

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

YOUNG J. LEE, *Applicant*

vs.

**MILITARY DELI AND BAKERY SERVICES, INC. and UNITED STATES FIRE
INSURANCE COMPANY administered by CRUM & FORSTER, *Defendants***

**Adjudication Number: ADJ11273405
Riverside District Office**

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

Lien Claimant RMS Medical Group (RMS) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 14, 2022, wherein the WCJ found in pertinent part that RMS was not entitled to receive payment for the medical-legal services it provided Young Lee (applicant) on April 11, 2018, and the WCJ ordered that RMS take nothing by way of its lien.

RMS contends that the medical-legal services provided applicant by Omid Haghghinia, D.C. were reasonable and necessary, that defendant is liable for the reasonable medical costs incurred by applicant, and that defendant's failure to provide Dr. Haghghinia with applicant's medical record is not an appropriate basis for denying payment for his medical-legal reporting.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&O, except that we will amend the F&O to find that RMS is entitled to payment in the amount of \$625.00 for the April 11, 2018 medical-legal services; based thereon we will amend the Order to award RMS \$625.00 in payment of its lien.

BACKGROUND

Applicant claimed injury to her neck, right shoulder, right arm, right wrist, and right hand/fingers, while employed by defendant as a baker during the period from April 24, 2017, through March 26, 2018. Defendant denied the claim as of April 4, 2018. (Def. Exh. H, Denial Notice, April 4, 2018.)

By a Client Referral correspondence from applicant's attorney, Omid Haghghinia, D.C., (affiliated with RMS) was elected to act as applicant's primary treating physician (PTP).¹

On April 11, 2018, Dr. Haghghinia examined applicant and on April 19, 2018, he issued a Primary Treating Physician's Comprehensive Medical-Legal Report. (L.C. Exh. 2, Omid Haghghinia, D.C., April 11, 2018.) The diagnoses included neck and right shoulder pain with muscle and tendon swelling, and wrist/hand pain. (L.C. Exh. 2, p. 8.) Dr. Haghghinia continued to provide applicant with medical treatment, but the injury claim was denied. (See Def. Exhs. I – T, RFA Deferrals, June 29, 2018 – March 6, 2020; L.C. Exh. 3, Bills Ledger.)

The injury claim was settled by Compromise and Release; the WCJ issued the Order Approving Compromise and Release on July 14, 2021.

Defendant and RMS proceeded to a lien trial on April 19, 2022, and the matter was continued to May 31, 2022. (Minutes of Hearing and Summary of Evidence (MOH/SOE), April 19, 2022. At the May 31, 2022 hearing the matter was submitted for decision. The issues included the lien filed by RMS. (MOH/SOE, April 19, 2022, p. 2.)

¹ It must be noted that the correspondence dated October 15, 2016, refers to a cumulative injury claim with applicant's employment starting "on or around 4/24/17." The correspondence also includes a paragraph stating: "This is a specific injury and is pending. Causation: due to nature of work. POB: neck, right shoulder. For specific Mr. Woo was rear ended while working in a traffic accident. For CT claim is arm, wrist, hand/fingers." Clearly the date on the correspondence and the paragraph referring to Mr. Woo are clerical errors and will not be considered. (See L.C. Exh. 1.)

DISCUSSION

Pursuant to Labor Code section 4060(b):

Neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician, except as provided in this section. However, reports of treating physicians shall be admissible.

(Lab. Code, § 4060.)²

Administrative Director Rule 9793 states in part that:

(c) "Comprehensive medical-legal evaluation" means an evaluation, which includes an examination of an employee, and which (A) results in the preparation of a narrative medical report prepared and attested to in accordance with Section 4628 of the Labor Code, any applicable procedures promulgated under Section 139.2 of the Labor Code, and the requirements of Section 10682 and (B) is either:

(1) performed by a Qualified Medical Evaluator pursuant to subdivision (h) of Section 139.2 of the Labor Code, or

(2) performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, or the primary treating physician for the purpose of proving or disproving a contested claim, and which meets the requirements of paragraphs (1) through (5), inclusive, of subdivision (h). ...

(k) "Primary treating physician" is the treating physician primarily responsible for managing the care of the injured worker in accordance with subdivision (a) of Section 9785.

(Cal. Code Regs., tit. 8, § 9793.)

Section 4064 states in part:

(a) 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. ...

(d) The employer shall not be liable for the cost of any comprehensive medical evaluations obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062.

(Lab. Code, § 4064.)

² All further statutory references are to the Labor Code unless otherwise noted.

Here, there is no dispute as to whether Dr. Haghigini was applicant's PTP at the time he prepared and submitted the April 11, 2018 medical-legal report. (L.C. Exh. 2.) Nor is there a dispute as to whether defendant had denied applicant's injury claim. Section 4060(b), as quoted above, specifically states that the parties are not liable for medical-legal reports that are not performed in compliance with that statute, except for those performed by the treating physician. Based on the provisions of section 4064 the employer is liable for the cost of medical-legal evaluations obtained by the employee pursuant to section 4060. A medical-legal evaluation performed by employee's treating physician, is a medical-legal evaluation obtained pursuant to section 4060. Also, 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 his or her PTP. 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).)

Finally, we note that although RMS initially charged \$1,250.00 for Dr. Haghigini's medical-legal report, the actual amount owed is \$625.00. (L.C. Exh. 3, p. 5; Cal. Code Regs., tit. 8, § 9795, Medical-Legal Fee Schedule.)

Accordingly, we grant reconsideration, and affirm the F&O except that we amend the F&O to find that RMS is entitled to payment for the April 11, 2018 medical-legal services in the amount of \$625.00; based thereon the Order is amended and RMS is awarded \$625.00 in payment of its lien.

For the foregoing reasons,

IT IS ORDERED that Lien claimant's Petition for Reconsideration of the Findings and Order issued by the WCJ on July 14, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 14, 2022, Findings and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

4. RMS Medical Group is entitled to reimbursement for such medical legal services in the amount of \$625.00.

ORDER

It is hereby **ORDERED** that RMS Medical Group is to receive payment from defendant in the amount of \$625.00 as payment of its lien.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

PATRICIA A. GARCIA, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 3, 2022

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

**YOUNG LEE
HONG LAW FIRM
CRUM & FORSTER
RMS MEDICAL GROUP**

TLH/mc

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