: "The two-night SDBR Study reveals that the patient suffers from a moderate pathological sleep breathing respiratory disorder." (Exhibit 10 at p. 4.) Hence, per an objective, diagnostic study applicant had a sleep breathing respiratory disorder.

On August 18, 2015, Mayer Schames, D.D.S. issued an RFA for Immediate Emergency Medical Treatment of an Obstructive Airway Oral Appliance to treat applicant's diagnosis of Obstructions of the Airway During Sleep. (Exhibit 3 at p. 1.)

On August 25, 2015, Dr. Hubbard diagnosed applicant with insomnia and referred her to an internist for a consult for said insomnia. (Exhibit 13 at pp. 1; 3.) On August 28, 2015, Dr. Hubbard issued an RFA for internist consult for insomnia. (Exhibit 12 at p. 1.)

On September 1, 2015, David Schames, D.D.S., issued an Examination Report for Treatment of the Objectively Documented Nocturnal Obstructions of the Airway. (Exhibit 2.) Dr. Schames reviewed the SDBR Study and reported:

> Ms. Avila has undergone objective diagnostic polysomnogram respiratory studies, where it has been determined that the patient does indeed have nocturnal obstructions of the airway. It was objectively documented that she had 4 episodes of Obstructive Apnea, 2 episodes of Obstructive Hypopnea, and an Apnea *I* Hypopnea Index of 4.7 episodes of major obstruction of airflow occurring every hour. Due to the obstructions of airflow during sleep she also exhibited resultant moderate oxygen desaturation of her blood, which does not allow the proper amounts of oxygen to access the brain and vital organs. She was also objectively documented to have obstructions of airflow causing snoring.

(*Id*. at p. 2.)

Dr. Schames listed applicant's diagnoses as follows:

> 327.26-Nocturnal Obstructions of the Airway Requiring the Nationally Accepted Standard of Care Treatment of an Obstructive Airway Oral Appliance.
>
> 523.42-Aggravated Periodontal Disease/ Gingival Inflammation *(contributed to by industrial pain, and/or any industrial emotional stressors, and/or industrial side effects of medications taken, and/or industrial Bruxism, and/or their loss of sleep)*.

(*Id*. at p. 10.)

Thereafter, Dr. Schames indicated the appropriate treatment including Obstructive Airway Oral Appliance. (*Id.* at pp. 10; 11.)

Dr. Schames reiterated that applicant underwent a polysomnographic study which objectively documented her nocturnal obstructions of the airway (*Id*. at p. 11) then he listed potential industrial causes of Nocturnal Obstructions of Airway including side effects of Naproxen effecting saliva and upper airway lining liquid. (*Id*. at pp. 13-14.) As a dentist can prescribe nonsteroidal anti-inflammatory medication, it is certainly in a dentist's purview to be familiar with potential side effects of said medication.

Based on the foregoing, Dr. Schames provided treatment as follows:

> The patient was, therefore, provided with emergency medical treatment in the form of an Obstructive Airway Oral Appliance, to be worn at nighttime, or any other time the patient sleeps, to protect their teeth from nighttime bruxism, which is causing and/or contributing to their facial myofascial pain and headaches.

(*Id*. at p. 17.)

On November 16, 2015 Dr. Hubbard requested authorization for diagnostic testing to screen and rule out more serious sleep injuries including Respiratory and Pulmonary Abnormalities, Sleep Disordered Breathing, Obstructive Sleep Apnea and Cheyne-Stokes Respiration. (Exhibit 11.)

Ultimately, on June 1, 2016, in response to an April 13, 2016 UR Denial, Independent Medical Review (IMR) issued a partial overturn and determined that "immediate emergency medical treatment, obstructive airway oral appliance, to be worn during sleep is medically necessary and appropriate." (Exhibit 5 at p. 3.)

In considering the totality of the evidence, there is substantial evidence that treatment provided by lien claimant was reasonable and necessary to cure or relieve from the effects of the industrial lumbar spine injury. As early as August 2011, applicant believed she also had an industrial injury to sleep because of her lumbar spine. As early as July or August 2015, applicant's authorized PTP diagnosed her with insomnia and attempted to secure her treatment for it. On July 29, 2015, by SDBR Study, applicant was diagnosed with a sleep breathing respiratory disorder. On September 1, 2015, applicant was diagnosed with an industrial sleep disorder based on the polysomnography and medication side effects from industrial lumbar spine treatment. On an emergency basis, applicant was provided with an Obstructive Airway Oral Appliance. Finally, on June 1, 2016, IMR determined that immediate emergency medical treatment, obstructive airway oral appliance, to be worn during sleep is medically necessary and appropriate.

IV.

Next, defendant contends that lien claimant's section 4903.05(c) Declaration was false as there is no documentation that medical treatment has been neglected or unreasonably refused to applicant.

Again, defendant's liability for medical treatment arises under section 4600, which states reasonable and necessary medical treatment shall be provided by the employer. (§ 4600(a).) "In the case of his or her 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." (*Ibid*.) The Supreme Court has discussed the consequences of an employer's refusal to provide medical treatment:

> [T]he employer is given initial authority to control the course of the injured employee's medical care. Section 4600 requires more than a passive willingness on the part of the employer to respond to a demand or request for medical aid. This section requires some degree of active effort to bring to the injured employee the necessary relief. Upon notice of the injury, the employer must specifically instruct the employee what to do and whom to see, and if the employer fails or refuses to do so, then he loses the right to control the employee's medical care and becomes liable for the reasonable value of self-procured medical treatment.

(*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd*. (1983) 34 Cal. 3d 159, 165 (internal citations omitted).)

In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383] (*Ramirez*), the court of appeal observed that:

> Upon notice or knowledge of a claimed industrial injury an employer has both the right and *duty to investigate the facts* in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he *take the initiative in providing benefits*. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Id.* at p. 234, italics added.)

In *United States Cas. Co. v. Industrial Acc. Com*. (*Moynahan*) (1954) 122 Cal.App.2d 427, [19 Cal.Comp.Cases 8], the court similarly states:

> Section 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury….The duty imposed upon an employer who has notice of an injury to an employee is not … the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary to determine the extent of his obligation and the needs of the employee.

(*Id.* at p. 435.)

Here, the WCJ clearly described defendant's responses or lack thereof to applicant's repeated requests for medical treatment:

1) There was no response to PTP Hubbard's RFAs, dated August 25, 2015 and August 28, 2015, requesting authorization for internist consult for insomnia. (Exhibits 12 and 13.)
2) There was no response to PTP Hubbard's RFA, November 16, 2015 requesting authorization for diagnostic testing to screen and rule out: 1) Respiratory and Pulmonary Abnormalities, Sleep Disordered Breathing, Obstructive Sleep Apnea and Cheyne-Stokes Respiration: Spirometry and Pulmonary Function and Stress Testing, Sleep Disordered Breathing Respiratory Study, including overnight pulse oximetry and nasal function studies. (Exhibit 11.)
3) Lien claimant issued an RFA dated August 15, 2015 requesting authorization for an obstructive airway oral appliance on an emergency basis. (Exhibit 3.) In response to lien claimant's August 15, 2015 RFA, on August 21, 2015 defendant only sent a denial letter denying the emergency treatment because the requesting provider is not the authorized PTP. (Exhibit C.)
4) Lien claimant served a November 24, 2015 Initial Consultation Report which justifies the need for an Obstructive Airway appliance with a second RFA for periodontal scaling. (Exhibits 1 and 2.) In response to the second request, defendant issued an EOR not addressing the Obstructive Airway appliance with a laundry list of reduction codes which are not germane. (Exhibit B.)
5) Lien claimant filed the appropriate declarations.

Hence, defendant made no active effort to bring to applicant the necessary relief or to provide benefits. Defendant did not meet its duty to investigate the facts of the sleep injury or to determine the extent of its obligation to provide awarded medical treatment.

Lastly, defendant argues that it is not liable for lien claimant's services because no primary treating physician issued an RFA for their services nor was either Drs. Schames designated to be a secondary treating physician before their treatment services were provided. In his Report, the WCJ considered whether an RFA of lien claimant's treatment needed to be from the PTP Dr. Hubbard. (06/03/2025 Report at p. 9.) The WCJ determined that, since defendant "ignored" two RFAs from Dr. Hubbard regarding applicant's insomnia injury by failing to submit the requests to UR and failing to provide medical evidence in rebuttal through the UR process, defendant waived any objection to the treatment and became responsible for the self-procured treatment. (*Id*.)

Similarly with this contention of a lack of request for authorization before treatment, on August 18, 2015 from lien claimant, an RFA issued for Immediate Emergency Medical Treatment of an Obstructive Airway Oral Appliance to treat applicant's diagnosis of Obstructions of the Airway During Sleep. (Exhibit 3.) The words "immediate" and "emergency" should have prompted defendant to take some action. In response to the RFA, three days later, on August 21, 2015, defendant sent a denial letter denying the emergency treatment because the requesting provider is not the authorized PTP. (Exhibit C.) Defendant did not submit the request to UR; defendant did not defer a submission to UR; defendant did nothing further to investigate the facts in order to meet its obligation to provide benefits. Furthermore, when the authorized PTP, Dr. Hubbard, diagnosed applicant with insomnia (Exhibits 12 and 13) his requests for treatment were ignored. When Dr. Hubbard requested testing to rule out more additional sleep disorders, his request was ignored. (Exhibit 11.) Defendant has waived any objection to the treatment and became responsible for the self-procured treatment.

Ultimately, on August 28, 2015, applicant was diagnosed by her authorized treater with insomnia and treatment was requested for it. (Exhibit 13.) The range of standard medical treatment for sleep injury includes but is not limited to behavior intervention, sedative/sleep-promoting medications, obstructive airway oral appliance and/or continuous positive airway pressure (CPAP). If defendant wanted to control this potential treatment, upon notice of applicant's sleep injury, it should have specifically instructed applicant what to do and whom to see or become liable for the reasonable value of self-procured medical treatment. We agree with the WCJ, the record needs to be developed on the issue of whether the lien claimant's charges were reasonable.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 4, 2025

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

SLEEP TREATMENT CLINICS
LAW OFFICE OF SAAM AHMADINIA
STATE COMPENSATION INSURANCE FUND

SL/abs

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