

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

**DOMONIQUE LOPEZ, *Applicant***

**vs.**

**ALBERTSONS, permissibly self-insured;  
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ14743350  
Long Beach District Office**

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

Lien claimant Medland Medical Tustin seeks reconsideration of the Findings and Order (F&O) of January 16, 2024, wherein the workers' compensation judge (WCJ) found in pertinent part that for the issue of causation, applicant was only entitled to the medical legal report from the panel qualified medical evaluator (QME) under Labor Code section 4062.2<sup>1</sup>; and that the report from Omid Haghghinia, D.C., was not compensable as a "proper" medical legal report to address causation on the denied claim. Lien claimant contends that its medical legal services were reasonable and necessarily incurred and therefore defendants should have been ordered to pay for the medical legal reporting.

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

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

Petition for Reconsideration, rescind the WCJ's F&O, and return this matter to the WCJ for further proceedings.

## **FACTS**

Applicant sustained industrial injury to her cervical spine, shoulders, and back while working for defendant as a deli clerk on February 2, 2021. Defendant denied the claim on May 5, 2021. (Ex. 101.)

On January 13, 2022, applicant's primary treating physician (PTP) Dr. Omar Haghghinia examined applicant and submitted an evaluation. (Ex. 3.) In his report, Dr. Haghghinia stated that it was a medical-legal report and that it was performed for the purpose of proving or disproving a contested claim. (Ex. 3, p. 2.) He concluded that applicant's injury was industrial. (Ex. 3, p. 11.)

Panel QME Dr. Michael Chuang submitted PQME reports on March 25, 2022, and January 3, 2023. (Exs. A and 102.) The case settled with a Compromise and Release agreement signed on January 26, 2023, and an order approving issuing on the same date.

The case came to trial on October 2, 2023, on the issue of the lien to be paid to Medland Medical Tustin for Dr. Haghghinia's report. The WCJ found the only medical-legal report the applicant was entitled to obtain to address causation on the denied claim was from a PQME or an agreed medical evaluator (AME) and that Dr. Haghghinia's report was not a proper medical-legal report to address causation on the denied claim. (F&O, pp. 1-2.) Instead, the WCJ found that Dr. Haghghinia's report was a valid comprehensive initial treatment evaluation report and retained jurisdiction over the issue of the proper valuation of the report. (F&O, p. 2.) Lien claimant filed the Petition to obtain payment for Dr. Haghghinia's medical legal report.

## **DISCUSSION**

Section 4064 states:

The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061, and 4062. Each comprehensive medical-legal evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms, except medical treatment recommendations, which are subject to utilization review as provided by Section 4610, and objections to utilization review determinations, which are subject to independent medical review as provided by Section 4610.5.

(Lab. Code, § 4064(a).)

Section 4060(b) allows a medical-legal evaluation by the treating physician. Section 4620(a) defines medical-legal expense as “any costs and expenses...for the purpose of proving or disproving a contested claim.” Section 4064(a) provides that the employer is liable for the cost of a comprehensive medical evaluation that is authorized by section 4060. The regulations provide that the “primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation...” (Cal. Code Regs., tit. 8, § 9785(d).)

Read together, these sections provide that a medical-legal evaluation performed by an employee’s treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of reasonable and necessary medical-legal reports that are performed by the treating physician. The Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from their PTP, and in turn, the report from that PTP is a medical-legal expense for which the defendant is liable. (*Warren Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550, 556 (Appeals Board en banc).)

Moreover, 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. (§§ 4620 et seq., 5307.6.) The mere fact that the parties had agreed to an AME in a particular specialty does not mean that a party cannot reasonably obtain a comprehensive medical-legal report from a treating physician in the same or similar specialty.

(*Id.*) The Appeals Board is the ultimate trier of fact and it is not bound by the opinion of an AME and instead must only consider the opinion of the AME. (*Id.*)

Similarly, in the instant case, the reports from both the PQME and the PTP would be relevant, admissible, and could provide a basis for a decision. Thus, if lien claimant can demonstrate that PTP Dr. Haghghinia’s medical-legal report was reasonable and necessary, it is entitled to recover on that basis. Therefore, we will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Order of January 16, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the Findings and Order of January 16, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 8, 2024**

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

**MEDLAND MEDICAL, INC.  
AMARO BALDWIN TUSTIN**

**JMR/ara**

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