

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

ANTONIO GOMEZ, *Applicant*

vs.

G&M OIL, INC.;
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, administered by
Gallagher Bassett Insurance Services, *Defendants*

Adjudication Number: ADJ10233926
Santa Ana District Office

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

Lien claimant RMS Medical Group (lien claimant) seeks reconsideration of the January 24, 2022 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found lien claimant's services were rendered after applicant was discharged from care by the primary treating physician, that Dr. Guy Gottschalk was not the applicant's primary treating physician (PTP), and that RMS Medical Group did not conduct a valid medical-legal evaluation. The WCJ disallowed the lien, accordingly.

Lien claimant contends that defendant G&M Oil, Inc., insured by the Insurance Company of the State of Pennsylvania, administered by Gallagher Bassett Insurance Services (defendant) neglected or refused applicant's medical treatment, and that defendant is consequently liable for applicant's self-procured medical treatment as provided by lien claimant. (Petition for Reconsideration (Petition), dated February 13, 2022, at 4:11.) Lien claimant further contends its billing statements and declarations are admissible in evidence. (*Id.* at 6:25.)

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be granted to amend Finding of Fact No. 1 to reflect a discharge date of October 27, 2015, but that the petition otherwise be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the F&O, and substitute new findings that lien claimant did not sustain its burden of proof, and that the lien of RMS Medical Group is disallowed.

FACTS

Antonio Gomez claimed injury to the left leg and ankle while employed as a cashier by defendant on November 5, 2014. Lien claimant and real party in interest RMS Medical Group has filed a medical services/treatment lien in the amount of \$6,560.70. (December 1, 2021 Minutes of Hearing (Minutes), at 2:13.)

Applicant claimed injury to his left ankle, knee and lumbar spine after falling from a ladder while working in a walk-in cooler. (Ex. C, report of QME Michael Einbund, M.D., dated May 25, 2016, p. 2.) Applicant was treated for his injuries at U.S. Healthworks, which provided medication for pain and inflammation, as well as ankle and knee braces. (*Id.* at p. 3.) Applicant was provided with physical therapy and other treatment modalities, and on January 20, 2015 came under the care of podiatrist Robert Spencer, D.P.M. (*Id.* at p. 10.) Applicant thereafter received various treatment modalities for an additional nine months. Applicant's primary treating physician then released applicant from active care on October 27, 2015, with no impairment, and no need for ongoing or future medical treatment. (Ex. I, Part 1 of U.S. Healthworks records uploaded February 16, 2021, p. 111.)

Applicant retained legal counsel, and on January 25, 2016, nominated Guy Gottschalk, M.D. as his primary treating physician. (Ex. 2, Letter Nominating Primary Treating Physician, dated January 25, 2016.) Dr. Gottschalk provided treatment to applicant, including referrals for pain management and orthopedic surgery consultations. (Ex. E, report of QME Michael Einbund, M.D. dated June 14, 2017, p. 8.) RMS Medical Group filed its lien on behalf of Dr. Gottschalk on January 22, 2018. (Ex 1, Notice and Request for Allowance of Lien, dated January 22, 2018.)

Applicant's case was resolved by way of Compromise and Release, and an order approving issued on November 2, 2017.

Lien claimant and defendant proceeded to lien trial on December 1, 2021. The principle issue raised by the parties was the lien of RMS Medical Group, with associated issues of whether the defendant timely objected to the charges of RMS under Labor Code sections 4620 and 4621,

whether defendant complied with “Utilization Review regs.,” and whether there was a “denial of care that removes treatment from the MPN.”¹ (Minutes, at 2:16.) Additional issues included whether lien claimant conducted a valid medical-legal evaluation, whether the corresponding unsigned billing was valid, whether lien claimant’s section 4903.8(d) declaration was valid, and whether the treatment provided by lien claimant arose out of an inappropriate medical referral, contrary to sections 4061 and 4062, and *Tenet/Centinela Hospital Medical Center v. Workers’ Comp. Appeals Bd. (Rushing)* (2000) 80 Cal.App 4th 1041 [65 Cal Comp Cases 477] (*Rushing*). (*Id.* at 2:22.)

As relevant to this discussion, lien claimant offered into evidence its billing ledger and the supporting reports of applicant’s treating physicians Drs. Gottschalk, Shamlou and Green. (Minutes at 3:13.) However, the defendant objected to the billing ledger, which was marked for identification only and not admitted into evidence. (Minutes, at 5:10.) Similarly, defendant objected to the admissibility of the reports of Drs. Gottschalk, Shamlou and Green on the grounds that they were obtained in violation of *Rushing, supra*, 80 Cal.App.4th 1041. Again, the reports were marked for identification, but not admitted into evidence.

No party offered witness testimony, and the matter was submitted for decision.

The WCJ issued the F&O on January 24, 2022, determining in relevant part that applicant’s primary treating doctor discharged the applicant on September 29, 2015 with no future medical care, that RMS Medical Group’s Services occurred after applicant was discharged by the PTP, that Dr. Guy Gottschalk was not the applicant’s PTP, and that RMS Medical Group did not conduct a valid medical-legal evaluation. (Findings of Fact Nos. 1 through 5.) Accordingly, the WCJ disallowed the lien of RMS Medical Group.

The Opinion on Decision explained that Exhibit 4, a billing ledger marked for identification only, was excluded from evidence because it was unsigned, and the signatory to the section 4903.8(d) declaration was not identified as a physician or other individual personally knowledgeable as to the services provided by the lien claimant. The Opinion further noted that Exhibit 4 was not appropriately listed on the pre-trial exhibit list. (Opinion, at p. 5, para. 3.) The opinion also addresses Exhibits 5 through 11, which were not admitted into evidence on multiple grounds including noncompliance with dispute resolution protocols under section 4062 et seq. and *Rushing, supra*, 80 Cal.App.4th 1041.

¹ All further statutory references are to the Labor Code unless otherwise stated.

Lien claimant's petition contended defendant neglected applicant's medical treatment to multiple body parts, including the left hip, left leg, and knee and back. (Petition at 3:25.) Lien claimant asserted that the presence of contested claims or issues necessitated the medical-legal reporting of Dr. Gottschalk pursuant to section 4620 et seq., and Administrative Director rule 9795. (Cal. Code Regs., tit. 8, § 9795(a).) Lien claimant further contended that Exhibit 4 was improperly excluded from evidence because the signatory to the section 4903.8(d) declaration had direct knowledge of the services provided by lien claimant to the applicant. (Petition, at 6:16.) Lien claimant also contended that under *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 [2006 Cal. Wrk. Comp. LEXIS 323] (Appeals Bd. en banc), the defendant's refusal or neglect allowed applicant to self-procure his treatment with Dr. Gottschalk. (Petition, at 8:4.)

Defendant's answer asserted that the reporting of Dr. Gottschalk was obtained in contravention of sections 4062 and 4062.2, and did not constitute substantial medical evidence because the physician reviewed no medical records. (Answer, at 2:18; 4:8; 6:7.)

The WCJ's Report reiterated that applicant was precluded from selecting Dr. Gottschalk under *Rushing, supra*, 80 Cal.App.4th 1041, and that issues arising out an alleged neglect or refusal of treatment were inapposite, as the body parts listed were not part of the instant claim. (Report, at p.5, para. 2.) The WCJ recommended that reconsideration be granted to correct typographical error in the date listed in Finding of Fact No. 1, which should reflect October 27, 2015, and denial of the balance of the petition on the merits.

DISCUSSION

The decisions of the Appeals Board "must be based on *admitted* evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc, emphasis added).) A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74].) As required by Labor Code section 5313 and explained in *Hamilton*, "the WCJ is charged with the

responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Additionally, when a lien claimant is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured employee and must prove by a preponderance of the evidence all of the elements necessary to the establishment of its lien. (*Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Bd. en banc); *Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Bd. en banc); *Kunz v. Patterson Floor Company, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Bd. en banc).)

Accordingly, lien claimant RMS Medical Group bears the burden of proving all of the elements necessary to the establishment of its lien. This includes demonstrating that the services claimed were actually rendered, and that the services were medically necessary to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a); *Torres v. AJC Sandblasting, supra*, 77 Cal.Comp.Cases 1113, 1121.)

Here, neither the reports of primary treating physician Dr. Gottschalk, nor those of consulting physicians Dr. Shamlou or Dr. Green, were admitted into evidence. (Opinion on Decision, p. 11, first full para.) There is no other evidence in the record to substantiate the specific treatment rendered.

Consequently, lien claimant cannot meet its burden of establishing that it rendered services to applicant, the nature of those services, or that those services were medically necessary.

The Petition does not challenge the WCJ’s exclusion of lien claimant’s physician reports, including the reports of Drs. Gottschalk, Shamlou and Green. Moreover, we discern no good cause in the record to disturb the WCJ’s determinations in this regard. In the absence of evidence to support what services were actually rendered, as well as their medical necessity, lien claimant’s burden of proof is not met. All further issues are moot, including whether Dr. Gottschalk was applicant’s PTP and whether RMS Group performed a valid medical-legal evaluation.

We acknowledge that lien claimant indirectly challenges the exclusion of its ledger printout, offered as Exhibit 4, by asserting that it filed a valid declaration in support of its ledger printout under section 4903.8(d). (Petition, at pp.5-6.) However, even were the ledger printout admitted into evidence, it would be insufficient to carry lien claimant's burden, because the mere introduction of billing or ledger statements is "wholly inadequate to carry lien claimant's burden in this regard," and because the lien claimant still "must show that the charges for the treatment or services rendered is reasonable." (*Torres, supra*, 77 Cal.Comp.Cases 1113, 1121.)

Accordingly, lien claimant has not met its burden of proving all of the elements necessary to the establishment of its lien. Consequently, we will grant reconsideration, rescind the F&O, and substitute new findings of fact that lien claimant has not met its evidentiary burden, and that all other issues are moot. We will further order the lien disallowed.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of February 13, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of January 24, 2022 is **RESCINDED**, with the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Antonio Gomez, while employed on November 5, 2014, as a cashier, at Huntington Beach, California, by G&M Oil Company, Inc., sustained injury arising out of and in the course of employment to his left leg and ankle.
2. Lien claimant RMS Medical Group has not met its burden of proving all of the elements necessary to the establishment of its lien.
3. All other issues are moot.

ORDER

- a. The lien of RMS Medical Group is DISALLOWED.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 18, 2022

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

**RMS MEDICAL GROUP
TOBIN LUCKS
GALLAGHER BASSETT**

SAR/abs

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