WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GANG YE, *Applicant*

vs.

AQUATIC GEARS INC; OAK RIVER INSURANCE COMPANY C/O BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Numbers: ADJ11681317 (MF) ADJ11909471
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Optimal Health Institute (Lien Claimant) seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on May 4, 2023, wherein the WCJ found that Lien Claimant was only entitled to payment on their lien for treatment administered during the delay period in the sum of $9,532.91.

Lien Claimant contends that they were entitled to additional payments on their lien for treatment administered after applicant's claims were denied on January 18, 2019 because medical evidence including the reporting of the Panel Qualified Medical Evaluator (PQME), Dr. Sriram Mummaneni, M.D., supports a finding that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE).

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the 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 deny reconsideration.

BACKGROUND

Gang Ye, applicant, claimed injury to his back while employed by Aquatic Gears, Inc. as an AP clerk/warehouse worker on October 26, 2028 (ADJ11909471). Applicant also claimed continuous trauma injury arising out of and occurring in the course of employment to his back,

stress, nervous, digestive, psyche, internal, neurological, headaches, and sleep, spanning his entire period of employment, March 11, 2011, through October 26, 2018 (ADJ11681317). The employer's workers' compensation carrier at that time was Oak River Insurance Company, administered by Berkshire Hathaway Homestate Company and the claims initially received delay letters dated November 21, 2018 and subsequently denied on January 18, 2019. Both injury claims were settled by Compromise and Release (C&R); a WCJ issued the Joint Order Approving Compromise and Release on September 15, 2020. Lien Claimant filed its liens in both cases on March 10, 2022.

Lien Claimant and defendant proceeded to trial on April 27, 2023. (Minutes of Hearing and Summary of Evidence (MOH/SOE), April 27, 2023.) The issues submitted for decision in both cases included injury AOE/COE, Lien Claimant's lien, reasonableness and medical necessity or whether the services authorized during delayed period or the services were billed per official medical fee schedule, whether the treatment was properly reported, improper RFAs or neglect of treatment, whether UR was timely, whether the services were performed during the delayed period, whether treatment was authorized for Dr. Shen during the delay period and penalties and interest. (See MOH/SOE, April 27, 2023.)

DISCUSSION

It has long been the law that in order to constitute substantial evidence, a medical opinion must be based on pertinent facts and on an adequate examination and history, and it must set forth the reasoning behind the physician's opinion, not merely his or her conclusions; a mere legal conclusion does not furnish a basis for a finding. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp. Cases 604 (Appeals Board en banc).)

In his initial report, Dr. Mummaneni stated:

> From the description of the applicant's job, it appears that the work contributed to his lumbar issues, at least to 1 % causation. In regards to the specific injury claim, the applicant's description also leads to at least a 1 % causation. There is no other information in the record that would counter this. The injury is therefore AOE/COE.
> (L.C. Exh. 7, Dr. Mummaneni, January 23, 2020, p. 21.)

Having reviewed Mummaneni's reports, we agree with the WCJ that the PQME's reporting is incomplete and not substantial medical evidence regarding causation. Dr. Mummaneni's discussion regarding cause of disability does not explain his reasoning or analysis for reaching his conclusion of "at least [] 1% causation". Dr. Shen's opinions are not based on pertinent facts, nor are they based on an adequate medical history, and none of the reports set forth the reasoning behind his opinions. Thus, his reports are not substantial evidence upon which a finding of cumulative injury, AOE/COE can be based. Lien claimant presented no additional evidence other than their own reports to support that the injury was industrial in nature. Dr. Andrew Shen issued two reports. (L.C. Exh. 2, March 12, 2019 and December 20, 2018 by Dr. Andrew Shen.) Neither report is a comprehensive med-legal evaluation. Likewise, the reports by applicant's secondary treating physicians: Stanley S. Wong, DAOM L.Ac. (Acupuncturist) (Exh. 4) and Henry Kan, DC (Chiropractor) (Exh. 3) do not constitute comprehensive med-legal evaluations. The applicant was not called to testify. Absent stipulations regarding the alleged injury and the injured body parts, a lien claimant must prove that applicant sustained an injury AOE/COE. "

We observe that it is the lien claimants that carry the burden of proving injury AOE/COE. In *Kunz v. Patterson Floor Coverings, Inc*. (2002) 67 Cal.Comp.Cases 1588, 1592 (WCAB en banc), we held that when a lien claimant litigates the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien. In *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, (WCAB en banc), we held that in an AOE/COE denied case, lien claimant has the burden of proving injury arising out of and in the course of employment, as a prerequisite to recovery. (Lab. Code §§ 3202.5; 5705.)

Further, pursuant to Labor Code section 4600:

> (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. …
> (Lab. Code, § 4600.)

Since Lien Claimant did not meet its burden of proof on the issue of injury AOE/COE as to the cumulative injury claim, there is no legal basis for claiming the treatment at issue was reasonably required to cure or relieve applicant from the effects of the alleged cumulative injury.

Accordingly, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant's Petition for Reconsideration of the May 4, 2023 Joint Findings and Orders is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 24, 2023

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

OPTIMAL HEALTH INSTITUTE
HALLETT EMERICK LAW FIRM
JIE CI DING LAW FIRM

LN/pm

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