

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

**DENISE RICO, *Applicant***

**vs.**

**STARCREST PRODUCTS OF CALIFORNIA, INC.;  
ZENITH INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ15742808  
Riverside 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, we will deny reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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



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

**APRIL 3, 2023**

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

**CHERNOW PINE  
MEDLAND MEDICAL**

**LN/pm**

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

CS

**REPORT AND RECOMMENDATION ON PETITION  
FOR RECONSIDERATION**

**I  
INTRODUCTION**

Date of injury: Specific injury to upper extremities on 07/13/2021.

Hearings set: Status Conference 03/13/2023.

Age on date of injury: Age 24 on 07/13/2021.

Identity of Petitioner: Aaron Wylie, hearing representative, for defendant Zenith Insurance Company from Chernow, Pine, and Williams and petitioned for Reconsideration of Findings and Orders regarding lien trial findings issued 01/05/2023.

Parts of body claimed: Hands, wrists, fingers, and arms.

Date of Filing of Petition for Reconsideration: 01/30/2023

Timeliness: The petition was timely as it was filed on last day allowable, 01/30/2023.

Verification: The petition was verified by Aaron Wylie, J.D.

Petitioner's Contentions: Petitioner contends that the evidence does not justify the Findings of Fact and by the order, decision, or award, the Board acted without or in excess of its powers, and the Findings of Fact do not support the Order.

The petitioner argues that this WCALJ was incorrect in finding Number 4 of lien trial decision, in which it was found that Medland Medical Tustin (hereinafter Medland) was entitled to medical-legal charges for the initial date of service on 03/28/2022. The petitioner does not dispute the other 6 findings. The petitioner essentially argued that the initial visit from a doctor chosen by the applicant attorney cannot issue a compensable med-legal report. This WCALJ found that

the initial report from Dr. Haghaghinia from Medland dated 03/28/2022 qualified as a ML 201, with a reasonable value of \$2,015.00.

Of the seven (7) findings, the petitioner only disputes finding number 4. The defendant further argues that primary treating physician was not properly designated and they were not served with the designation until after the examination. Dr. Haghaghinia from Medland was served with a letter designating him as the primary treating physician.

The petitioner further argues that based on Labor Code 4060(c) and Labor Code 4062.2 that Dr. Haghaghinia from Medland is not a Panel QME, and therefore the initial report is not compensable as a medical-legal report.

It is recommended that reconsideration be denied. There has been no response by Medland.

## **II FACTS AND PROCEDURAL HISTORY**

Zenith Insurance Company denied the claim on October 8, 2021 (EAMS Doc ID 43642160, lien claimant exhibit 1). The application for adjudication was filed by Steven Meline Santa Ana on 02/02/2022. The applicant alleged injury to fingers, wrist, hand, and arm.

The applicant was examined by Panel QME Donald Kim on 01/14/2022 EMAS Doc ID 43637637).

Applicant attorney Steven Meline sent Dr. Omid Haghaghinia, D.C. from Medland a letter on 03/08/2022, in which the applicant attorney sent a copy of the denial letter and requested a med-legal report as it was a contested claim (EAMS Doc ID 43642161, Lien Exhibit 10). The Labor Code cited, 4622, should have been cited as 4620 of the Labor Code, in part, but does identify that the case was denied on 10/08/2021 and that it was a contested claim.

The case settled by compromise and release on June 30, 2022. Medland filed a lien in the amount of \$4886.24 on July 22, 2022 (EAMS Doc ID 42365121). Lien trial proceed on 11/17/2022 and was considered submitted on that day. There was no testimony offered by either party and the defendant did not offer evidence to dispute compensability.

Findings and Orders and Opinion on Decision issued 01/05/2023. A status conference was set on 03/13/2023 to verify utilization review and any bill reviews that the defendant completed or any other dispute regarding the lien. The Petition for Reconsideration by Chernow, Pine, and Williams for Zenith Insurance Company was filed on 01/30/2023.

Medland Medical Tustin did not file a Petition for Reconsideration and has not filed a response up to the date of filing this report.

### **III DISCUSSION**

Pursuant to Labor Code 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." The applicant has the affirmative on proving injury arising out of employment and in the course of employment (AOE/COE).

Labor Code 3202.5 requires all parties and lien claimants to meet the evidentiary burden of proof on all issues by a "preponderance of the evidence." This means "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth."

Zenith Insurance Company has argued that pursuant to Labor Code 4060(c) and Labor Code 4062.2 that it should not be required to pay and it is not legally obligated to pay Medland for medical-legal fees.

It should be noted, however, that the following excerpts of sections are applicable as well. 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.

Title 8, California Code of Regulations Section 9793 states in relevant 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.

Labor Code 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...

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...

There is no dispute that Omid Haghghinia, D.C. was a treating physician. There is no dispute that this was a denied case. The treating physician reported on and discussed a disputed issue, causation of injury, on a denied case.

Labor Code Section 4060(b) 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. Further, based on Labor Code 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.

The petitioner cited *Babakitis v. Pacific Homes Works*, 2015 Cal. Wrk. Comp. P.D. LEXIS 488. In that case, venue was in Long Beach. Southern California Mental Health was the lien claimant. The judge in the case found Applicant's attorney did not request Southern California Mental Health to issue comprehensive medical-legal reports. The trial judge also found that the expenses incurred by Southern California Mental Health are not medical-legal in nature as they were requested as a consultation or regarding treatment on a denied case. Since it was essentially a treating physician report it was found not compensable on a denied case in which injury was not proven industrial.

It is not a significant panel decision but could be used for persuasive argument. This case is distinguishable, however. In the *Babakitis v. Pacific Homes Works* case the only issue the doctor was asked to address in detail, by applicant attorney, was the appropriateness of prior recommended treatment. It was found that since there were no disputed issues which were specified by applicant's attorney which were addressed by Lien Claimant, its charges did not constitute medical-legal expenses pursuant to section 9793(h)(2). These facts are not the same as the present case in which the case was clearly and admittedly a denied case and Dr.

Haghghinia was asked to discuss causation AOE/COE, among other things. The petitioner admitted these facts on page 2, lines 15-19, of the Petition for Reconsideration.

The defendant next cited the case of *Warren Brower v David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board *en banc*). The petitioner argued that this case has a more restrictive application as an exception to the general

rules in Labor Code 4060(c) and Labor Code 4062.2. It appears that the petitioner is arguing that it can only be a medical- legal charge if the PTP reviewed an AME or QME report and was requested to rebut the AME or QME opinion. This WCALJ does not read this case as being so restrictive. In fact it is more inclusive. On page 7 of the *En Banc* decision, the WCAB summed it up in part of the last paragraph of page 7:

With respect to defendant's contention that it should not be required to reimburse applicant's costs for Dr. Russell's report, defendant offered no legal authority for the proposition that applicant was not entitled to request a medical-legal report from his treating psychologist. (Defendant's Petition for Reconsideration, p. 8.) Moreover, a medical-legal expense is ordinarily allowable if it is capable of proving or disproving a contested claim, if the expense was reasonably necessary at the time incurred, and if the cost incurred was reasonable. (§§ 4620 et seq., 5307.6.) The mere fact that the parties had agreed to an AME in a particular specialty does not mean that a party cannot reasonably obtain a comprehensive medical-legal report from a treating physician in the same or similar specialty.

This case is similar to the present case. There was a prior med-legal report and a subsequent request for a primary treating physician to comment on a disputed issue. In the present case it was regarding causation AOE/COE whereas in the *Brower* case it was to dispute regarding impairment level. In the present case the report of Omid Haghghinia, D.C. was requested by applicant attorney to report on a disputed issue. The *Brower* case essentially used the more broad definition of a Medical-Legal expense included in Labor Code 4620(a). Subsection 4620(a) reads as follows:

- (a) For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party, the administrative director, or the board, which expenses may include X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees by a certified interpreter pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code, for the purpose of proving or disproving a contested claim.

This is applicable in the present case as well. The report of Dr. Omid Haghghinia, D.C. was requested for the purpose of proving or disproving a contested claim. The initial report of March 28, 2022 is compensable as a medical-legal report.

It is requested that the findings and order be affirmed and the Petition for Reconsideration be denied.

**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

DATED: 02/02/2023

Eric Thompson  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE