WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

QING ZHONG WEI, *Applicant*

vs.

GRAND OAK TREE, LLC.;
INSURANCE COMPANY OF THE WEST, *Defendants*

Adjudication Number: ADJ13323913
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimant Optimal Health Medical Center seeks reconsideration of the Findings and Order (F&O) of September 24, 2024, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and occurring in the course of employment to his left shoulder, left side rib cage, lumbar spine, and left and right sacroiliac joints while employed as a maintenance repairer for defendant. The WCJ found that defendant maintained a valid MPN and properly exercised control of medical treatment within the network and the services of Optimal Health Institute were not reasonably required to cure or relieve applicant from the effects of the industrial injury.

Lien claimant contends that defendant's notice of its MPN was defective and that defendant did not set up a timely medical evaluation, so that lien claimant met its burden to show that there was a denial of care.

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

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant lien claimant's Petition for Reconsideration, amend the F&O to find that defendant is liable for the cost of services up to August 6, 2020, and otherwise affirm the F&O.

BACKGROUND

We will briefly review the relevant facts.

Applicant sustained injury arising out of and occurring in the course of employment to his left shoulder, left side rib cage, lumbar spine, and left and right sacroiliac joints while employed by defendant as a maintenance repairer on April 2, 2020.

According to the record, on April 7, 2020, applicant and his attorney executed a Declaration pursuant to Labor Code section 4906(h) and a Fee Disclosure Statement. Thus, applicant became represented on April 7, 2020, although the Application for Adjudication (Application) was not filed until June 17, 2020.

On April 9, 2020, defendant sent notice to Kaiser Permanente, with a copy to applicant, that Kaiser Permanente was in defendant's MPN and that Kaiser Permanente had been designated as applicant's treating physicians. It authorized Kaiser Permanente to provide medical treatment to applicant for the April 2, 2020 injury. However, the notice specified that authorization was for "the following limited body parts only: Description of injury: Trunk: Pelvis." (Exhibit B, 4/9/2020.) There is no indication in the record that this letter was ever sent to applicant's attorneys.

On June 16, 2020, applicant's attorney issued a letter addressed to Andrew Shen, M.D., requesting an initial comprehensive report. (Exhibit 2, 6/16/2020.)

Also, on June 16, 2020, applicant's attorney issued a letter to defendant employer notifying it that it represented applicant and requesting documents. (Exhibit 2, 6/16/2020.)

On June 17, 2020, as stated above, the Application was filed.

On June 30, 2020, defendant sent a letter to Dr. Shen, notifying him that he was not in the MPN. It copied applicant's attorney, but it did not copy applicant. (Exhibit A, 6/30/2020.)

On July 1, 2020, Dr. Shen issued an initial evaluation report following his first examination of applicant on that day. (Exhibit 3, 7/1/2020.)

On July 6, 2020, defendant filed a Declaration of Readiness (DOR) on the issue of "whether there is a properly established MPN in which the employee may obtain treatment." Defendant alleged that:

> DEFENDANT AUTHORIZED AN MPN PHYSICIAN ELECETD [*sic*] BY APPICANT ON 06/01/2020. ON 06/16/2020, APPLICANT ELECTED ANDREW SHEN MD WHO IS NOT IN THE EMPLOYER'S MPN. DEFENDANT ADVISED DR. SHEN ON 6/30/2020 THAT TREATMENT WOULD NOT BE AUTHORIZED . WCAB INTERVENTION IS REQUIRED TO RETURN THE APPLICANT TO THE MPN.

On July 7, 2020, Dr. Shen wrote a letter to defendant with an urgent request for authorization of treatment and noted that his office had received the denial letter via fax on July 6, 2020. (Exhibit 4 7/7/2020.)

On August 6, 2020, applicant's attorney filed an Amended Application, indicating in paragraph number seven that no medical treatment had been provided. (Exhibit 38, 8/6/2020.)

On August 6, 2020, an expedited hearing was held. All parties were present, and a joint request was made for an order taking the matter off calendar. The Other/Comments section states: "A/A stipulates there is a proper ICW MPN. ICW also stipulates." (Exhibit D, Minutes of Hearing 8/6/2020.)

On June 28, 2024, this matter came on for a lien trial on the issue of lien claimant's lien, including "MPN control by defendant." Exhibits were submitted and designated, but the matter was continued to a new date for the purpose of determining whether all exhibits had been served and received by all parties. On August 30, 2024, proceedings continued, and the matter was submitted.

DISCUSSION

I.

Former Labor Code[1] section 5909 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.

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

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 16, 2024 and 60 days from the date of transmission is Sunday, December 15, 2024. The next business day that is 60 days from the date of transmission is Monday, December 16, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 16, 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.

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 16, 2024, and the case was transmitted to the Appeals Board on October 16, 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 16, 2024.

II.

We now turn to the issue of defendant's liability for the medical evaluation and treatment provided to applicant by Optimal Health Medical Center.

A stipulation is "'An agreement between opposing counsel … ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties although the parties may be permitted to withdraw from their stipulations upon a showing of good cause. (*Id.*, at 1121.) Under section 5702, the parties may stipulate to facts and file the stipulation, and the Appeals Board "may thereupon make its finding and award based upon such stipulation." (See Cal. Code Regs., tit. 8, § 10700(b).)

On August 6, 2020, applicant stipulated that defendant had a valid MPN, so that the only payment issue is whether defendant is liable for the cost of Dr. Shen's July 1, 2020 examination.

When a lien claimant litigates the entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by a preponderance of the evidence all elements necessary to the establishment of its lien. (*Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc.) If an employer has established an MPN, the employer is only liable for payment for treatment by a physician from within the employer's MPN, and applicant is generally limited to treating with a physician from within that MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an injured worker may self-procure medical treatment at the employer's expense. (Lab. Code, § 4600(a); see *Knight v. United Parcel Service* (2006) 71 Cal. Comp. Cases 1423, 1434 [2006 Cal. Wrk. Comp. LEXIS 323] (Appeals Board en banc) ["an employer or insurer's failure to provide required notice to an employee of rights under the MPN that results in a neglect or refusal to provide reasonable medical treatment renders the employer or insurer liable for reasonable medical treatment self-procured by the employee"]; see also *McCoy v. Industrial Acc. Com.* (1966) 31 Cal.Comp.Cases 93 ["the employer is required to provide treatment which is reasonably necessary to cure or relieve the employee's distress, and if he neglects or refuses to do so, he must reimburse the employee for his expenses in obtaining such treatment"].) Where an injured worker seeks entitlement to treatment outside a defendant's MPN, the injured worker holds the burden of proof to show neglect or refusal to provide treatment by the defendant. (See *San Diego Unified Sch. Dist. v. Workers' Comp. Appeals Bd.* (2013) 79 Cal.Comp.Cases 95, 96 (writ den.).)

AD Rule 9767.12 provides for notification of the MPN as follows:

> (a) **When an injury is reported** or an employer has knowledge of an injury that is subject to an MPN or when an employee with an existing injury is required to transfer treatment to an MPN, a complete written MPN employee notification with the information specified in paragraph (2) of this subdivision, shall be provided to the covered employee by the employer or the insurer for the employer. This MPN notification shall be provided to employees in English and also in Spanish if the employee primarily speaks Spanish.

(Cal. Code Regs., tit. 8, § 9767.12(a)(1), emphasis added; see Cal. Code Regs., tit. 8, § 9767.12(a)(2) [outlining the information required to be provided in a complete MPN notification].) AD Rule 9767.5(f) states that for non-emergency services, an appointment for a first treatment visit must be available within 3 business days of applicant's notice "to the MPN medical access assistant that treatment is needed." (Cal. Code Regs., tit. 8, § 9767.5(f).)

The only pieces of evidence with respect to notice are defendant's letter dated April 9, 2020 to Kaiser Permanente, defendant's letter dated June 30, 2020 to Dr. Shen, and defendant's DOR dated June 30, 2020. However, the June 30, 2020 letter was not sent to applicant and was not faxed to Dr. Shen until July 6, 2020, which was after his July 1, 2020 evaluation, and the DOR was not filed until July 6, 2020. Thus, the issue is whether the April 9, 2020 letter sufficiently arranged for a medical examination under section 4616.3(a) and sufficiently notified applicant of the MPN under section 4616.3(b). In its Petition, lien claimant asserts that while the letter was allegedly copied to applicant, there was no proof of service. It further contends that "the letter did not include an appointment date, time, and facility or a list of doctors" for applicant to see at Kaiser and authorization was limited to treating applicant's pelvis.

Here it is undisputed that applicant never sought any treatment from Kaiser Permanente, and the record indicates that applicant became represented on April 7, 2020 before the April 9, 2020 letter. Based on the record before us, we cannot discern whether applicant did not understand that care with Kaiser was available, possibly because of defective notice, or whether he failed to seek care because he was represented. The purpose of the notice requirements is so that an injured worker clearly understands that care is available, and applicant's attorneys and the treating physicians understand that defendant will not assume payment for the cost of care outside the MPN. Defendant's failure to clearly provide notice to applicant after he reported the injury was

compounded by the lack of notice to applicant's attorneys and Dr. Shen until after the July 1, 2020 evaluation. Thus, defendant is liable for payment for services up to the August 6, 2020 stipulation.

Accordingly, we grant lien claimant's Petition for Reconsideration, amend the F&O to find that defendant is liable for the cost of medical treatment and medical-legal services up to August 6, 2020, and otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration that the Findings and Order issued by the WCJ on September 23, 2024 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

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3. Applicant stipulated on August 6, 2020 that defendant maintained a valid MPN and properly exercised control of medical treatment with the network. Optimal Health Institute was not a provider within defendant's MPN.

4. Subject to proof, lien claimant is entitled to payment for medical treatment and medical legal services provided to applicant by Optimal Health Institute before August 6, 2020. Medical treatment and medical legal services after August 6, 2020 were not reasonably required to cure or relieve from the effects of the industrial injury herein.

ORDER

IT IS ORDERED that subject to proof, the lien of Optimal Health Institute is allowed for medical treatment and medical services provided up to August 6, 2020. Jurisdiction is reserved to the WCJ in the event of a dispute.

IT IS FURTHER ORDERED that the lien of Optimal Health Institute be otherwise disallowed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 16, 2024

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

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