

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

RICARDO RUELAS, *Applicant*

vs.

**DART LOGISTICS;
ZURICH INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ9096159
Los Angeles 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 12, 2024

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

**THE DENTAL TRAUMA CENTER
LAW OFFICES OF SAAM AHMADINIA
GOLDMAN, MAGDALIN & KRIKES**

LN/pm

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**

Rafael Ruelas, a 29-year-old forklift driver for Dart Logistics, filed an Application for Adjudication on 9/16/13 alleging that during the period commencing 6/6/99 through 10/18/11, he sustained injury arising out of and occurring in the course of employment to his neck, right shoulder, elbows, arms, back, right leg, hip, right knee, psyche, as well as sexual dysfunction and a sleep disorder. The claim was denied by the employer.

Lien Claimant The Dental Trauma Center (hereinafter Petitioner) has filed a timely, verified, Petition for Reconsideration of the Findings and Order dated 10/12/23 alleging:

1. That by the order, decision or award, the Board acted without or in excess of its powers, and;
2. The evidence does not justify the Findings of Fact; and;
3. The Findings of Fact do not support the order, decision, or award.

Petitioner contends that:

- a. The Court erred by applying the requirements of Title VIII CCR section 9785.

**II
FACTS**

The case in chief was resolved by a Findings and Award on 3/30/15 wherein Judge Nina Munoz found that Applicant sustained injury arising out of and occurring in the course of employment by way of a cumulative trauma through 8/26/13 to his right elbow, right shoulder, right arm, neck and back. No other body parts were put in dispute at the time of trial, and there was no reservation of jurisdiction over any other body parts. No Petition to reopen was ever filed.

Prior to the Findings and Award, Applicant was treating with Dr. Nikakhtar who declared in the report dated 8/26/13 that Applicant elected her as the Primary Treating Physician per Labor

Code Section 4600. (LC exhibit 8). Dr. Nikakhtar issued several other form PR-2 progress reports identifying herself as the Primary Treating Physician (Applicant's exhibit 5). Prior to the issuance of the Findings and Award, Applicant also treated with several secondary physicians from the same medical group (Paramount Physicians Health Center) including Dr. Horevitz (Applicant's exhibits 2 and 3) and Dr. Smith (Applicant's exhibit 4) who addressed their reports to Dr. Nikahtar. Applicant's condition was found to be permanent and stationary on 4/5/16 by Agreed Medical Examiner Dr. Berman. Dr. Berman's report did not reflect any complaints relative to the jaw, teeth, or sleep issues.

Applicant began treating with Petitioner on 6/28/16 relative to his teeth, jaw, and sleep disorder (in the form of an obstructed upper airway). Applicant's attorney did not elect Petitioner as the primary treating physician. Petitioner stated in the corresponding report dated 7/15/16 (LC exhibit 6) that said report would be incorporated into the primary treating physician's permanent and stationary report. The proof of service of the report did not reflect service on Dr. Nikakhtar or any other physician. The report was not addressed to Applicant's attorney. Petitioner opined in his report of 7/15/16 that Applicant developed dental issues as a result of his orthopedic pain from the industrial cumulative trauma as well as stress. Dental treatment was provided by Petitioner until 11/21/16 (LC exhibit 1).

The claim was settled by Compromise and Release on 3/10/20.

Petitioner's lien claim was tried on 8/30/22. The issue of whether the teeth, jaw, and sleep disorder claims were industrially related to the industrial orthopedic cumulative trauma injury was a sub issue, as well as whether the Court had jurisdiction to award any reimbursement for treatment to said body parts. The Court issued a Findings and Order on 10/17/22 wherein Petitioner's lien was disallowed based on there being lack of jurisdiction since no Petition to Re-open was filed. Petitioner filed a Petition for Reconsideration of that decision on 11/10/22 wherein the argument was correctly made that a Petition to Re-open was not required for medical treatment necessitated by a compensable consequence. The Court rescinded the Findings and Order on 11/15/22. A status conference took place on 12/14/22 at which time the matter went off calendar because the parties were attempting to settle the matter. The matter was placed back on calendar on 6/6/23 but Petitioner failed to appear. The Court issued a Notice of Intention to dismiss the lien as a result, but Petitioner objected. The matter was once again submitted for decision on 8/23/23. The Court issued a new Findings and Order on 10/12/23 wherein Petitioner's lien was disallowed again. The

Court reasoned in that decision that since Petitioner was not elected as the primary treating physician, and his opinions were not incorporated by the primary treating physician, the Court could not rely on Petitioner's medical opinion that Applicant sustained compensable consequence injuries to his teeth, jaw, or associated sleep disorder.

III **DISCUSSION**

WHETHER TITLE VIII CCR SECTION 9785(e)(3) IS APPLICABLE

Petitioner argues that Title VIII CCR section 9785 is not applicable here because the case was denied, and thus Applicant was permitted to self-procure reasonable treatment at the Defendant's expense. However, that argument ignores the obvious fact that when Petitioner began treating in this case in 2016 the claim was no longer denied due to the judicial finding of industrial causation which issued on 3/30/15. Thus the entire premise of Petitioner's argument is false.

Title VIII CCR section 9785(d) provides that the primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation. Likewise, Labor Code section 4061.5 states that the treating physician primarily responsible for managing the care of the injured worker or the physician designated by that treating physician shall, in accordance with rules promulgated by the administrative director, render opinions on all medical issues necessary to determine eligibility for compensation. In the event that there is more than one treating physician, a single report shall be prepared by the physician primarily responsible for managing the injured worker's care that incorporates the findings of the various treating physicians. Title VIII CCR section 9785(e)(3) states that secondary physicians shall report to the primary treating physician in the manner required by the primary treating physician. Additionally, Title VIII CCR section 9785(e)(4) states that the primary treating physician shall be responsible for obtaining all of the reports of secondary physicians and shall, unless good cause is shown, within 20 days of receipt of each report incorporate, or comment upon, the findings and opinions of the other physicians in the primary treating physician's report. Additionally, numerous cases have held that the opinions of a secondary treating physician must be reviewed and incorporated by the primary treating physician in order for the Court to rely on such an opinion (*Rodriguez v. Modern Development Company* 2013 Cal. Wrk. Comp. P.D. LEXIS 393; *Barcnas v. In Home*

Support Services 2012 Cal. Wrk. Comp. P.D. LEXIS 330; *Katano v. State of California, North Kern State Prison*, 2018 Cal. Wrk, Comp. P.D. LEXIS 91; *Arteaga v. Marshalls Industries*, 2012 Cal. Wrk. Comp. P.D. LEXIS 264; *Guevara v. Life Long Learning*, 2019 Cal. Wrk. Comp. P.D. LEXIS 366, (Cal. Workers' Comp. App. Bd. August 1, 2019).

In this case, Petitioner treated Applicant for a dental condition and associated sleep disorder (in the form of obstructed upper airway). The Findings and Award of 3/30/15 does not reference any dental condition or sleep disorder. There was no Petition to Reopen the 3/30/15 Findings and Award. Thus for Petitioner's medical treatment services to be potentially compensable, it had to be established that the dental condition and sleep disorder were compensable consequence of the industrial orthopedic cumulative trauma injury. Petitioner's opinion was tantamount to declaring that the dental condition and sleep disorder were compensable consequences of the orthopedic injury. But in order for such an opinion to be relied upon by the Court, it must be established that said opinion was made by the primary treating physician or incorporated by the primary treating physician. Neither of those conditions were met here.

Finally, Petitioner takes issue with the Court pointing out that Petitioner was not a primary treating physician or acting as a secondary treating physician on referral from the primary treating physician. Petitioner has taken a leap to suggest that the Court was imposing a requirement that the secondary physician be referred by the primary treating physician. The Court was only pointing out the lack of clarity on how Applicant was referred to Petitioner to begin with, but followed up that point by noting that regardless of how Applicant found Petitioner, the reports were not incorporated by the primary treating physician. Again, since Petitioner is not the primary treating physician and his opinions regarding the compensable consequence injury were not incorporated by the primary treating physician, the Court cannot rely on Petitioner's opinion that Applicant sustained a dental injury as a compensable consequence of the orthopedic industrial injury. Thus the dental treatment charges provided by Petitioner are not compensable.

IV
RECOMMENDATION

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

Date: November 20, 2023

Jeffrey Morgan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE