

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

MARCO ANTONIO TORO SERVIN *Applicant*

vs.

**MIKE'S RESTAURANT SUPPLY; TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA, *Defendants***

**Adjudication Number: ADJ14196079
Oakland District Office**

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

Lien claimant Medland Medical seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of October 31, 2023, wherein Medland Medical's lien was denied in its entirety. Reimbursement for medical treatment services was denied because it was found that the injured worker did not sustain a compensable industrial injury. With regard to reimbursement of medical-legal services, it was found that the June 28, 2022 report of Medland provider chiropractor Omid Haghghinia, D.C. was "not capable of proving or disproving the issue" of compensability. (Opinion on Decision at p. 2.) In this matter, in a Compromise and Release approved on October 12, 2022, in exchange for \$5,000.00, the injured worker settled his claim that, while employed during a cumulative period ending January 18, 2021, he sustained industrial injury to various body parts.

Lien claimant contends that the WCJ erred in disallowing its lien claim. We have not received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will affirm the WCJ's finding that lien claimant is not entitled to reimbursement for medical treatment services because lien claimant did not prove that applicant sustained compensable industrial injury for the reasons stated in the Report, which we adopt, incorporate and quote below. We note that although lien claimant's Petition contended it was entitled to reimbursement for medical treatment services, it did not address the WCJ's threshold finding that the injured worker did not sustain compensable industrial injury.

However, we will grant reconsideration and find that lien claimant is entitled to reimbursement for medical-legal services. 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.” (*Brower v. David Jones Constr.* (2014) 79 Cal.Comp.Cases 550, 556 [Appeals Bd. en banc].) An injured worker is generally entitled to request a medical-legal report from their primary treating physician. (*Ibid.*) Although payment should not be authorized if the report is “worthless” or “incapable of proving or disproving a disputed fact,” costs are generally reimbursable if, at the time the report is produced it has “the potential to affect” a disputed matter. (*Costa*, 72 Cal.Comp.Cases at pp. 1498-1499 [dealing with vocational reporting, which *Costa* held should follow the same standard as medical-legal costs].)

Dr. Haghghinia took a history from the applicant, physically examined the applicant, ordered and reviewed diagnostic tests, and gave an opinion regarding industrial causation. Although the WCJ identifies several problems with the medical-legal reporting which caused the WCJ not to ultimately rely upon its conclusion of industrial injury, the fact that it was ultimately not convincing does not render it completely non-probative and “worthless.”

We therefore grant reconsideration and amend the WCJ’s decision to allow reimbursement of medical-legal costs in an amount to be adjusted by the parties, with WCAB jurisdiction reserved, including any issues of penalties or interest.

With regard to the issue of reimbursement for medical treatment services, we deny the lien claimant’s Petition for the reasons stated in the Report, which we quote below:

As to lien claimant’s assertion that the medical treatment portions of lien claimant’s services should be paid, the court offers the following:

When a lien claimant is litigating the issue of entitlement to payment on its lien, it stands in the shoes of the injured employee. The lien claimant must establish all of the necessary elements of its lien by a preponderance of the evidence. *Torres v. AJC Sandblasting* (2012) 77 CCC 1113 (appeals board *en banc*). The lien claimant bears the burden of establishing the injury, entitlement to benefits and the reasonable value of the services. *Zenith Insurance Co. v. WCAB (Capi)* (2006) 71 CCC 374. A medical lien claimant must prove the threshold issue of industrial injury to establish its entitlement to recover on its lien claim.

In order for the Court to find injury there must be substantial medical evidence to prove up the injury. The lien claimant submitted no substantial medical evidence to support a CT injury from 1/18/2020 to 1/18/2021 nor did the lien claimant provide any testimony to establish Applicant sustained an industrial

injury, therefore the court found lien claimant did not meet its burden of proof establishing an injury AOE/COE occurred by a preponderance of the evidence and is not entitled to payment on its lien.

For the foregoing reasons,

IT IS ORDERED that Lien Claimant's Petition for Reconsideration of the Findings and Order of October 31, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of October 31, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

1. MARCO ANTONIO TORO SERVIN, age 43 on the date of the alleged injury, while employed during the period 01-18-2020 through 01-18-2021 as a general laborer, at Orange, California, by MIKES RESTAURANT SUPPLY, INC., whose workers' compensation insurance carrier was TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, did not sustain injury arising out of and occurring in the course of employment to the shoulders, arms, bones and face.

2. Lien claimant Medland Medical is entitled to reimbursement for medical-legal services in satisfaction of its lien in an amount to be adjusted by the parties, with WCAB jurisdiction reserved in the event of a continued dispute. This reservation of jurisdiction extends to any dispute over penalties or interest.

3. Lien claimant Medland Medical is not entitled to reimbursement for medical treatment services in satisfaction of its lien.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 22, 2024

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

**MARCO ANTONIO TORO SEVERIN
PRUSSAK WELCH
DIMACULANGAN & ASSOCIATES
MEDLAND MEDICAL**

DW/oo

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