WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SHARON ELEBY, *Applicant*

vs.

COUNTY OF LOS ANGELES / MARTIN LUTHER KING HOSPITAL DEPARTMENT #225, PERMISSIBLY SELF-INSURED, ADMINISTERED BY SEDGWICK CLAIMS MANAGEMENT SERVICES, INCORPORATED, *Defendants*

Adjudication Number: ADJ2341059 (LBO0283508)
Long Beach 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2023

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

SICM GROUP
PARK COMPOUNDING
TESTAN LAW

PAG/pm

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

REPORT AND RECOMMENDATION
OF WORKERS' COMPENSATION JUDGE ON
PETITION FOR RECONSIDERATION

I.
INTRODUCTION

Petitioner, PARK COMPOUNDING, through its representative, SICM GROUP, has filed a timely, verified Petition for Reconsideration of the Findings of Fact and Order issued on December 15, 2022. The Petition indicates that the Petitioner is aggrieved by the decision of the undersigned and seeks reconsideration on the following grounds:

1. That the order, Decision and Award made and filed by the Workers' Compensation Appeals Board exceeded its powers;
2. That the decision by the Appeals Board is not justified by the facts in the case;
3. That the findings of fact do not support the Order, Decision or Award.

II.
FACTS

On or about December 7, 2009, an Award issued in the matter as a result of the filing of a Stipulation with Request for Award.

On or about December 22, 2021, Petitioner filed a Declaration of Readiness to Proceed seeking a Lien Conference regarding its lien.

On or about April 12, 2022, the Defendant and Petitioner appeared for a Lien Conference and set the matter for Lien Trial.

On or about May 16, 2022, the Defendant and Petitioner appeared at trial. The trial was continued to a Lien Conference so that the parties could (1) file their Notices of Representation, (2) file a copy of the Stipulations with Request for Award dated December 7, 2009 as it was not in EAMS, and (3) clarify who is now administering the claim for the Defendant.

On or about July 27, 2022, the Defendant and Petitioner requested to set for Trial.

On or about November 10, 2022, the Defendant and Petitioner could not resolve their issues. The Parties then proceeded to submit the matter on the record[1].

On or about December 15, 2022, a Findings of Fact and Order and Opinion on Decision was issued in which it was found that the Petitioner should take nothing further[2]

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[1] The Parties raised the following issues;
a. The lien of Park Compounding Irvine, which has a balance of $9,592.58. Defendant had paid $2,107.96 previously.
b. Whether the medication dispensed were reasonable and necessary for the treatment of the applicant.
c. Whether the lien claimant properly requested authorization.
d. Whether the lien claimant complied with Regulation 9792.27.9.
e. Whether Regulation 9792.27.9 is applicable to the lien claimant's date of service.
f. Whether the defendant complied with 9792.9.1 and labor Code Section 4610. (Minutes of Hearing –Lien Trial dated November 10, 2022).

[2] As a basis for this order, the following was found:

It is from this decision that Petitioner filed a Petition for Reconsideration on or about January 3, 2023.

Defendant filed its Answer on or about January 13, 2023.

III.
DISCUSSION

The Petitioner believes that it was error for there to be findings that

(a) the Lien Claimant did not meet its burden to show that it properly requested authorization for its medications, and
(b) the Lien Claimant did not meet its burden to prove that the medications dispensed were reasonable and necessary for the treatment of the Applicant.

The Petitioner ultimately contends that Reconsideration is appropriate because it believes that it met its evidentiary burden of proof on all issues[3].

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a. The Lien Claimant did not meet its burden to prove that the medications dispensed were reasonable and necessary for the treatment of the Applicant.
b. The Lien Claimant did not meet its burden to show that it properly requested authorization for tis medications.
c. Title 8, California Code of Regulations Section 9792.27.9 did not apply to the Lien Claimant's dates of service.
d. No finding shall be made as to whether the Lien Claimant complied with Title 8, California Code of Regulations Section 9792.27.9 as this section was previously found to be not applicable to Lien Claimant's dates of service.
e. No finding shall be made as whether Defendant complied with Title 8, California Code of Regulations Section 9792.9.1 and Labor Code Section 4610 as the Lien Claimant did not meet its burden to prove that it ever provided a Request for Authorization.
f. Park Compounding has not met its burden to prove settlement to any additional sums. (Findings of Fact and Order dated December 15, 2022).

[2] Petition for Reconsideration, page 3, lines 14-15.
a. The Lien Claimant did not meet its burden to prove that the medications dispensed were reasonable and necessary for the treatment of the Applicant.
b. The Lien Claimant did not meet its burden to show that it properly requested authorization for tis medications.
c. Title 8, California Code of Regulations Section 9792.27.9 did not apply to the Lien Claimant's dates of service.
d. No finding shall be made as to whether the Lien Claimant complied with Title 8, California Code of Regulations Section 9792.27.9 as this section was previously found to be not applicable to Lien Claimant's dates of service.
e. No finding shall be made as whether Defendant complied with Title 8, California Code of Regulations Section 9792.9.1 and Labor Code Section 4610 as the Lien Claimant did not meet its burden to prove that it ever provided a Request for Authorization.
f. Park Compounding has not met its burden to prove settlement to any additional sums. (Findings of Fact and Order dated December 15, 2022).

[3] Petition for Reconsideration, page 3, lines 14-15.

REQUEST FOR AUTHORIZATION

The Petitioner asserts that it met its burden to prove that it properly requested authorization for the medications dispensed. It is well established that all parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence[4]. Labor Code Section 4600 sets forth an obligation for a physician when said physician seeks to provide medical treatment. Specifically, a physician providing treatment under Section 4600 shall send any request for authorization for medical treatment, with supporting documentation, to the claims administrator for the employer, insurer, or other entity according to the rules adopted by the Administrative Director.[5] Title 8, California Code of Regulations Section 9792.9 (a) (2)[6] sets forth the timeframes in which a request for authorization is deemed to have been received by the claims administrator. Notably, this section states that in the absence of a proof of service by mail or a dated return receipt, the request shall be deemed to have been received by the claims administrator on the date stamped as received on the document[7]. In this matter, there was no evidence submitted by the Petitioner to show that the requests for authorization were served on the claims administrator prior to the medications being dispensed. A review of the PR-2 reports and prescriptions do not have a proof of service attached to them[8]. Additionally, there was no testimonial evidence offered by the Petitioner as to when those reports and prescriptions were served on the claims administrator. Applying Title 8, California Code of Regulations Section 9792.9 (a) (2), the undersigned could not utilize the date the PR-2 reports and prescriptions were received by the Defendant because the PR-2 reports and prescriptions offered into evidence by the Petitioner did not have a date stamp on them indicating that they were received by the Defendant[9]. Moreover, there was no testimony offered as evidence to establish when the PR-2 reports and prescriptions were received by the Defendant. Additionally, for any requests for authorization made on or after July 1, 2013, the Petitioner failed to offer any evidence to show that a DWC Form RFA as required by Title 8, California Code of Regulations Section 9792.9.1 was completed and served on the claims administrator. As such, it was clear that the Petitioner did not meet its evidentiary burden to prove that it properly requested authorization for its compound medications.

REASONABLENESS AND NECESSITY

Assuming the Petitioner met its burden to prove that it properly requested authorization, the next issue was whether the Petitioner established the reasonableness and necessity for its treatment. Petitioner contends Dr. Latteri complied with the duties of the primary treating physician as set forth in Title 8, California Code of Regulations Section 9785. The Petitioner further asserts that Title 8, California Code of Regulations Section 9785 does not require the reporting of the primary treating physician to include rebuttal of any guidelines and/or scientific

[4] Labor Code Section 3202.5
[5] Labor Code Section 4610 (g) (2) (A)
[6] It is noted that this section applies to requests for authorization prior to July 1, 2013. See Title 8, CaliforniaCode of Regulations Section 9792.9.
[7] Title 8, California Code of Regulations Section 9792.9 (a) (2)
[8] See Exhibits 113 – 124
[9] See Exhibits 113 - 124

medical evidence[10]. While the Petitioner is correct that Regulation 9785 does not impose such a standard, the Petitioner ignores what Courts have opined in relation to treatment under Labor Code Section 4600. Courts have opined that "notwithstanding whatever an employer does (or does not do), an injured employee must still prove that the sought treatment is medically reasonable and necessary." State Comp. Ins. Fund v Workers' Comp. Appeals Bd. (2008) 73 Cal. Comp. Cases 981, 990. Courts have further opined that "medically reasonable and necessary means demonstrating that the treatment request is consistent with the uniform guidelines (§4600, subd. (b)) or, alternatively, rebutting the application of the guidelines with a preponderance of scientific medical evidence (§4604.5)." State Comp. Ins. Fund v Workers' Comp. Appeals Bd., (2008) 73 Cal. Comp. Cases 981, 990. In this matter, the Dr. Latteri's PR-2 reports and prescriptions do not illustrate that there was compliance with the Labor Code and established precedent. Simply put, Dr. Latteri's PR-2 reports and prescriptions did not discuss the Applicant's symptoms or her history with the side effects of her prescription medication. Further, the reports and prescriptions of Dr. Latteri did not explain the reason that compound medications should have been used[11]. Moreover, there was no indication that any of the PR-2 reports or prescriptions contained any scientific or medical evidence which supported the use of the compound medications based upon the Applicant's symptoms and her medication usage at that time. As such, it was found that the Petitioner did not meet its burden to prove that the treatment rendered was medically reasonable and necessary.

IV.
RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be denied.

DATE: January 17, 2023

Dewayne P. Marshall
WORKERS' COMPENSATION JUDGE

[10] See Petition for Reconsideration, page 4, lines 13-14.

[11] It is noted that the Petitioner attempts to establish reasonableness and necessity by quoting from pre-typed form language from the PR-2s and the re-bill (Exhibit 110) (See Petition for Reconsideration pages 5- 7); however, the Petitioner ignores that none of the reports to which it cites includes a history from the Applicant which indicates that the Applicant is experiencing major side effects of standard medication and thereby justifies the prescription for the compound medications. As such, the reports were not substantial evidence.