

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

**JUVENTINA PORTILLO, *Applicant***

**vs.**

**ALL TIME RESTAURANT, LLC; TRAVELERS, *Defendants***

**Adjudication Number: ADJ14202484  
Los Angeles 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, and for the reasons stated below, we will deny reconsideration.

A lien for medical treatment is allowable only when the treatment rendered is reasonably required to cure or relieve an injured worker from the effects of an industrial injury. (Lab. Code, §§ 4600(a), 4903(b).) A defendant will not be liable for a medical treatment where there is no industrial injury. (*Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588, 1593 (en banc).) Therefore, where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.Cases at p. 1592.)

We decline defendant's request that we consider the issue of sanctions. However, we caution lien claimants to refrain from bringing a claim or asserting a position that is indisputably without merit. (Lab. Code, § 5813, Cal. Code Regs., tit. 8, § 10421(b)(6).)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSONER**

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



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

**December 27, 2022**

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

**COLLECTIVE RESOURCE LONG BEACH  
KOHANIM CHIROPRACTIC, INC.  
MARINA KUZNETSOVA, LAC  
METRO HEALTHCARE MEDICAL CORP  
SOCAL INTERPRETING  
TOBIN & LUCKS  
WOOLFORD & ASSOCIATES**

**PAG/mc**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

### **I. INTRODUCTION:**

Applicant, born [ ], alleged a cumulative trauma injury during the period 11/1/2019 through 11/1/2020 while working as a kitchen helper for the employer. Applicant alleged injury to the neck and back.

Lien claimants, Metro Healthcare Medical, Marina Kuznetsova, Kohanim Chiropractic, and SoCal Interpreting are the Petitioners herein, and filed a timely, verified Petition for Reconsideration (hereinafter, the Petition), on 10/25/2022. Petitioners take issue with the Findings, Award and Order and Opinion on Decision issued by this Court dated 9/30/2022. In that Findings, Award and Order, this Court found, amongst other things, that Applicant did not sustain injury arising out of and in the course of said employment to the neck and back, as lien claimants failed to meet their burden of proof on this issue. Petitioners contend the undersigned WCJ erred in so doing, contending that lien claimants did meet their burden of proof and are entitled to reimbursement for the treatment provided in this case.

### **II. STATEMENT OF FACTS:**

This case involves an orthopedic cumulative trauma claim, as indicated above, that was timely denied by Defendants. The case-in-chief settled by way of compromise and release settlement agreement approved on 7/2/2021 in the amount of \$20,000.00.

Lien claimants, Metro Healthcare Medical, Marina Kuznetsova, Kohanim Chiropractic, and SoCal Interpreting, all filed their notice and requests for allowance of liens on 8/5/2021. On 9/9/2021, lien claimants filed a declaration of readiness to proceed on their pending lien claims. The matter was eventually set for trial before the undersigned WCJ on 8/4/2022. At that time, the parties indicated that they were unable to resolve their pending dispute, and the matter proceeded forward with trial. The stipulations and issues were agreed upon by the parties, the evidence was identified for the record for each lien claimant and Defendants, and none of the parties offered any testimony from any witnesses. The matter stood submitted for decision based upon the documentary record as of 8/4/2022.

On 9/30/2022, after review of the documentary record, the Court issued the Findings, Award and Order and Opinion on Decision at issue herein. The Court found, as relevant here, that Applicant did not sustain injury arising out of and in the course of said employment to the neck and back, as lien claimants failed to meet their burden of proof on this issue.

On 10/25/2022, Petitioners filed the instant Petition. Petitioners contend, as indicated above, that lien claimants did meet their burden of proof and are entitled to reimbursement for the treatment provided in this case.

On 11/3/2022, Defendant, Employers Preferred Insurance Company, by and through their attorney of record, Tobin Lucks LLP, filed an Answer to The Petition for Reconsideration. In addition to requesting that the Petition be denied, Defendant requests the WCAB impose costs and sanctions pursuant to Labor Code §5813 for filing the a skeletal, unnecessary Petition by lien claimants.

No Answer has been filed to date by Defendant, Travelers Property Casualty Company of America.

### **III. DISCUSSION:**

#### **A. Lien claimants failed to meet their burden of proof on the issue of injury:**

In a rather scant, skeletal Petition, Petitioner concludes “that they met its burden of proof and are entitled to treatment in accordance with the Official Medical Fee Schedule” (Petition, page 4, lines 6 to 7). Unfortunately, Petitioner does not cite to the evidentiary record to support any of the contentions raised in violation of CCR § 10945(b) and does not address this Court’s opinion that the only medical report provided to this Court that discusses causation for this injury, the medical report from Dr. Renee Kohanim dated 1/20/2021 (Lien Claimant’s Exhibit 7), is not substantial evidence due to an inadequate discussion of causation. The undersigned WCJ maintains that opinion, and Petitioner offers no argument to rebut this.

Instead, Petitioner continues to believe that because causation was found at all in the medical reporting, although the record is not cited by Petitioner, and because Defendant did not offer any evidence to rebut that evidence, lien claimants’ treatment should be reimbursed.

Petitioner contends that “the Defendants failed to introduce any medical evidence to dispute the treatment provided by Petitioners” (Petition, page 3, lines 16 to 17). The undersigned WCJ disagrees with this conclusion. The burden of proving injury AOE/COE rests with the lien claimants, standing in the shoes of employee. The employer does not have the burden to disprove causation (see *Mendoza v. Huntington Hospital* (2010) 75 CCC 634, 644; *Bradford v. WCAB* (2018) 83 CCC 1592 (writ denied)). This Court has been continually reminded by the WCAB that this Court’s decisions must be based upon substantial evidence. Lien claimants must present substantial medical evidence to establish industrial causation (See *Barajas v. Vessey & Co., Inc.*, 2015 Cal. Wrk. Comp. P.D. LEXIS 652; *Thomas v. WCAB* (2015) 80 CCC 1507 (writ denied)). Here, lien claimants failed to offer any substantial evidence on the issue of industrial causation.

This Court continues to be of the opinion that lien claimants failed to meet their burden of proof on the threshold issue of injury.

#### **IV. RECOMMENDATION:**

The undersigned WCJ recommends that the lien claimants’ Petition for Reconsideration dated 10/24/2022, be denied.

Date: November 4, 2022

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Peter M. Christiano  
WORKERS’ COMPENSATION  
ADMINISTRATIVE LAW JUDGE