

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

MARICRUZ AMBRIZ, *Applicant*

vs.

JANICLEAN SERVICES, INC.;
CYPRESS INSURANCE CO. administered by BERKSHIRE HATHAWAY, *Defendants*

**Adjudication Number: ADJ17277232
Anaheim District Office**

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

Lien claimant Medland Medical seeks reconsideration of a February 12, 2024 Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ). The WCJ found that defendant was not liable for self-procured medical treatment obtained by applicant outside the medical provider network (MPN).

Lien claimant contends that the lien pertains to a medical-legal evaluation, and that the notices relied upon by the WCJ with respect to treatment outside the MPN were not properly served on applicant. (Petition for Reconsideration, pp. 2, 4-6.)

We have not received an Answer from the defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations in the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed herein, we will grant lien claimant's Petition and rescind and substitute a new F&O.

FACTS

Applicant, while employed as a janitor for defendant, claims to have sustained injury on November 1, 2022 to the wrists, arms, back, right shoulder, feet, and stress. Applicant was seen

by Omid Haghghinia, D.C. of Medland Medical on January 19, 2023. At the time, Dr. Haghghinia was not within defendant's MPN.

On December 19, 2023, the parties proceeded to a lien trial. Defendants submitted as trial evidence, a notice of MPN dated November 30, 2022, a notice of treatment within MPN dated December 16, 2022, and claim delay and denial letters dated December 14, 2022, and February 14, 2023, respectively. Issues set for trial included whether applicant sustained an injury arising out of or in the course of employment (AOE/COE), whether there was a delay of care under *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc), applicability of Labor Code section 5402, whether defendant had MPN control during the delay, and whether lien claimant was within the MPN.

DISCUSSION

Labor Code section 4600(a)¹ requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. If an employer has established an MPN, an injured worker is generally limited to treating with a physician from within that MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an injured worker may self-procure medical treatment at the employer's expense. (Lab. Code, § 4600(a); see also *McCoy v. Industrial Acc. Com.* (1966) 31 Cal.Comp.Cases 93 ["the employer is required to provide treatment which is reasonably necessary to cure or relieve the employee's distress, and if he neglects or refuses to do so, he must reimburse the employee for his expenses in obtaining such treatment".]) Pursuant to section 5705, the burden of proof rests upon the party with the affirmative of the issue. However, all parties shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Lab. Code, § 3202.5.) In a matter where an injured worker seeks entitlement to treatment outside a defendant's MPN, the injured worker holds the burden of proof to show neglect or refusal to provide treatment by the defendant. (See e.g., *Amezcuca v. Westside Produce* (March 11, 2013, ADJ8027084) [2013 Cal. Wrk. Comp. P.D. LEXIS 93]; *Cornejo v. Solar Turbines, Inc.* (September 24, 2013, ADJ4111589, ADJ1391390, ADJ2081394, ADJ4372783) [2013 Cal. Wrk. Comp. P.D. LEXIS 479]; see also *San Diego Unified Sch. Dist. v. Workers' Comp. Appeals Bd.* (2013) 79 Cal.Comp.Cases 95, 96 (writ den.) [it is applicant's burden

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

to establish that a failure to provide notice of the MPN resulted in a denial of care].) However, when a lien claimant litigates the issue of entitlement for 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 elements necessary to the establishment of its lien. (*Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc.))

Here, lien claimant alleges that applicant was not served with notice of a MPN. (Petition, p. 4.) However, as evidenced by the notice of MPN dated November 30, 2022 and the notice of treatment within MPN dated December 16, 2022, applicant not only received notice, but authorization for treatment with Dr. Bruce Sands of Concentra. These documents were served prior to applicant's first date of treatment with Omid Haghghinia, D.C.² Lien claimant argues the November 30, 2022 and December 16, 2022 notices are unable to be authenticated because there are no attached proofs of service. Applicant, however, has admitted to the existence of the MPN.³ Further, we agree with the WCJ that per sections 5708 and 5709, the WCAB has the authority to admit into evidence those documents relevant to any dispute and "best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Report, p. 2.) Additionally, and more importantly, the lien claimant has failed to prove other elements necessary to the establishment of their lien. Indeed, as per the WCJ, lien claimant has "failed to present any evidence that specifically demonstrates neglect or denial of medical care/treatment in this case." As such, lien claimant has failed to meet its burden of proof with respect to reimbursement for treatment under section 4600.

Labor Code section 4060(b) allows for medical-legal evaluation by a treating physician and section 4620(a) defines a medical-legal expense as "costs and expenses...for the purpose of proving or disproving a contested claim." Section 4064(a) provides that an employer is liable for the cost of a comprehensive medical evaluation authorized under section 4060. Based upon the foregoing, the issue of whether a medical-legal expense is recoverable must be considered by the WCJ in the first instance. Here, the issue has yet to be decided as the WCJ has only addressed the lien on the basis of whether treatment obtained was outside a valid MPN and whether notice of the

² Applicant was first seen by Omid Haghghinia, D.C. of Medland Medical on January 19, 2023.

³ On page 6 of the Compromise and Release Agreement Applicant stipulates that she "was aware of and agrees that the employer has a valid MPN."

MPN was received by applicant prior to treatment. The issue of whether lien claimant should be reimbursed on a medical-legal basis was not addressed.

In the case at hand, lien claimant alleges that at the request of applicant and applicant's attorney, lien claimant was requested to perform a comprehensive consultation to "address all medical legal issues regarding causation, apportionment, recommended treatment as well as disability status." (Petition, p. 2.) A report was subsequently issued, dated January 19, 2023.

As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Pursuant to *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]., both the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where additional discovery is clearly necessary. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) Here, it is evident the record requires further development with respect to whether lien claimant is entitled to reimbursement on a medical-legal basis.

Accordingly, we grant lien claimant's Petition, rescind and substitute the F&O, and return this matter to the WCJ for further proceedings and a new decision on the issue consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order dated February 12, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as to the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order dated February 12, 2024 is **RESCINDED** and **SUBSTITUTED** as follows:

FINDINGS

1. Lien claimant, Medland Medical, failed to meet its burden to prove that defendant is liable for applicant's self-procured medical treatment outside defendant's Medical Provider Network.
2. The issue of whether defendant is liable to lien claimant, Medland Medical, for a medical-legal evaluation and any associated medical-legal expenses is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 2, 2024

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

**MEDLAND MEDICAL
LAW OFFICES OF KAPLAN & BOLDY**

RL/cs

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

CS