WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NATALIE VERDEJA, *Applicant*

vs.

TARGET CORPORATION, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ15691107
Santa Ana District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND DECISION
AFTER RECONSIDERATION

Lien claimant Omid Haghighinia, D.C., seeks reconsideration of the May 22, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that Dr. Haghighinia was not a primary treating physician (PTP), and that lien claimant was not entitled to recovery of its lien.

Lien claimant contends that pursuant to Labor Code sections[1] 4600 and 4601, applicant and applicant's attorney properly designated Dr. Haghighnia as the PTP and appropriately requested and obtained a comprehensive medical-legal report under section 4060. As such, lien claimant contends that it is entitled to recovery of its lien pursuant to sections 4620 and 4064.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the Petition, the contents of the Report, and have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the May 22, 2024 F&O, and substitute a new F&O that finds that lien claimant met its burden under sections 4620 and 4621 and that the issue of the reasonable value of the lien is deferred, and return the matter to the trial level for further proceedings by the WCJ consistent with this decision.

[1] All further references are to the Labor Code unless otherwise noted.

FACTS

Applicant claimed that while employed by defendant as a stock clerk on November 1, 2021, she sustained an industrial injury to her back, thigh, psyche, nervous system and multiple other body parts.

On November 18, 2022, defendant issued a notice of denial of applicant's claim. (Joint Exhibit 1.)

On December 30, 2022, applicant through her attorney designated Dr. Haghighinia as her PTP in a letter to defendant. (Joint Exhibit 2.) In the same letter, applicant's attorney indicated that a medical-legal evaluation would be sought from Dr. Haghighinia.

On January 31, 2023, Dr. Haghighinia issued a "Primary Treating Physician's Comprehensive Medical-Legal Report." (Exhibit 9.) He recommended that applicant have x-rays of her lumbar spine and a course of chiropractic/physiotherapy and return in six weeks. (Exhibit 9, p. 10.) He took a history of applicant's work duties and concluded that applicant sustained an industrial injury. (Exhibit 9, pp. 3, 11.)

Applicant's case was resolved by way of a Compromise and Release (C&R), and on October 31, 2023, the WCJ issued an order approving the Amended C&R. As relevant herein, according to Paragraph 9, defendant contended that applicant's claim was barred by sections 3600(a)(10) and 3208.3(e), and alleged that applicant's employment was terminated on December 30, 2021 and that no injury had been reported before the filing of the Application. (Amended C&R, ¶ 9, p. 7.)

On December 14, 2023, Medland Medical filed a lien on behalf of Dr. Haghighinia.

On April 24, 2024, the matter proceeded to a lien trial. The issues were injury arising out of and in the course of employment; lien claimant's claim for payment for its medical-legal report; and penalties, interest and costs.

In her Report, the WCJ indicated that Dr. Haghighinia did not qualify as applicant's PTP despite applicant's designation because "there is no evidence that Dr. Haghighinia monitored the effect of any treatment" since applicant saw him only once. (Report, p. 3.) The WCJ further noted that Dr. Haghighinia's report is not recoverable as a medical-legal expense as it is not "capable of proving or disproving a disputed medical fact" since Dr. Haghighinia did not review "any records" and the evaluation "occurred more than a year after the alleged date of injury." (Report, pp. 4-5.)

DISCUSSION

Section 4060(b) allows for a medical-legal evaluation by a treating physician and section 4620(a) defines medical-legal expense as "any costs and expenses…for the purpose of proving or disproving a contested claim." Section 4064(a) provides that an employer is liable for the cost of any comprehensive medical evaluations authorized under section 4060.

AD Rule 9793(h) states:

> (h) "Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:
>
> > (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
> >
> > (2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
> >
> > (3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.
> >
> > (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
> >
> > (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793(h).)

It is clear the intention of section 4060(b), when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's primary treating physician (PTP) shall be considered a medical-legal evaluation pursuant to section 4060 and as such, the employer should

be held liable for any associated reasonable and necessary medical-legal costs and expenses. Moreover, the Appeals Board has previously held that there is no legal authority to support the proposition that an injured worker is not entitled to a medical-legal report from a PTP and no legal authority to support that a PTP's report is not a medical-legal expense for which defendant is liable. (*Warren Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).)

In the instant case, we are not persuaded that the record supports the conclusion that Dr. Haghighinia is not applicant's PTP. Applicant designated Dr. Haghighinia as her PTP in a letter to defendant dated December 30, 2022. Further, applicant appeared for, and was eventually evaluated by Dr. Haghighinia. Applicant also acknowledged that the evaluation was a medical-legal evaluation. We observe that there is nothing in the Labor Code which states that a physician is not a "treating" physician until after they have provided treatment. The primary purpose of a designation is to advise the parties that the injured worker has selected a PTP. If there is in fact insufficient evidence on an issue, the WCJ and the Appeals Board have a duty to further develop the record. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].)

Moreover, nothing in the Labor Code suggests that completion of an evaluation more than a year post injury invalidates a medical-legal report. Further, although review of the entirety of the medical file and other relevant records is generally encouraged, we disagree that failure to do so automatically renders a report invalid and incapable of proving or disproving a disputed medical fact. (See *Costa v. Hardy Diagnostic* (2006) 71 Cal.Comp.Cases 1797 (Appeals Board en banc.) As noted above, in such cases, the WCJ and the Appeals Board have a duty to further develop the record. The appropriate remedy would be to request that the PTP review the entirety of the record and either reevaluate the applicant and/or issue a supplemental report.

Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof pursuant under sections 4620 and 4621: that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its

services were reasonably, actually, and necessarily incurred. Additionally, it was held in *Colamonico* that a defendant does not waive an objection based on section 4620 or 4621 by failing to raise these objections in accordance with section 4622. Here, our review indicates that lien claimant met its burden to show that there was a contested claim, and that the medical-legal reporting was reasonable and necessary at the time that it was incurred.

If a lien claimant meets its burden of proof pursuant to sections 4620 and 4621, the analysis shifts to the reasonable value of the invoices pursuant to section 4622. A defendant then has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an explanation of review (EOR) with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1); 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant's burden. If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider's billing. (Cal. Code Regs., tit. 8, § 10451.1(f)(1)(A); see *Colamonico*, supra.) A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest. A lien claimant has the burden of proof of the reasonable value of its services. In the instant case, as noted above, lien claimant has met its burden of proof pursuant to sections 4620 and 4621, and the analysis should now shift to the reasonable value of the invoice pursuant to section 4622.

Accordingly, we grant lien claimant's Petition for Reconsideration, rescind the F&O, substitute a new F&O that finds that lien claimant met its burden under sections 4620 and 4621 and that the issue of the reasonable value of the lien is deferred, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the May 22, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 22, 2024 Findings and Order is **RESCINDED** and

SUBSTITUTED with a new Findings and Order as provided below and the matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this opinion.

FINDINGS OF FACT

1. Lien claimant qualifies as a primary treating physician.

2. Lien claimant met its burden pursuant to Labor Code sections 4620 and 4621.

ORDER

The issue of the reasonable value of Dr. Haghighinia's medical-legal report and any associated costs, expenses, penalties and interest is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 13, 2024

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

MEDLAND MEDICAL
SEDGWICK CLAIMS MANAGEMENT SERVICES

RL/*cs*

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