

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

**VIRGINA VASQUEZ, *Applicant***

**vs.**

**KING MEAT, INC.;**  
**FREMONT INSURANCE COMPANY in liquidation and administered by the**  
**CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA), *Defendants***

**Adjudication Numbers: ADJ2754339, ADJ2982695**  
**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, we will deny reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

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



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

**February 22, 2023**

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

**ELENA KONSTAT, PHD  
GUILFORD SARVAS & CARBONARA LLP  
VIRGINA VASQUEZ**

**AS/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**

Defendant, CIGA, by and through their attorneys of record, has filed a timely Petition for Reconsideration challenging the Findings and Order of 14 December 2022. In it Petitioner argues that the undersigned erred in finding (in part) for the lien claimant, DR KONSTAT. Specifically, they argue that the lien should be denied because the conclusions of DR. KONSTAT were not incorporated into the report of the primary treating physician. They also argue that the lien claimant failed to establish that the psychological and psychiatric treatment was shown to be reasonable and necessary. They also argue that the findings of reasonableness by the prior judge in the case-in-chief do not have a preclusive effect. Finally, they argue that no party requested a medical-legal report from her.

To date, no answer to the Petition has been received.  
It is recommended that reconsideration be denied.

**II**

**FACTS**

Applicant, VIRGINIA VASQUEZ, aged 45 on the date of injury while employed by KING MEAT, insured by FREMONT INSURANCE COMPANY which is now in liquidation and administered by the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA) sustained injury arising out of and in the course of employment on 03 July 1999 to her right upper extremity, right shoulder, neck, left wrist and psyche.

While injury was admitted, the injury to the psyche was denied and was only admitted on the first day of trial in the case-in-chief. The draft Pre-Trial Conference Statement was ambiguous as to whether the psyche was admitted or denied. However, the Stipulations and Issues read into the record by the Judge Aslanian clarified the issue.

As a result of the trial, the psyche was found to be industrial and Judge Aslanian found specifically that the psychological treatment was reasonable and necessary. Dr. Nathan also reported on the issue but found that the psychological injury produced only 5% impairment and

was secondary to her orthopedic condition but was 10% apportioned to her personality functioning.

The case then came to trial before the undersigned for lien trial for a lien representing two medical – legal reports and some treatment. The undersigned disallowed the first medical-legal report of December 2004 as it was not requested by either party. However, the medical-legal report of 2007 was allowed as it was requested by applicant’s attorney on or about 02 February 2005 (See Exhibit 20.) The undersigned allowed the treatment lien based on the lien claimant’s theory of the value. The undersigned rejected the theory of the defendant on the fee schedule value as its witness testimony was inconsistent. The Petition for Reconsideration followed.

### **III**

### **DISCUSSION**

The most important procedural fact in this case is that this is a lien claim filed by a treating physician who provided self-procured treatment after the defendant failed to provide treatment. As such, it does not matter if the defendant submitted the requests for authorization to utilization review (UR.) Lien claimant did request authorization (See Exhibit 12) but there is no evidence that the defendant provided the reports that provided the treatment plan to UR.

The defendants in the case-in-chief did submit rebuttal reports from Dr. Nathan. However, these reports were much more concerned with diagnosis, permanent disability and apportionment and seemingly little concerned with the treatment. See Exhibits F and G. Comparing the two, Dr. Konstat makes a better case for the treatment she did provide.

Consequently, even if the Findings of Judge Aslanian did not have a preclusive effect, it is easy to see that the treatment was reasonable and necessary.

Defendant counters that the reports of Dr. Konstat were not admissible in evidence based on the fact that they were not incorporated into the reports of the primary treating physician. However, close review of Labor Code section 4620 and Rules 9785 (e)(3) and (4) does not show that there is any exclusionary rule that would make the secondary treater’s report inadmissible.

Defendant also argues that the Findings of Judge Aslanian do not have a preclusive effect. This argument is unpersuasive. This is a lien trial so that the lien claimant is in privity with the interests of the applicant. The defendant is the same party. Consequently, the issue is binding on both the parties in the lien trial.

The issue was tried in the case-in-chief so that re-litigation of the issue at the lien trial becomes a waste of judicial resources. Even so, even if the issue is not viewed as previously litigated, the issue would fall in favor of lien claimant anyway as its reports were much more persuasive than the stridently written reports of Dr. Nathan in this case.

Finally, defendant claims that the second medical - legal report of Dr. Konstat was not requested by any party. This is simply inaccurate. Exhibit 20 shows that applicant's attorney did request this report, even though Dr. Konstat took her time in responding to the request.

In sum, Dr. Konstat should be paid for her services, except for the first medical – legal report which was not requested by a party. The undersigned disallowed that portion of the bill. Cosequently, the decision was appropriate.

**IV**  
**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

**ROGER A. TOLMAN, JR.**  
Workers' Compensation Judge

SERVICE:

ELENA KONSTAT, US Mail

GUILFORD SARVAS ANAHEIM, Email

Served on above parties by preferred method of service shown above at addresses shown on attached Proof of Service:

ON: 1/24/2023

BY: A.Cabornida