

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

JOSE LUIS HUITRON, *Applicant*

vs.

**CUSTOM METAL FINISHING INC.;
EMPLOYERS PREFERRED INSURANCE COMPANY,
administered by EMPLOYERS INSURANCE GROUP,
*Defendants***

**Adjudication Number: ADJ16468047
Anaheim District Office**

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

Lien claimant Spectrum Medical Group, Inc., seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on January 8, 2024, wherein lien claimant's lien was denied in its entirety. The WCJ found in pertinent part that lien claimant failed to meet its burden to show that applicant's claimed injury arose out of and in the course of his employment (AOE/COE) and thus failed to meet the threshold requirement for proving reasonableness and necessity of the medical treatment services provided; and failed to meet the requirements of AD Rule 9793(h) (Cal. Code of Reg. §9793(h)).

Lien claimant contends that the medical treatment provided by Amin Nia, D.C., was reasonable and necessary and that Dr. Nia's comprehensive medical-legal evaluation is reimbursable pursuant to Labor Code section 4060.¹ We note that although lien claimant's Petition contended it was entitled to reimbursement for medical treatment services, it did not address the WCJ's threshold finding that applicant did not sustain compensable industrial injury.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We did not receive an answer from defendant, and we received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that we deny reconsideration.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed herein, we will grant lien claimant's Petition for Reconsideration, amend the F&O to defer the issue of whether lien claimant is entitled to reimbursement for the medical-legal evaluation, and return this matter to the WCJ for further proceedings and a new decision on the issue consistent with this opinion. We will otherwise affirm the F&O.

With regard to reimbursement of medical-legal services, the WCJ determined that the September 14, 2022 report of lien claimant provider physician Dr. Nia was "without the request of the party. Because lien claimant failed to meet the conditions of *Cal. Code of Reg. §9793(h)*, the initial report cannot be paid as a medical-legal expense." (Opinion on Decision at p. 4.)

In this matter, defendant denied applicant's claim of injury on or around August 3, 2022 citing lack of legal, factual or substantial medical evidence and alleging post-termination, thus establishing a contested claim. (Defendant's Exhibit A.) Additionally, it does not appear to be disputed that Dr. Nia was applicant's primary treating physician (PTP) at the time the September 14, 2022 medical-legal report was prepared and submitted. (L.C. Exhibit 7.) It is clear that applicant presented himself for the evaluation on September 9, 2022, and the report of the evaluation states that it was obtained at the request of a party and it was sent to applicant's attorney and to defendant.

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. Notably, none of these three sections 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 PTP, and in turn, the report from that PTP 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).) Thus, the issue of whether the medical-legal expenses may be recovered must be considered by the WCJ in the first instance.

Furthermore, we are not persuaded that the record supports the finding that applicant's attorney did not request timely medical-legal reporting by Dr. Nia. Significantly, his correspondence to defendants, dated September 8, 2022, selected Dr. Nia as applicant's PTP, identified a September 8, 2022 appointment, and cited to sections 4600 and 4603. (L.C. Exhibit 2.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Based on our review of the record, it appears that the WCJ's application of AD Rule 9793(h) failed to consider sections 4060(b), 4064(a), and 4620(a). In addition, we do not believe that the finding of no liability for the medical legal evaluation is fully supported by the present record, and it may be that application of A.D. Rule 9783 to otherwise preclude recovery for medical-legal reporting by a PTP is not correct.

Therefore, we defer the issue of whether lien claimant is entitled to reimbursement for the cost of the medical-legal evaluation.

We will not disturb the WCJ's finding that lien claimant is not entitled to reimbursement for medical treatment services because lien claimant did not prove that applicant sustained compensable industrial injury. As noted above, lien claimant did not challenge or address the finding as to AOE/COE in the Petition. (Lab. Code, § 5904 [Petitioner is deemed to have waived an issue that is not raised in the petition for reconsideration].)

As stated in the Opinion on Decision:

Injury AOE/COE

The case-in-chief resolved via Compromise and Release on 11/28/22. In the C&R, it is noted that applicant, Jose Luis Huitron, while working as a metal grinder in Gardena, California, during the period 11/5/18 through 11/5/21, claims to have sustained injury to the arm, wrist, shoulder, and body systems. As reflected in the C&R, there was a good faith issue in existence which, if resolved against the claimant, would totally bar his recovery of workers' compensation benefits and injury AOE/COE was listed as an issue included in the settlement at Page 6 of the C&R. No party or lien claimant objected to, or filed a Petition for Reconsideration to, the Compromise and Release and Order Approving Compromise and Release. Raised as an issue for determination, was the threshold issue of injury arising out of and in the course of employment.

In cases where the case in chief settles via Compromise and Release with a good faith issue as to the industrial relationship of the applicant's injury before the liens are resolved (i.e., such as may be found in a settlement wherein injury AOE/COE was specifically noted to be disputed, as in this case), and the disputed medical treatment lien claims are subsequently tried, lien claimants step into the shoes of the applicant and must meet their burden of proof and establish a prima facie case of entitlement to workers' compensation benefits in order to collect anything for medical treatment. This burden of proof is based upon a preponderance of the evidence.

In this case, lien claimant's charges were for a medical-legal evaluation and medical treatment services. In order for defendant to be liable for lien claimant's treatment charges, lien claimant has the requirement of proof of an injury arising out of and occurring in the course of employment. If that threshold is met, then additional factors for consideration would include necessity and reasonableness of the treatment, and reasonableness of charges.

In certain instances, it may be necessary for the applicant to testify at the lien trial in order for the lien claimant to carry its burden of proof. Typically, purely medical disputes (where there is no disagreement over what happened to the applicant) and purely legal disputes (where there is no factual dispute only a dispute as to the application of the law to the facts) do not require the applicant's testimony. Factual disputes typically require the applicant's testimony, particularly when there is an issue as to whether the asserted injury occurred in the course of employment. While lien claimants have the right to present witnesses and even may offer the applicant's deposition if they can show that applicant was unavailable to testify, if the nature of the dispute is such that applicant's testimony and a judge's determination that the testimony is credible is necessary for lien claimant to establish a prima facie case, and such testimony is not presented at trial, then the medical treatment lien claimant cannot meet its burden of proof and is not entitled to recover anything on its lien for medical

treatment. In the instant matter, the applicant was not present at the lien trial and lien claimant did not subpoena applicant to testify. Injury was denied in this matter.

Based upon the late reporting of the asserted injury to the employer, as evidenced by the language in the Compromise and Release, EAMS Doc ID 43906322, and defendant's denial of injury, Defendant's Exhibit A, the court finds there to be no substantial evidence supporting an injury at work. Considering the facts of this case, the court finds, in order to award medical treatment, lien claimant needed to establish its prima facie case and the applicant's testimony was necessary.

Accordingly, we grant lien claimant's Petition for Reconsideration, amend the F&O to defer the issue of whether lien claimant is entitled to reimbursement for the medical-legal evaluation, and return this matter to the WCJ for further proceedings and a new decision on the issue consistent with this opinion. We otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant's Petition for Reconsideration of the Findings and Order of January 9, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of January 9, 2024 is **AFFIRMED** except it is **AMENDED** as follows:

FINDINGS OF FACT

3. The issue of whether lien claimant met its burden of proof to show that it is entitled to payment for the reasonable and necessary medical-legal evaluation is deferred.

ORDER

Lien claimant, Spectrum Medical Group, Inc., shall take nothing by way of its lien for the costs of medical treatment. The issue of whether it is entitled to payment for the reasonable and necessary medical-legal evaluation is deferred.

IT IS FURTHER ORDERED the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 2, 2024

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

**SPECTRUM MEDICAL GROUP
MICHAEL SULLIVAN & ASSOCIATES**

LN/pm

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