WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

COLEBY QUARTEMONT, ***Applicant***

vs.

CITY OF VACAVILLE, Permissibly Self-Insured, adjusted by INNOVATIVE CLAIMS SOLUTIONS, ***Defendants***

Adjudication Number: ADJ13508500
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

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 stated in the WCJ's report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

Defendants have a regulatory duty to conduct a reasonable and good faith investigation to determine whether benefits are due. We agree with the WCJ that defendant failed to comply with that duty in this case.

Specifically, Workers' Compensation Appeals Board (WCAB) Rule 10109 provides, in relevant part:

> (a) … [A] claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.
>
> (b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
>
> > (1) The administrator ***may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information*** … . The investigation must supply the information needed to provide timely benefits and to document for audit the

administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.

(2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.

(c) The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.

….

(e) Insurers, self-insured employers and third-party administrations shall deal fairly and in good faith with all claimants, including lien claimants.

(Cal. Code Regs., tit. 8, § 10109, emphasis added.)

In *Ramirez v. Workers' Comp. Appeals Bd*. (1970) 10 Cal.App.3d 227, 234 [35 Cal. Comp. Cases 383], the Court said:

> 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 … [Italics added]. (Emphasis added.)

Moreover, in *United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8], the Court said:

> 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." (Emphasis added.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2021

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

COLEBY QUARTEMONT
MARCUS, REGALADO, MARCUS & PULLEY
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Date of lnjury:	December 12, 2019
Age on DOI:	29
Occupation:	Maintenance mechanic
Parts of Body Injured:	Psyche
Identity of Petitioners:	Defendant
Timeliness:	The petition was timely
Verification:	The petition was verified.
Date of Order:	March 29, 2021
Petitioners Contentions:	Defendant asserts that the PQME report in the case is not substantial evidence because the doctor did not review all prior records of psychological treatment. Defendant further argues that the report is technically deficient as it does not state that it is using the terminology of the DSM.

II
FACTS

While employed as a maintenance mechanic by the City of Vacaville, on December 12, 2019, applicant struck a power line while jackhammering concrete. This caused power to be cut to an adjacent wastewater treatment plant. Applicant was not physically harmed, but became frightened and upset. He sought treatment the following day. (Exhibit A.)

After filing a workers' compensation claim as an unrepresented worker, applicant was requested to complete a form allowing release of his medical records. Applicant completed the form, but limited the time for which the release applied to the period subsequent to his hire date of March 2012. (Exhibit B,)

The claim was denied and applicant was evaluated by Mark Kimmel, PhD., who reported on July 16, 2020. (Exhibit AA.) Dr. Kimmel diagnosed applicant with an adjustment disorder with mixed anxiety and depressed mood, with elements of PTSD. This diagnosis was stated to derive from the International Classification of Diseases, Tenth Revision (ICD-10). Dr. Kimmel stated that the industrial event was the predominant cause of the injury. Dr. Kimmel reviewed all available records and took a complete history.

Defendant had denied the claim on March 10, 2020. After receipt of the report from Dr. Kimmel, the City continued to deny the claim. The claims adjuster testified at trial that because he considered the report deficient he did not have a

duty to act. (Minutes of Hearing, Summary of Evidence, page 13, lines 17 to 20.)

Applicant hired an attorney on or around August 11, 2020, who wrote a demand letter on August 19, 2020. (Exhibit 1.) On September 22, 2020, applicant filed a Declaration of Readiness to Proceed, and the case was set for trial over defendant's objection on October 20, 2020. After a trial on December 17, 2020, a Findings and Award issued finding injury AOE/COE. It is this Findings and Award which is the subject of the Petition for Reconsideration.

III
DISCUSSION

1. The QME report from Dr. Kimmel constitutes substantial medical evidence

Dr. Kimmel wrote a thorough report, reviewing all records provided him, and discussing the diagnostic principles and the causation analysis. Defendant has not shown any deficiencies in his history. Its primary argument is that there was some childhood psychological treatment which was discussed with the doctor but for which the records were not reviewed.

There is no requirement that an evaluator review each and every record in existence. Further, there has been no showing that the treatment was anything other than what applicant discussed with Dr. Kimmel. Dr. Kimmel clearly addressed all known nonindustrial stressors in his predominant causation analysis.

2. Defendant took no efforts to clarify the PQME report

Defendant has argued that the PQME report is deficient in that it does not provide a diagnosis pursuant to the Diagnostic and Statistical Manual (DSM), which it states is insufficient in light of Labor Code section 3208.3(a).

To begin with, the Labor Code requires that the DSM "or other generally approved and accepted" manuals be used. Defendant took no effort to ask Dr. Kimmel whether the ICD-10 is generally approved and accepted, not did it ask the doctor whether the diagnosis would be the same as that provided by the DSM. The claims examiner testified that he felt no duty to do so.

The claims examiner testified that in his opinion, the words "adjustment disorder" raise unresolved questions about the diagnosis. He testified that he questions whether being "almost electrocuted" can cause injury. In doing so, the claims examiner is rejecting medical evidence without any attempt to clarify it presumably based on his own understanding of medical science.

Labor Code section 4063 requires that on receipt of a report resolving an issue requiring a defendant to provide compensation, it must do so or file a Declaration of Readiness to Proceed. The claims examiner is incorrect that he has no duty when he makes a unilateral decision to reject the clear and unambiguous opinion of the evaluator.

3. Defendant made no formal attempts to receive additional records

Defendant has argued that its discovery attempts were hampered by the failure of applicant to sign an unlimited release. However, it has shown no meaningful attempts to receive an unlimited release. The claims examiner can only recall with any detail one phone call to applicant requesting a second release. (Minutes of Hearing, Summary of Evidence, page 11, liens 1 to 4.)

If defendant determined that it needed an unlimited release, it had the ability to seek WCAB intervention. There is no record of any efforts to do so. Instead it chose to unilaterally sit on its hands from the February 20, 2020, receipt of the time-limited release until its October 7, 2020, objection to applicant's DOR. Defendant clearly waived any right to insist on an unlimited release due to its delays.

III
RECOMMENDATION

It is respectfully recommended that defendant's Petition for Reconsideration be denied.

Date: May 10, 2021
Michael Geller
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE