

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

MARIA BONILLA, *Applicant*

vs.

**EMBER CARE; TECHNOLOGY INSURANCE COMPANY;
AMTRUST; LIFE HOUSE HOLDINGS LLC; UNITED STATES FIRE INSURANCE
COMPANY; ZENITH, *Defendants***

**Adjudication Numbers: ADJ8166020, ADJ8371382, ADJ8371384
Los Angeles District Office**

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

Lien claimants Comprehensive Outpatient Surgery Center, California Urgent Care Center, Technical Surgery Support, Precision Interpreting, ABCDE Transportation, and Reliable Medical Supply (lien claimants) seek reconsideration of the Joint Findings & Orders (F&O) of September 10, 2024, wherein the workers' compensation administrative law judge (WCJ) found in relevant part that applicant did not sustain injury on May 2, 2008 (ADJ8166020) and that the six (6) lien claimants did not meet their burden of proof that the medical treatment services provided were reasonably required to cure or relieve applicant from the effects of an industrial injury and disallowed all six of their liens.

Lien claimants contend that the WCJ's decision is incorrect because applicant suffered an industrial injury on May 2, 2008, and the medical treatment services provided by the six lien claimants were reasonably required to cure or relieve applicant from the effects of this injury, thus, the six lien claimants met their burden of proof regarding the medical treatment services they provided for this industrial injury.

We received an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending the Petition be denied.

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 discussed below, we will grant lien claimant's Petition for Reconsideration, rescind the Joint F&O, substitute a new F&O that finds that applicant sustained injury on May 2, 2008 (Finding of Fact 1), on November 24, 2011 (Finding of Fact 2), and on April 26, 2011 through April 26, 2012 (Finding of Fact 3), and defers all other issues (Finding of Fact 4) and return the matter to the WCJ for further proceedings and a new decision. We do not reach the merits of whether lien claimants are entitled to recovery on their liens.

BACKGROUND

In ADJ8166020, applicant claimed that while employed by defendant as a certified nursing assistant on May 2, 2008, she sustained injury to her arms, fingers, back, and shoulders arising out of and occurring in the course of employment when she was attacked by a patient. In ADJ8371382, while employed as a certified nursing assistant by defendant on November 24, 2011, applicant sustained injury arising out of and in the course of employment to her right hand and right wrist and claims to have sustained injury to her low back. In ADJ8371384, while employed as a certified nursing assistant by defendant during the period from April 26, 2011 to April 26, 2012, applicant sustained injury arising out of and in the course of employment to her right hand, right wrist, left hand, left wrist, and low back.

On March 6, 2013, agreed medical evaluator (AME) Larry A. Danzig, M.D., examined applicant for her claimed injuries, and on March 12, 2013, he issued a report. (Exhibit 19, 3/12/2013.) Dr. Danzig diagnosed applicant with "Low back pain of the sprain/strain variety; Right wrist tendinitis, rule out carpal tunnel syndrome; Left wrist tendinitis, rule out carpal tunnel syndrome." (*Id.*, p. 34.) With respect to causation, he stated that:

The patient reported and the available medical records indicated that the patient sustained injury to her low back on May 2, 2008 during the course of her employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

The patient reported and the available medical records indicated that the patient sustained injury to her right hand/wrist on November 24, 2011 during the course of her employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

Based on the patient's description of the physical demands of her usual and customary work and the patient's physical examination today, it was medically probable that the patient sustained a cumulative trauma injury to her right and left hands/wrists and low back during the course of her employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

(Ibid.)

On August 6, 2013, Dr. Danzig issued a supplemental report. (Exhibit 20, 8/6/2013.) He reviewed a copy of applicant's July 17, 2013 MRI to her lumbar spine. He stated that: "the MRI scan shows evidence of a 5 mm extruded disc herniation at L4-L5 with significant compromise of the left L5 nerve root." He opined that applicant might need further treatment for her low back complaints, and if she "remained symptomatic, consideration would be given to surgery." (*Id.*, p. 3)

On June 9, 2014, Dr. Danzig reexamined applicant and issued a report on June 11, 2014. (Exhibit A, 6/11/14.) He concluded that:

The patient reported and the available medical records indicated that the patient sustained injury to her low back on May 2, 2008 during the course of her employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

The patient reported and the available medical records indicated that the patient sustained injury to her right hand/wrist on November 24, 2011 during the course of her employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

Based on the patient's description of the physical demands of her usual and customary work and the patient's physical examination today, it was medically probable that the patient sustained a cumulative trauma injury to her right and left hands/wrists and low back during the course other employment with Lighthouse Convalescent Hospital/Lighthouse Holdings.

(Id., p. 20.)

He opined that applicant "should have access to an orthopaedic surgeon" and that she might require physical therapy and medication. (*Id.*, p. 27.) As to apportionment, he stated that:

based on my review of the available medical records and the history given to me by the patient, it is medically probable that approximately ninety percent of the patient's disability for the lumbar spine was caused as a direct result of the patient's cumulative trauma injury which the patient sustained during the course of her

employment with Lighthouse Holdings and approximately ten percent to the specific injury of May 2, 2008.

it was medically probable that approximately ninety percent of the disability listed above for the patient's right hand/wrist was caused as a direct result of the patient's cumulative trauma injury which the patient sustained during the course of her employment with Lighthouse Holdings and approximately ten percent to the specific injury of November 24, 2011.

based on my review of the available medical records and my physical examination of the patient, it was medically probable that one hundred percent of the disability listed above for the patient's left hand/wrist was caused as a direct result of the patient's cumulative trauma injury which the patient sustained during the course of her employment with Lighthouse Holdings.

(*Id.*, pp. 28-29.)

On May 7, 2015, the parties entered into settlement by way of a Compromise & Release (C&R) in ADJ8166020. Under “total unpaid medical expense to be paid by,” it states that: “Defendant only as related to 2008 injury & subject to all defenses in the Labor Code.” (C&R, ¶ 6.) Defendant asserted the defense of statute of limitations.

The parties also entered into a C&R in ADJ8371382 and ADJ8371384. Notably, the C&R indicates that defendant paid temporary disability indemnity from March 6, 2013 to May 14, 2013 and permanent disability indemnity from June 11, 2014 to December 23, 2014. (C&R, ¶ 6.) It further states that: “PER AME DANZIG THE CLAIMS RATE TO 13%WPI, WHICH IS \$9,717.50 IN PD. THE REMAINING BALANCE WILL BE RESERVED FOR FUTURE MEDICAL CARE.” (C&R, ¶ 9.) That same day, the WCJ issued orders approving each of the two C&Rs.

On July 26, 2024, lien claimants and defendant proceeded to trial. In ADJ8166020, defendant raised the issue of injury arising out of and in the course of employment. In ADJ8371382, defendant stipulated to injury to applicant’s right hand and right wrist, but raised the issue of injury to the low back. In ADJ8371384, defendant stipulated to injury to applicant’s right hand, right wrist, left hand, left wrist, and low back. The issue of the liens was raised in all cases.

On September 5, 2024, as relevant here, the WCJ found that applicant did not sustain injury arising out of and occurring in the course of employment to her arms, fingers, back, or shoulders on May 2, 2008. In his Joint Opinion on Decision, the WCJ stated that he disregarded the opinion

of Dr. Danzig because his opinion was “not stated in terms of reasonable medical probability.” (Opinion, p. 1.)

DISCUSSION

I.

Former Labor Code section 5909¹ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 10, 2024, and 60 days from the date of transmission is December 9, 2024. This decision is issued by or on December 9, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 10, 2024, and the case was transmitted to the Appeals Board on October 10, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 10, 2024.

II.

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code §3202.5) "A lien claimant ... has the burden of proving by a preponderance of the evidence that the claim is industrial...." (*Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34 Cal.App.4th 1204, 1212-1213 [60 Cal.Comp.Cases 289, 291-292].) When applicant was injured on May 2, 2008, she reported the injury to her supervisor and made a report and was provided treatment through the company. Applicant was examined by AME Dr. Danzig who found that applicant sustained injuries caused by the incident on May 2, 2008. Specifically, in his report of June 14, 2014, Dr. Danzig stated that "it is medically probable that approximately ninety percent of the patient's disability for the lumbar spine was caused as a direct result of the patient's cumulative trauma injury which the patient sustained during the course of her employment with Lighthouse Holdings and approximately ten percent to the specific injury of May 2, 2008."

The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*) It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1

Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence “. . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) The WCJ may not isolate portions of a physician’s opinion to support a specific result, but must consider the physician’s reports and testimony as a whole. (See *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].) Here, we discern no substantive difference between the supposed flaw in Dr. Danzig’s opinion described by the WCJ as “not stated in terms of reasonable medical probability” and Dr. Danzig’s actual opinion where he stated that “it was medically probable” that 10% of applicant’s permanent disability in her back was due to the May 2, 2008 injury. Moreover, in the C&R that resolved applicant’s May 2, 2008 injury, defendant agreed to pay for the cost of future medical treatment for the May 2, 2008 injury. In the C&R that resolved applicant’s other two injuries, defendant agreed that per Dr. Danzig, applicant’s permanent disability rated as 13%WPI, and that the monies would be reserved for future medical care. Thus, defendant’s position that applicant did not sustain injury on May 2, 2008 appears to be baseless.

Accordingly, we grant lien claimant’s Petition for Reconsideration, rescind the Joint F&O, substitute a new F&O that is consistent with the reporting of AME Dr. Zanzig, and finds that applicant sustained injury on May 2, 2008 (Finding of Fact 1), on November 24, 2011 (Finding of Fact 2), and on April 26, 2011 through April 26, 2012 (Finding of Fact 3), and defers all other issues (Finding of Fact 4) and return the matter to the WCJ for further proceedings. We do not reach the merits of whether lien claimants are entitled to recovery on their liens.

For the foregoing reasons,

IT IS ORDERED that lien claimants' Petition for Reconsideration of Joint F&O issued on September 11, 2024 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of September 11, 2024 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. (ADJ8166020) Maria Bonilla, while employed on May 2, 2008, as a certified nursing assistant, at Sylmar, California, by Ember Care, whose workers' compensation insurance carrier was Technology Insurance Company, administered by Majestic (currently AmTrust), sustained injury arising out of and occurring in the course of employment to her back, but not to her arms, fingers or shoulders.
2. (ADJ8371382) Maria Bonilla, while employed on November 24, 2011, as a certified nursing assistant, at El Segundo, California, by Life House Holdings LLC, whose workers' compensation insurance carrier was United States Fire Insurance Company, administered by Zenith, sustained injury arising out of and occurring in the course of employment to her right hand and wrist, but not to her back.
3. (ADJ8371384) Maria Bonilla, while employed during the period commencing April 26, 2011 through April 26, 2012, as a certified nursing assistant, at El Segundo, California, by Life House Holdings LLC, whose workers' compensation insurance carrier was United States Fire Insurance Company, administered by Zenith, sustained injury arising out of and occurring in the course of employment to her right wrist and hand, left wrist and hand, and low back.
4. The issue of whether lien claimants are entitled to recovery on their liens is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings and a new decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 9, 2024

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

**ZA MANAGEMENT
CHERNOW PINE & WILLIAMS**

DLM/oo

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