

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

EUSTOLIA LOPEZ, *Applicant*

vs.

**MONARCH LITHO;
EVEREST NATIONAL INSURANCE COMPANY,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ10839476
Oxnard 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. Pursuant to our authority, we accept defendant's supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.) 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 25, 2022

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

**SOUTHERN CALIFORNIA MENTAL HEALTH
NEWLUN INSURANCE SERVICES**

PAG/abs

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**

Defendant filed a timely verified petition for reconsideration of the undersigned's 1/5/2022 Findings and Award. The undersigned found lien claimant, Southern California Mental Health, sustained the burden to prove valid medical-legal dates of service 2/21/2019, 10/7/2019 and 12/12/2019 for medical-legal reporting by Dr. David Krauss, Ph.D.

Applicant, Eustolia Lopez, born [], while employed during the period 9/23/1987 through 4/13/2017, as a machine operator, at Montebello, California, by Monarch Litho, Inc., claims to have sustained injury arising out of and in the course of employment to her psyche, head, and nervous system in the form of stress, anxiety and sleep impairment.

At the time of injury, the employer's workers' compensation carrier was Everest National Insurance Company administered by Sedgewick Claims Management Services.

Applicant's case-in-chief was resolved by Order Approving Compromise and Release dated 10/15/2020 issued by Hon. WCJ Hovakimian.

The matter proceeded to lien trial on the lien of Southern California Mental Health before the undersigned, and was submitted on 12/22/2021.

PROCEDURAL HISTORY

On 4/17/2017, the application for adjudication was filed and served wherein applicant, Eustolia Lopez, born [], while employed during the period 9/23/1987 through 4/13/2017, as a machine operator, at Montebello, California, by Monarch Litho, Inc., claims to have sustained injury arising out of and in the course of employment to her psyche, head, and nervous system in the form of stress, anxiety and sleep impairment.

On 4/19/2019, applicant filed a DOR requesting an MSC to resolve this denied claim.

On 4/29/2019, defendant objected to said DOR, advising further discovery was needed on the issue of AOE/COE.

On 8/26/2019, the matter was taken off calendar for further discovery.

On 2/19/2020, applicant filed a DOR on several issues including AOE/COE.

On 7/13/2020, the matter was set for trial on the issue of AOE/COE.

On 10/1/2020, the matter was taken off calendar at trial as settlement was pending.

On 10/15/2020, Hon. WCJ Hovakimian issued the Order Approving Compromise and Release.

DISCUSSION

Lien of Southern California Mental Health

Lien claimant seeks payment for dates of service on 2/21/2019, 10/7/2019 and 12/12/2019 for med-legal reporting by Dr. David Krauss, PhD., of Southern California Mental Health, where \$9,758.08 was billed and nothing was paid. Lien claimant seeks penalties and interest.

Defendant asserts lien claimant should take nothing from said lien and should be sanctioned for promoting frivolous litigation and bad faith conduct. Defendant seeks and award of costs. Defendant disputes whether medical-legal evaluations were properly obtained, whether lien claimant was the primary treating physician and whether lien claimant provided a comprehensive medical-legal evaluation.

The undersigned found the claim was denied by letter from defendant dated 5/23/2017. See lien claimant exhibit #1.

The undersigned found David Krauss, PhD., of Southern California Mental Health, was the primary treating physician. See lien claimant exhibit 2, letter to Dr. Krauss with cc to defendant dated 1/17/2019. The undersigned found applicant attorney requested Dr. Krauss perform a medical-legal evaluation and write a narrative medical –legal report in letter to Dr. Krauss with cc to defendant dated 1/17/2019. See lien claimant exhibit 2.

The undersigned found Dr. Krauss issued a valid comprehensive initial medical-legal report dated 3/5/2019. See lien claimant exhibit 5, Dr. Krauss report dated 3/5/2019.

The undersigned found applicant attorney requested Dr. Krauss review the 8/8/2019 report of Levon Margolin, Ph.D., and write a supplemental narrative medical –legal report in letter to Dr. Krauss dated 8/23/2019. See lien claimant exhibit 7.

The undersigned found Dr. Krauss issued a valid comprehensive supplemental medical-legal report reviewing the 8/8/2019 report of Levon Margolin, Ph.D. dated 10/7/2019. See lien claimant exhibit 8, Dr. Krauss report dated 10/7/2019.

The undersigned found applicant attorney requested Dr. Krauss write a supplemental narrative medical –legal report regarding pre-existing psycho pathology in letter to Dr. Krauss dated 10/8/2019. See lien claimant exhibit 9.

The undersigned found Dr. Krauss issued a valid comprehensive supplemental medical-legal report reviewing additional medical records and addressing causation dated 12/12/2019. See lien claimant exhibit 10, Dr. Krauss report dated 12/12/2019.

Defendant contends that the reports of Dr. Krauss dated 2/21/2019, 10/7/2019 and 12/12/2019 are not valid medical-legal examinations.

Labor Code § 4060(b) mandates that neither the employer nor the employee shall be liable for any comprehensive medical-legal evaluation performed by other than the treating physician whose reporting shall be admissible.

Title 8, Cal. Code of Regs., §9793(c) defines Medical-Legal Expenses and Comprehensive Medical-legal Evaluations as an evaluation of an employee which results in the preparation of a narrative medical report prepared and attested to in accordance with §4628 of the Labor Code, and is performed by a Qualified Medical Evaluator, Agreed Medical Evaluator, or primary treating physician for the purpose of proving or disproving a contested claim, and which meets the requirements of paragraphs (1) through (5), inclusive, of subdivision (h).

In this case, Applicant's Attorney requested a Labor Code §4060 Medical-legal evaluation of the applicant's psychiatric condition post-denial by Defendant. Lien claimant issued an initial 2/21/2019 report establishing industrial causation. Applicant's Attorney requested supplemental Labor Code §4060 Medical-legal reports on 8/23/2019 and 10/8/2019 which generated supplemental Labor Code §4060 Medical-legal reports dated 10/7/2019 and 12/12/2019.

Based upon the Labor Code and Regulations, the reports of Lien claimant, Southern California Mental Health Associates dated 2/21/2019, 10/7/2019 and 12/12/2019 constitute reasonable and necessary medical-legal expense payable by Defendant pursuant to Title 8, Cal. Code of Regs., §9785, §9793 and §9795 in an exact amount to be adjusted by and between the parties, plus penalties and interest, with the WCAB retaining jurisdiction in the event of a dispute.

Petitioner asserts,

“A. Whether the workers’ compensation judge acted in excess of their powers by awarding payment to SCMHA without finding that SCHMA was the “primary treating physician” under the definition provided in 8 CCR § 9785(a), nor that SCHMA’s evaluating doctor was a Qualified Medical Evaluator nor Agreed Medical Evaluator;

See defendant petition for reconsideration dated 1/25/2022, page 2, lines 15-19.

Petitioner asserts,

“IV. SUMMARY OF FACTS

...

F. On January 17, 2019, Applicant's attorney referred her to Lien Claimant's Dr. Kauss for a psychological medical-legal evaluation (Exhibit “A,” EAMS Doc ID37598114), inconsistent with Labor Code requirements under sections 4060, 4601, and 4062.”

See defendant petition for reconsideration dated 1/25/2022, page 3, lines 4-5, page 4, lines 1-3.

The undersigned agrees with defendant that Dr. Krauss was not a QME or an AME. The undersigned found David Krauss, PhD., of Southern California Mental Health, was the primary treating physician. See lien claimant exhibit 2, letter to Dr. Krauss with cc to defendant dated 1/17/2019. The undersigned found applicant attorney requested Dr. Krauss perform a medical-legal evaluation and write a narrative medical –legal report in letter to Dr. Krauss with cc to defendant dated 1/17/2019. See lien claimant exhibit 2.

Defendant's self-serving conclusion that applicant's 1/17/2019 letter was, "inconsistent with Labor Code requirements under sections 4060, 4601, and 4062" is not persuasive. Labor Code section 4060(b) states in part, "However, reports of treating physicians shall be admissible."

Defendant's self-serving conclusion that applicant's 1/17/2019 letter was, "inconsistent with Labor Code requirements under sections 4060, 4601, and 4062" is not persuasive. Labor Code section 4060(b) states in part, "However, reports of treating physicians shall be admissible."

Defendant asserts,

"1. Dr. Kauss was not a treater; much less, the *primary* treater. Contrary to SCMHA's Lab. Code § 4903.05 (c) declaration (*id. supra* in FACTS at "M"), swearing that the lien was for "treatment" charges, there were ***absolutely no treatment charges here.***"\

See defendant petition for reconsideration dated 1/25/2022, page 10, lines 7-11.

"Third, he had not rendered or prescribed treatment ***and*** monitored the effect of the treatment thereafter (nor ever). He did not bill for anything other than medical-legal services."

See defendant petition for reconsideration dated 1/25/2022, page 10, lines 7-11.

The undersigned found Dr. Krauss was the primary treating physician, who was correctly acting in the role as primary treating physician by performing a medical legal evaluation at the outset of this denied case. In other words, the medical legal evaluation was necessary to determine what treatment, if any, was needed on an industrial basis.

RECOMMENDATION

Based upon the forgoing reasons the undersigned recommends the petition for reconsideration be denied.

DATE: 01/27/2022

MICHAEL K. GREENBERG
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE