

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

JUAN SOLIS, *Applicant*

vs.

**1ST CHOICE BODY PAINT, INC. and
EMPLOYERS COMPENSATION INSURANCE COMPANY, *Defendants***

Adjudication Numbers: ADJ8753937 ADJ10065663

Marina del Rey District Office

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted lien claimant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Western Pacific Psychological Network (lien claimant) seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 27, 2019, wherein the WCJ found in pertinent part that Juan Solis (applicant) was not an employee of 1st Choice Body Paint, Inc.; the WCJ ordered that lien claimant's lien was disallowed in its entirety; and ordered that lien claimant pay defendants \$2848.00 "pursuant to Labor Code Section 5813." (F&O, p. 2.)

Lien claimant contends that defendant did not timely deny the injury claim so pursuant to Labor Code section 5402, it was deemed compensable; that an employer is liable for reasonable medical treatment after compensability is established; and that defendant is liable for psychiatric treatment that was the result of applicant's physical injury.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received a Response (Answer) from defendant.

¹ Commissioner Sweeney, who was a member of the panel, has since retired and another panel member has been assigned in her place.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will affirm the F&O except that we will amend the F&O to find that applicant did not perform work for 1st Choice Body Paint, Inc., for six months, thereby per Labor Code section 3208.3(D), the psychiatric injury is not compensable (Finding of Fact #2).

BACKGROUND

Applicant claimed injury to his reproductive system, psyche, nervous system, and circulatory system, while employed by defendant as a bodyman on September 3, 2012 (ADJ8753937). He also claimed injury to his reproductive system, back, shoulders, circulatory system, psyche, and in the form of stress while employed by defendant during the period from August 1, 2012, through November 2, 2012 (ADJ10065663). He received psychiatric treatment from lien claimant during the period from June 9, 2015, through August 25, 2017.

The injury claims were settled by Compromise and Release (C&R); a WCJ issued a Joint Order Approving C&R on February 1, 2018. The C&R included the following language: "This settlement is based upon a good-faith dispute as to employment, employment status, as defendant contends that the applicant was an independent contractor." ... "Applicant stipulates he did not perform work for the employer for 6 months thereby psych not compensable per LC 3208.3(d)." (Compromise and Release, January 24, 2018, p. 7, original in uppercase.)

Lien claimant and defendant proceeded to trial on December 5, 2018. They stipulated that the injury claim was "resolved by Compromise and Release, dated 2/1/2018" and the issues submitted for decision included employment, injury arising out of and occurring in the course of employment and the "Lien of Western Pacific Psych, treatment..." Minutes of Hearing and Summary of Evidence (MOH/SOE) December 5, 2018, p. 2.)

DISCUSSION

Pursuant to Labor Code section 3207:

"Compensation" means compensation under this division and includes every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence.²
(Lab. Code, § 3207.)

² All further statutory references are to the Labor Code unless otherwise noted.

Section 3208.3 states in part:

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. ... (Lab. Code, § 3208.3(d).)

It has long been the law that where a lien claimant (rather than the injured employee) is litigating the issue of entitlement to 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 of the 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); Lab. Code, §§ 3202.5, 5705). In his initial pain management/psychological evaluation report Zara Ashikyan, Ph.D., (a member of lien claimant) stated:

This psychological evaluation indicates that the patient is experiencing significant psychological symptoms. The patient's psychological symptoms discussed earlier are a direct result of injuries arising out of and occurring in the course of employment and are consistent with the clinical findings. (LC Exh. 14, Zara Ashikyan, Ph.D., June 16, 2015, p. 13.)

As noted above, the injured worker must have been employed by the employer for at least six months for a psychiatric injury to be compensable. (Lab. Code, § 3208.3(d).) “Employment” in section 3208.3(d) means “the performance of actual service for the employer.” (*Wal-Mart Stores, Inc. v Workers’ Comp. Appeals Bd. (Garcia)* (2003) 112 Cal.App.4th 1435, 1442 [68 Cal.Comp.Cases 1575].) The six-month employment threshold applies to all claims for psychiatric injury, whether pled as a direct injury or as a compensable consequence. (*Ibid*, at p. 1441.)

The Appeals Board (including the WCJs) may take Judicial Notice of pleadings contained in the Electronic Adjudication Management System (EAMS) ADJ file. (Cal. Code Regs., tit. 8, §§ 10803 and 10807(c).) Here, the WCJ took Judicial Notice of applicant’s stipulation in the C&R (approved by a WCJ in February 2018 and filed in EAMS) that he did not perform work for the employer for six months, so his psychiatric injury claim was not compensable. Based thereon, in order to show that the psychiatric/psychological treatment at issue herein was compensable, lien claimant needed to submit evidence indicating the stipulation in the C&R was false and/or inaccurate. However, the lien trial record contains no evidence that contradicts or is inconsistent

with the stipulation in the C&R. Thus, lien claimant did not meet its burden of proof on the threshold issue of whether applicant's psychiatric injury claim was compensable. Therefore, all other issues and/or arguments asserted by lien claimant are moot.

Accordingly, we affirm the F&O except that we amend the F&O to find that applicant did not perform work for 1st Choice Body Paint, Inc., for six months, thereby per Labor Code section 3208.3(D), the psychiatric injury is not compensable.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on February 27, 2019, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. Applicant did not perform work for 1ST Choice Body Paint, Inc., for six months, thereby per Labor Code section 3208.3(D), the psychiatric injury is not compensable.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 1, 2023

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

**WESTERN PACIFIC PSYCHOLOGICAL NETWORK, INC.
ASSOCIATED LIEN SERVICES, INC.
TOBIN LUCKS, LLP**

TLH/mc

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