

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

IMAN LARKI, *Applicant*

vs.

**SEA COUNTRY TOWING AND RECOVERY, INC.; INSURANCE COMPANY
OF THE WEST, *Defendants***

**Adjudication Numbers: ADJ10529726 (MF), ADJ10554062
Van Nuys 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. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate as quoted below, and for the reasons stated below, we will deny reconsideration.

We adopt and incorporate the following quote from the Report:

**I
INTRODUCTION**

The undersigned issued his Opinion on Decision and Findings & Order to Take Nothing on 11/23/2021. Lien Claimant, Azadeh Rahimi, Ph.D., has filed a timely, verified, Petition for Reconsideration on 12/20/2021.

Lien Claimant contends that:

1. The Appeals Board acted without or in excess of its power,
2. The evidence does not justify the Findings of Fact,
3. The Findings of Fact do not support the Order, Decision or Award.

The undersigned disagrees.

II FACTS

Applicant, Iman Larki, born [], was employed by Sea Country Towing and Recovery, as a tow truck driver from February 2015 through 3/2/16. According to the history contained in the submitted medical reporting, applicant was fired on 3/2/16. No cause for his termination was identified in the existing record.

Applicant filed two claims, both relating to claimed specific injuries. The first in time relates to a purported 11/9/15 injury to his shoulder (side unspecified) and nervous system (ADJ10554062). This claim was denied in its entirety by defendant. The second claim relates to a 12/19/15 injury to applicant's right shoulder, cervical spine, lumbar spine, and nervous system (ADJ10529726). Defendant accepted the right shoulder injury and denied compensability to all other body parts/systems.

Applicant's underlying claims were settled by joint compromise and release on 2/23/17.

The matter came before the undersigned for trial on 11/1/21 relating solely to the lien of Azadeh Rahimi, Ph.D. in the amount of \$30,050.00. Dr. Rahimi issued a single narrative report, and numerous (100+) single page follow up notes/reports. The undersigned identified 124 dates of counseling services provided by the lien claimant, 85 of which were provided after applicant's underlying claims were resolved by compromise and release. Of note, is that chart notes from the treatment session immediately prior the Order Approving issued, chronicle that the "patient reported his attorney is trying to resolve his case so he can try to work, however he intends to continue his psychological treatment" (Lien Claimant Exhibit 4, from 2/22/17). Lien claimant has stipulated that he is not entitled to reimbursement for any of the dates of service subsequent to the Order Approving herein.

The primary issues at trial herein were whether applicant sustained a compensable injury to his nervous system, and tangentially related issues of whether the reporting from Dr. Rahimi was admissible on the issue of compensability, and whether the lien, which was filed on 7/12/19 was barred by the statute of limitations pursuant to L.C. §4903.5(a).

The undersigned issued his Opinion on Decision and Findings and Order that Lien Claimant Take Nothing on 11/23/2021 finding in relevant part that Dr. Rahimi's single narrative report dated 10/7/16 was not admissible and stricken, and as a result lien claimant had failed to meet its burden of proof that applicant sustained a compensable injury to his psyche as alleged. The undersigned did not formally address the statute of limitations issue, as the issue became moot based on the other two findings. However, the undersigned did note in his Opinion on Decision that there was an issue of whether treatment services

provided after an Order Approving compromise and release issued were a “reasonable expense” pursuant to L.C. §4903/§4600 that would serve to extend the eighteen month statute of limitations calculation dates. It is from these findings/orders that lien claimant has filed for Reconsideration.

III DISCUSSION

A. DID THE UNDERSIGNED COMMIT ERR IN STRIKING THE NARRATIVE REPORT FROM LIEN CLAIMANT?

Lien claimant contends that there was no dispute at trial relating to which doctor was applicant’s primary treating physician. This is incorrect. The issue was raised on the parties’ Pre-Trial Conference Statement, and was noted according at trial in the Minutes of Hearing and Summary of Evidence (see MOH/SOE from 11/1/21, page 2, line 18).

Lien claimant contended that Dr. Rahimi was applicant’s primary treating physician. Defendant denied that contention. Lien claimant provided no evidence from applicant or his attorney showing that applicant designated Dr. Rahimi as his primary treating physician. No L.C. §4600 primary treating physician designation letter was offered into evidence by lien claimant. Despite this, Dr. Rahimi’s only narrative report is self-titled: “Primary Treating Physician’s Initial Medical-Legal Comprehensive Psychological Evaluation and Testing Report” (Lien Claimant Exhibit 2).

On the other hand, defendant contended that the primary treating physician was, Roberto Morales, D.C. In support of its position, defendant offered into evidence a primary treating physician designation letter, signed by the applicant, dated 7/6/16 (Defendant Exhibit A) Defendant also offered into evidence a joint schedule of records that were proposed to be sent to a PQME (Defendant Exhibit B). A report from Dr. Morales is listed, but no records or reports from Dr. Rahimi are evidenced in the schedule of records. Based on the evidence presented, the undersigned found that Roberto Morales, D.C. was selected by the applicant as his primary treating physician herein.

There is no evidence in the record that the primary treating physician requested that applicant be evaluated by Dr. Rahimi. Lien claimant contends that defendant’s utilization review and authorization of a single evaluation with a psychologist within its MPN, which was sent to the PTP, Dr. Morales, establishes a basis for Dr. Rahimi producing a “medical-legal report” (Lien Claimant Exhibit 1). The undersigned disagrees. The only narrative report in evidence from Dr. Rahimi, states that applicant “...was referred to me by his attorney as the primary treating physician” (emphasis added). As noted above, there is no evidence from the applicant or his attorney to substantiate this contention. There is no evidence in the record that the single narrative report

generated by Dr. Rahimi was ever requested from Dr. Rahimi by the PTP, or that the PTP ever reviewed or incorporated, the reporting. Nor is there any evidence in the record that the report was utilized by either party to prove or disprove a contested fact herein.

Based on the foregoing, the undersigned found that Lien Claimant Exhibit 2 was inadmissible and ordered stricken from the record. The undersigned does not believe that he committed err in making those findings.

B. DID THE UNDERSIGNED COMMIT ERR IN FINDING THAT APPLICANT DID NOT SUSTAIN INJURY TO HIS PSYCHE IN EITHER CLAIM HEREIN?

Lien claimant contends that the undersigned committed err in finding that lien claimant failed to meet its burden of proof that applicant sustained a compensable injury herein. The undersigned disagrees.

Based on the finding that the only reporting addressing injury/causation herein was inadmissible/stricken, there was no admissible evidence establishing that applicant sustained an injury to his psyche.

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**IV
RECOMMENDATION**

It is respectfully recommended that lien claimant's Petition for Reconsideration be denied.

(Report, at pp. 1-4.)

Administrative Director (AD) Rule 9785(e)(4) requires that the primary treating physician receive, incorporate and comment on secondary treating physician reports. Failure to do so, especially when there was no referral to that physician, renders the reports inadmissible and the bills unpayable. (Cal. Code Regs., tit. 8, § 9785(e)(4); see also, *Optima Health Institute v. Workers' Comp. Appeals Bd.* (2008) 74 Cal.Comp.Cases 64 (writ den.); *Guevara v. Long Learning* 2019 Cal. Wrk. Comp. P.D. LEXIS 366.)

We do not comment on the issue of statute of limitation as it was rendered moot.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 18, 2022

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

**AZADEH RAHIMI, PH.D.
DURDEN & ASSOCIATES, LLC
INSURANCE COMPANY OF THE WEST**

PAG/ara

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