

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

**MARIA MERCEDES SANCHEZ, *Applicant***

**vs.**

**PARCO, INC., permissibly self-insured, administered by CLAIM QUEST, INC.,  
*Defendants***

**Adjudication Number: ADJ9011724  
Pomona District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Award and Order (FA&O) issued by the workers' compensation administrative law judge (WCJ) on November 30, 2018. By the FA&O, the WCJ found that cost petitioner, Marilyn Strada, Ph.D., is entitled to payment for the late cancellation fee of \$750.00, as well as penalties, interest and attorney's fees. Applicant's attorney was found to be liable for payment to Dr. Strada.

Applicant contends that she is not liable for Dr. Strada's fee because Dr. Strada did not object to defendant's denial of her invoice within 90 days. Applicant also contends that defendant waived all objections to Dr. Strada's billing and is therefore liable for the late fee. Lastly, applicant contends that the procedure in Labor Code<sup>1</sup> section 4622 only applies to the provider and defendant, not applicant. (Lab. Code, § 4622.)

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will rescind the FA&O and issue a new decision finding that defendant is liable for the outstanding amount of \$700.00 owed to Dr. Strada.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise stated.

## FACTUAL BACKGROUND

Applicant claimed injury to her shoulders, wrists, fingers, upper extremities, elbows, forearms, psyche, headaches and sleep through May 14, 2013 while employed as a finishing inspector by Parco, Inc.

Satish Lal, M.D. evaluated applicant as the orthopedic qualified medical evaluator (QME). (Joint Exhibit J, QME reports of Satish K. Lal, M.D.) In a supplemental report dated December 18, 2015, Dr. Lal stated that applicant's attorney had asked if he could evaluate applicant's psyche, sleep and headache. (Joint Exhibit J, QME report of Satish K. Lal, M.D., December 18, 2015, p. 1.) Dr. Lal stated that he could not evaluate these parts and recommended referral to a psychologist and neurologist to evaluate these complaints. (*Id.* at p. 2.)

On March 30, 2016, applicant submitted a request to the Medical Unit for additional QME panels in psychology and neurology. (Defendant's Exhibit F, Applicant's attorney's panel request, March 30, 2016.) Defendant sent a letter to the Medical Unit on April 11, 2016 objecting to applicant's request for additional panels in these specialties. (Defendant's Exhibit I, Defendant's Objection Regarding Applicant Attorney's Second Attempt in Request for Psychological and Neurological Panel Physician, April 11, 2016.)

On April 15, 2016, the Medical Unit issued panel number 1936501 in psychology and panel number 1936504 in neurology. (Applicant's Exhibit No. 6, Medical Unit's Issued psychology panel, April 15, 2016, p. 2; Applicant's Exhibit No. 7, Medical Unit's Issued neurology panel, April 15, 2016, p. 2.) Applicant sent a letter to defendant on April 25, 2016 striking Neda Khodaparast, Psy.D., from the psychological panel. (Applicant's Exhibit No. 6, Medical Unit's Issued psychology panel, April 15, 2016, p. 1.)

Defendant sent applicant a letter on June 20, 2016 objecting to evaluations with physicians from the neurological or psychological QME panels. (Defendant's Exhibit K, Objection to Panel QME Settings, June 20, 2016.) It was noted in defendant's letter that an appointment had been set with Dr. Strada from the psychological panel for August 31, 2016. (*Id.* at p. 1.)

Dr. Strada sent a QME Appointment Notification form (Form 110) to the parties on July 5, 2016. (Cost Petitioner's Exhibit No. 1, QME Form 110 with POS, July 5, 2016.) Attached to the form was a notice entitled "CME Company Policy for Late Cancellations or Failed Appointments or Interpreters" stating that a "\$750 late cancellation fee is charged if the

appointment is cancelled or rescheduled less than seven business days before the evaluation.” (*Id.* at p. 2.) The form further stated that there is a “\$750 fee...if an applicant fails to attend the evaluation.” (*Id.*) The proof of service shows that this was sent to applicant, her attorney, the claims adjuster and defendant’s attorney. (*Id.* at p. 3.)

On July 12, 2016, applicant sent a notice of appointment for an evaluation with Dr. Marilyn Strada from the psychological QME panel set for August 31, 2016. (Applicant’s Exhibit No. 3, PQME Appointment Letter of Marilyn Strada, Ph.D., July 12, 2016.)

Defendant sent a letter dated August 8, 2016 to Dr. Strada regarding the upcoming appointment with her “as the Panel Qualified Medical Examiner” and states that “[a]ll medical exhibits will be forwarded via joint transmittal letter so that you do not receive duplicate copies.” (Cost Petitioner’s Exhibit No. 2, Defendant’s Adversarial PQME Letter, August 8, 2016, p. 1.) The letter indicates that there are enclosures. (*Id.* at p. 3.) Defendant’s letter does not discuss the dispute between the parties regarding the psychological panel.

On August 30, 2016, applicant’s attorney sent a notice to applicant that her August 31, 2016 appointment with Dr. Strada had been cancelled. (Defendant’s Exhibit Q, Applicant’s attorney’s letter to cancel PQME, August 30, 2016.) Dr. Strada and defendant were copied on this notice. (*Id.*)

Dr. Strada submitted a bill dated August 31, 2016 for a total of \$1,450.00, which included the following charges: \$750.00 for late cancellation (ML100), \$500.00 for review and analysis of records (ML106) and \$200.00 for clerical costs (OMFS CPT 99199). (Defendant’s Exhibit S, Letter from defense counsel, September 19, 2016, p. 4.) The record reflects that records were provided to Dr. Strada, which she reviewed and summarized in a report dated August 31, 2016. (Cost Petitioner’s Exhibit No. 3, Record review and billing, August 31, 2016.)

Defendant issued an explanation of review (EOR) for Dr. Strada’s bill on September 18, 2016, wherein it reduced the \$750.00 charge by \$550.00 with an allowance for \$200.00. (Cost Petitioner’s Exhibit No. 4, CIMS Explanation of Review, September 18, 2016.) Payment was issued to Dr. Strada by defendant for \$200.00. Defendant also forwarded Dr. Strada’s bill to applicant on September 19, 2016 with a letter stating: “It is our position that the payment of that bill is solely your responsibility.” (Defendant’s Exhibit S, Letter from defense counsel, September 19, 2016, p. 2.)

Dr. Strada filed a request for second bill review on September 28, 2016. (Cost Petitioner's Exhibit No. 5, Provider's request for second bill review, September 28, 2016.) On November 1, 2016, defendant sent a letter to Dr. Strada stating as follows in pertinent part:

Your bill was reviewed based on the rules and guidelines set forth in the California Official Medical Fee Schedule (OMFS) adopted by the Administrative Director of the Division of Workers' Compensation.

Upon contacting the claims administrator and the attorney, we will not be issuing an additional recommendation as neither party was made aware of a \$750.00 missed appointment fee.

Therefore, we found our original review to be correct and are unable to recommend an additional allowance.

(Cost Petitioner's Exhibit No. 6, Letter from CIMS, November 1, 2016.)

Despite this letter, defendant issued a second check in the amount of \$550.00 to Dr. Strada on November 22, 2016. (Cost Petitioner's Exhibit No. 7, Check No. 4681, November 22, 2016.) The record does not contain an EOR explaining the services for which this payment was issued.

On December 2, 2016, Dr. Strada submitted another request for second bill review, which stated that she was seeking \$500.00 for ML106 and \$200.00 for 99199. (Cost Petitioner's Exhibit No. 8, Provider's request for second bill review, December 2, 2016.) Defendant issued another EOR dated December 16, 2016, which included no allowances for any charges billed. (Cost Petitioner's Exhibit No. 9, CIMS Explanation of Review, December 16, 2016.) The EOR stated "This appears to be a duplicate charge. An allowance has already been made for these services." (*Id.*)

Dr. Strada filed a Petition for Determination of Non-IBR Medical-Legal Dispute on January 23, 2017 seeking the balance due on her bill, penalties, interest and attorney's fees.

The matter initially proceeded to trial on May 17, 2017. The issues for trial included whether applicant is entitled to additional QME panels in neurology and psychology. (Minutes of Hearing and Summary of Evidence, May 17, 2017, p. 6.) The issue of costs associated with the additional QME panels was deferred. (*Id.*)

Defendant filed a Petition for Costs on July 3, 2017 seeking payment of \$2,640 for time spent litigating the panel dispute and reimbursement of the \$750 defendant paid to Dr. Strada.

The WCJ issued a Findings & Award, Order and Notice of Hearing on August 2, 2017. In the decision, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her shoulders, wrists, index fingers, and thumbs but not to her entire upper extremities, elbows, forearms, psyche, headaches, and sleep. The WCJ further found that applicant is not entitled to additional panels in neurology and psychology. The decision included an order for further development of the record. The record does not show that either party challenged the August 2, 2017 decision.

The matter proceeded to trial again on November 6, 2018 with the issues identified as follows:

1. Payment of medical-legal expenses of PQME Marilyn Strada, Ph.D.
2. PQME request for 10 percent penalty pursuant to Labor Code Section 4622
3. PQME request for costs and sanctions and attorney fees pursuant to 8 CCR 10451.1
4. Defendants' petition for costs and reimbursement (deferred)

(Minutes of Hearing, November 6, 2018, p. 4.)

On November 30, 2018, the WCJ issued the FA&O as outlined above.

## **DISCUSSION**

“The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062.” (Lab. Code, § 4064(a).)

Defendant sent letters to applicant objecting to an evaluation with a psychological panel QME. However, the record does not reflect that defendant advised Dr. Strada that it objected to her evaluation. In fact, the record shows that defendant sent an advocacy letter to Dr. Strada stating that she had “been appointed and chosen as the Panel Qualified Medical Examiner” prior to the appointment. (Cost Petitioner’s Exhibit No. 2, Defendant’s Adversarial PQME Letter, August 8, 2016, p. 1.) There are also indications that defendant jointly provided her with records to review as part of her evaluation. (*Id.*) Defendant’s November 1, 2016 letter to Dr. Strada regarding the late appointment fee incorrectly states that the parties were not notified of the missed appointment

fee. This is inaccurate. The July 5, 2016 QME Appointment Notification Form served on all parties included notice that Dr. Strada's office charges \$750 for a late cancellation (less than seven business days before the evaluation) or for failure to attend the evaluation. (Cost Petitioner's Exhibit No. 1, QME Form 110 with POS, July 5, 2016, p. 2.) Defendant's failure to advise Dr. Strada of its objection to her evaluation and its conduct prior to her evaluation reasonably led Dr. Strada to believe her evaluation was being validly conducted as a panel QME.

As the party responsible for medical-legal expenses, it is defendant's responsibility to pay Dr. Strada's bill. Dr. Strada's bill was for a total of \$1,450.00. Defendant already made two payments to Dr. Strada in the amounts of \$200.00 and \$550.00 for a total of \$750.00, which leaves a remaining balance of \$700.00.<sup>2</sup> We will issue a new decision finding that Dr. Strada is entitled to the balance of \$700.00 and defendant is responsible for this balance. The other findings of fact will otherwise be similar to those contained in the original decision. All other issues will be deferred.

Therefore, we will rescind the FA&O and issue a new decision finding that Dr. Strada is entitled to payment in the amount of \$700.00 and defendant is liable for this expense.

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<sup>2</sup> Dr. Strada's bill was not subject to independent bill review (IBR) since defendant disputed the bill for reasons other than the amount to be paid per application of an applicable fee schedule. (See Lab. Code, § 4622(c).)

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award and Order issued by the WCJ on November 30, 2018 is **RESCINDED** in its entirety and **SUBSTITUTED** with the following:

**FINDINGS OF FACT**

1. It is found that Dr. Strada is entitled to payment for the balance due on her billing, which is \$700.00.
2. It is found that defendant is liable to Dr. Strada for the outstanding balance of her bill of \$700.00.
3. It is found that Dr. Strada is entitled to the statutory late payment penalty and interest in an amount to be adjusted by the parties with jurisdiction reserved in the event of a dispute.
4. It is found that there is no showing of bad faith actions or tactics by the parties to this dispute and no penalties are due on this basis.
5. The issue of cost petitioner's attorney fees is to be adjusted by the parties with jurisdiction reserved in the event of a dispute.
6. All other issues are deferred.

**ORDER**

**IT IS ORDERED** that Parco, Inc., permissibly self-insured, administered by Claim Quest, Inc., must pay Dr. Marilyn Strada in accordance with findings of fact herein. Jurisdiction is reserved in the event of a dispute regarding the amount owed.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**SEPTEMBER 1, 2021**

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

**FLOYD SKEREN MANUKIAN & LANGEVIN  
OTERO LAW  
MARIA MERCEDES SANCHEZ  
TAPPIN & ASSOCIATES**

*AI/pc*

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