

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

**NORMA MORENO, *Applicant***

**vs.**

**LAKE ELSINORE QUALITY INN & SUITES, dba REJRANG;  
PROCENTURY INSURANCE COMPANY, administered by  
ILLINOIS MIDWEST INSURANCE AGENCY, LLC, *Defendants***

**Adjudication Number: ADJ17674030**

**Riverside District Office**

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

Lien claimant, Medland Medical, seeks reconsideration of the Findings and Orders (F&O) issued on September 27, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that lien claimant failed to prove injury arising from and occurring in the course of employment (AOE/COE) and the reasonableness of its charges and ordered that lien claimant take nothing on its lien of medical treatment. The WCJ further awarded medical legal expenses, which no party challenged.

Lien claimant argues that the un rebutted report of applicant's primary treater establishes injury AOE/COE, that defendant was liable for medical treatment during the investigatory delay period of the claim regardless of whether applicant's injury was found industrial, and that defendant failed to conduct utilization review of the treatment provided to applicant, which waived its right to deny the reasonableness of the treatment rendered.

We have not received an answer from defendant.

We have received and reviewed a supplemental petition filed by lien claimant. (Cal. Code Regs., tit. 8, § 10964.)

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration to award the portions of the medical treatment lien during the investigatory delay period, but otherwise deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the supplemental petition and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will grant reconsideration, rescind the September 27, 2024 F&O, substitute a new Findings and Award that finds applicant's injury was industrial, awards medical legal expenses, defers medical treatment liens, and returns this matter to the trial level for further proceedings.

### **FACTS**

Applicant worked for defendant as a housekeeper during the period ending on April 24, 2023, when she claims to have sustained a cumulative injury to her back, hips, knee, and lower extremities. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 1, 2021, p. 2, lines 4-7.)

Defendant issued a delay letter on May 30, 2023. (Defendant's Exhibit A.) Defendant provided a medical provider notice (MPN) notice to applicant, which did not include a Spanish translation. (Defendant's Exhibits A and B.)

Defendant denied applicant's claim on June 1, 2023. (Defendant's Exhibit E.)

On May 17, 2023, applicant selected Dr. Omid Haghghinia, D.C., as her primary treating physician and requested authorization to treat. (Lien Claimant's Exhibit 7.) It does not appear that defendant authorized applicant to treat with any doctor during the delay period of her claim.

Dr. Haghghinia treated applicant on a lien basis. In the initial report, Dr. Haghghinia took an occupational history as follows:

Ms. Moreno began working for Lake Elsinore Quality Inn & Suites (DBA) Rajrang, Inc. on March 20, 2022, as a Housekeeper. The patient's job duties included: cleaning rooms, cleaning lobby, sweeping hallways, mopping hallways, taking out trash, cleaning bathrooms, scrubbing sinks, scrubbing toilets, removing dirty linen, making beds, cleaning mirrors, scrubbing walls, cleaning windows, cleaning doors, dusting, sweeping rooms, mopping rooms, washing linen, folding linen, and towels, pushing, and pulling a rolling supply cart. The patient worked 8 hours per day, 5-6 days a week.

The physical requirements consisted of prolonged walking, standing, lifting, and carrying up to 50 pounds, and repetitive bending, squatting, kneeling, climbing,

walking on uneven ground, reaching at, above and below shoulder level, repetitive neck motion, repetitive writing, fine hand manipulation, simple grasping, and pushing/pulling.

(Lien Claimant's Exhibit 3, Report of Dr. Haghghinia, June 21, 2023, p. 3.)

Dr. Haghghinia took a history of injury as follows:

The patient states that beginning on or about June 2022, while performing her usual and customary job duties, she began to experience mid back, lower back, bilateral hip, and bilateral knee pain. The patient describes her pain as a heavy, pulsating, pinching, numbing, and tingling sensation. The patient attributes her pain to constantly climbing stairs, constantly carrying, and lifting towels, linen, heavy trash bags, constantly walking, constantly kneeling, and squatting while scrubbing toilets, scrubbing walls, washing tubs, constantly bending while removing trash from dryers and sweeping underneath dryers, desks, and furniture. In addition, the patient was constantly sweeping, moping, vacuuming rooms, lobby areas, and hallways.

The patient did not report her injuries to her employer and did not seek medical care but would take over the counter medication for her pain.

The patient continued to work and on April 04, 2023, her symptoms worsened. The patient recalls that on that day she was about to finish her 8-hour shift when she was asked to mop the hallways. The patient explained they used a wet towel with a broom stick in order to mop at a faster pace. The mentioned although it was faster, it required a lot more strength as the towel was wet and was heavier to maneuver. Upon finishing the hallways and lobby she began to experience severe pain in her mid and lower back. She reported her pain to her supervisor, but no action was taken.

The following day, the patient was not called as usual to return to work. She found out that another person was hired to do her duties. She did not hear from her employer again.

(*Id.* at p. 4.)

Dr. Haghghinia diagnosed applicant with lumbar spine strain and bilateral knee tendonitis. (*Id.* at p. 10.) Dr. Haghghinia found applicant's injury industrial, opining as follows:

Based on the findings from the physical examination performed today, review of the history provided by the patient, considering the type of job the patient had to perform and the length of the time that the patient has worked for this employer, it is my opinion with reasonable medical probability that pain and discomfort is due to work injury which the patient sustained while she was working for Lake Elsinore Quality Inn & Suites (DBA) Rajrang, Inc.

(*Id.* at p. 11.)

It appears that Dr. Haghghinia sent defendant multiple requests for authorization during the treatment period as defendant issued two letters deferring utilization review until the MPN and AOE/COE disputes were resolved. (Defendant's Exhibits D and F.) Applicant settled her case by Compromise and Release on October 16, 2023.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> 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.

(§ 5909.)

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

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 31, 2024, and 60 days from the date of transmission is Monday, December 30, 2024. This decision is issued by or on December 30, 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 act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 31, 2024, and the case was transmitted to the Appeals Board on October 31, 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 September 27, 2024.

## II.

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. ( §§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)

\* \* \*

The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark, supra* at 298 (internal citations and quotations omitted).)

Lien claimant has the burden to prove that the treatment rendered was reasonable and necessary to cure or relieve from the effects of the industrial injury. (§§ 4600, 4610.5(c)(2); 5705.) This is ordinarily achieved through utilization review (UR) and/or independent medical review (IMR). (§§ 4610, 4601.5.)

“The utilization review process begins when the completed DWC Form RFA, or a request for authorization accepted as complete under section 9792.9.1(c)(2), is first received by the claims administrator, or in the case of prior authorization, when the treating physician satisfies the conditions described in the utilization review plan for prior authorization.” (Cal. Code Regs., tit. 8, §§ 9792.6.1(y).)

As occurred in this case, UR may be deferred by defendant where liability is disputed. (Cal. Code Regs., tit. 8, §§ 9792.9.1(b).)

(2) If utilization review is deferred pursuant to this subdivision, and it is finally determined that the claims administrator is liable for treatment of the condition for which treatment is recommended, either by decision of the Workers' Compensation Appeals Board or by agreement between the parties, the time for the claims administrator to conduct retrospective utilization review in accordance with this section shall begin on the date the determination of the claims administrator's liability becomes final.

(*Ibid.*)

Here, lien claimant clearly met the burden of proving applicant's injury was industrial. Dr. Haghghinia's reporting constitutes substantial medical evidence by taking an accurate and adequate history of injury and explaining how and why the industrial work exposure caused applicant's complaints. The WCJ faulted the doctor for using an incorrect pronoun in one portion of the report, however this is a common error seen across many medical reports and does not, by itself, warrant rejecting the entirety of the report. The WCJ further noted that the doctor found that applicant had no flexion or extension range of motion measurements of the lumbar spine. This appears to be a misreading as the doctor placed an asterisk in these sections and noted that applicant was having pain in these areas. Again, this is a relatively minor issue that does not warrant rejecting the doctor's finding of industrial injury. Finally, the WCJ noted that the primary treater did not review applicant's prior medical records; however, there is no allegation that any such records exist, or were otherwise obtained and not reviewed.

Next, the WCJ found that lien claimant did not meet their burden of proof as to the reasonableness and necessity of the treatment rendered. While this is technically true, it is only because defendant deferred conducting utilization review of the requests for authorization. Injury AOE/COE was a threshold issue in this case. Having resolved that issue in lien claimant's favor, defendant must now comply with regulation and conduct retrospective review of the deferred requests for authorization. Once the UR/IMR process is completed, the parties can review what treatment was reasonable and necessarily provided and attempt to resolve the remaining dispute.

No party challenged the WCJ's finding as to medical-legal reimbursement, and thus we have not disturbed those findings.

Accordingly, we grant reconsideration, rescind the September 27, 2024 F&O, and substitute a new Findings and Award that finds applicant's injury was industrial, awards medical legal expenses, defers medical treatment liens, and returns this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the Findings and Orders issued on September 27, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Appeals Board, that the Findings and Orders issued on September 27, 2024 is **RESCINDED** with the following **SUBSTITUTED** therefor:

**FINDINGS OF FACT**

1. Norma Moreno, while employed during the period ending on April 24, 2023, as a housekeeper, at Lake Elsinore, California, by Lake Elsinore Quality Inn & Suites dba Rajrang, Inc., sustained injury arising out of and in the course of employment to the lumbar spine and bilateral knees.
2. At the time of the injury, the employer's workers' compensation carrier was Procentury Insurance Company.
3. The employer has furnished no medical treatment.
4. The case and chief settled by Compromise and Release in the amount of \$17,647.08 on 10-16-2023.
5. The issue of the reasonableness of medical treatment provided is deferred.
6. The medical report of August 16, 2023 from Medland Medical Tustin is justified as a ML 201 and has a reasonable value of \$2,015.00.

**AWARD**

**AWARD IS MADE** in favor of Medland Medical Tustin and against Procentury Insurance Company as follows:

- A. Medical-legal expenses of \$2,015.00 for date of service August 16, 2023.
- B. The issue of the reasonableness of medical treatment is deferred.



**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**December 30, 2024**

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

**MEDLAND MEDICAL, LIEN CLAIMANT  
GILSON DAUB  
LAW OFFICES OF ALEX NARAYAN  
NORMA MORENO**

**EDL/mc**

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