

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

FRANCES GARCIA, *Applicant*

vs.

**MONTE VISTA CHILD CARE CENTER; CYPRESS
INSURANCE COMPANY;
ADMINISTERED BY BERKSHIRE HATHAWAY,
*Defendants***

**Adjudication Numbers: ADJ13556902; ADJ16300597
Pomona District Office**

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

Lien claimant (Medland Medical) seeks reconsideration of the Joint Findings and Order(F&O) issued by the workers' compensation administrative law judge (WCJ) on March 22, 2023 wherein the WCJ found that the reporting of Medland Medical did not qualify as medical-legal reporting and was not necessary to relieve or cure applicant's industrial injuries, and ordered that lien claimant take nothing by way of their lien.

Lien claimant contends that the WCJ erred in relying on the Qualified Medical Evaluator (QME) reports in finding that the services were not reasonably necessary.

We received no answer from defendant.

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

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed herein, we will grant reconsideration,

rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision consistent with this opinion.

I.

In this case, the WCJ relies primarily on the reporting of the QME in finding that the treatment provided by lien claimant between January 3, 2022 through July 29, 2022 was not reasonable and necessary. We find this analysis incomplete.

Specifically, the record contains substantial evidence that applicant suffered specific injury to her neck and lumbar spine arising out of and in the course of employment (AOE/COE). (Supplemental QME Report dated April 13, 2022 of Dr. Augustine Amerigo, DC, p. 5 (“the subject medical records contain substantial evidence that a specific work-related injury, resulting in medical care and temporary work restriction/duty modification, occurred on 08/27/2018.”)). In the Compromise and Release dated August 3, 2022, the parties agreed that AOE/COE was “not at issue for neck and lumbar spine.” (Compromise & Release, p. 13, ¶ 9.) At trial, the parties stipulated that applicant sustained injury AOE/COE to her back on August 27, 2018. (ADJ16300597.) (Minutes of Hearing and Order of Consolidation p.3:24-25.)

At the lien trial on March 8, 2023, the matter was submitted on the record, and no testimony was taken. Lien claimant provided evidence that it treated applicant between January 3, 2022 through July 29, 2022 (Exhibits 5, 6) and submitted Requests for Authorization on January 20, 2022; March 4, 2022, May 20, 20022; and July 22, 2022 (Exhibit 7). It also submitted evidence of an objection to an explanation of review (EOR) (Exhibit 3), but defendant did not submit any evidence such as explanation of reviews, or utilization reviews, or similar documents.

II.

An employer must provide an injured worker with medical treatment to cure or relieve the injured worker from the effects of an industrial injury. (Lab. Code, §4600.) Timely provision of reasonable medical treatment is an essential element of workers' compensation. (Cal. Const., Article XIV, § 4; *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82, 87 [31 Cal.Comp.Cases 93]; *Zeeb v. Workmen's Comp. Appeals Bd.* (1967) 67 Cal.2d 496, 501 [32 Cal.Comp.Cases 441]; *Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566]; see also, Lab. Code, §4600.) If the employer neglects or refuses to provide reasonable medical care, “the employer is liable for reasonable expense incurred by or on behalf of the employee in providing treatment.” (Lab. Code, §4600(a).) Here, the WCJ determined

that the treatment provided by lien claimant was not reasonable or necessary based on her review of the QME report. However, the appropriate way for a defendant to dispute whether treatment is reasonable and necessary is through UR, and here, defendant submitted no evidence that it had considered the RFAs from lien claimant and proceeded with the UR process. (See Lab. Code, § 4610.) Moreover, as noted above, the record indicates that applicant sustained injury to their neck and back, and the WCJ failed to address the issue of AOE/COE or find that applicant sustained injury AOE/COE in accordance with the parties' stipulation.

Lien claimants hold the burden of proof to establish entitlement to reimbursement for medical treatment liens. (*Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc).) This burden includes the burden to show that specific treatments and the charges for those treatments were reasonable and necessary. (*Id.* at 1121.)

For services subject to the OMFS, any analysis of whether charges were reasonable must consider the Official Medical Fee Schedule (OMFS). Labor Code section 4603.2(b)(2) states in relevant part that:

" . . . payment for medical treatment provided or prescribed by the treating physician selected by the employee or designated by the employer shall be made at reasonable maximum amounts in the official medical fee schedule, pursuant to Section 5307.1, in effect on the date of service. Payments shall be made by the employer with an explanation of review pursuant to Section 4603.3 within 45 days after receipt of each separate, itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician. "

In this case, for all dates of service, lien claimant was required to seek payment in accordance with the OMFS and the employer was required to object to bills in excess of the OMFS in writing or with an EOR.

Effective January 1, 2013, if a medical provider and an employer have a dispute regarding the amount due under the OMFS, a medical provider may seek resolution of the dispute through the Independent Bill Review (IBR) process outlined in section 4603.6. The IBR process is an administrative process that results in a determination by an independent bill reviewer that is deemed the determination of the administrative director. The determination is final and binding unless appealed. The grounds for appeal are set forth in section 4603.6(f). From the record, while defendant submitted evidence that it objected to the medical treatment on the grounds that it had denied the claim (Exhibit C) it is not clear that the parties complied with the IBR process.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*)). The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Therefore, we grant reconsideration, rescind the WCJ’s decision, and return this matter to the WCJ for further proceedings and decision consistent with this opinion.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the decision after reconsideration of the Workers' Compensation Appeals Board that the WCJ'S order dated March 22, 2023 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 16, 2023

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

**CAROLYN DAVIS
MEDLAND MEDICAL
SIEGEL MORENO**

LN/pm

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