WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

HEIDI ZHANG, *Applicant*

vs.

CALIFORNIA STATE UNIVERSITY LONG BEACH RESEARCH FOUNDATION; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ9051748
Los Angeles Office District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order (F&O) of October 10, 2024, wherein the workers' compensation administrative law judge (WCJ) found applicant sustained injury arising out of and occurring in the course of employment to her back and bilateral hips while employed as a director for defendant. Additionally, the WCJ found applicant suffered injury arising out of and occurring in the course of employment to her teeth and reasonably required the self-procured medical treatment furnished by The Dental Trauma Center. The value of the services of The Dental Trauma Center was found to be a reasonable amount based on the Official Medical Fee Schedule or other recognized valuation schedule for dental care costs, with jurisdiction reserved in the event of any dispute as to the proper reimbursement. Statutory increase and interest was found to be applied to the amounts found reasonable and remaining unpaid as provided in Labor Code[1] section 4603.2(b)(2).

Defendant contends that the medical reports prepared by Dr. Schames and Dr. Pietruszka for lien claimant do not constitute substantial medical evidence upon which to find industrial injury to applicant's teeth, due to a failure to review any of the medical reports from prior treating doctors, facilities, or qualified medical evaluators (QMEs).

We did not receive an Answer from lien claimant.

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

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

On November 13, 2024 after the WCJ issued a Report, defendant filed a supplemental petition titled, "Answer To Judge's Report and Recommendation To Petition For Reconsideration." WCAB Rule 10964 requires that supplemental pleadings or responses other than the Answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8 § 10964(a).) Our rule further requires that a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. (Cal. Code Regs., tit. 8, § 10964(b).) Defendant requested permission from the WCAB to file a supplemental pleading, but defendant's pleading does not set forth good cause and we have not considered defendant's supplemental Petition.

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 deny defendant's Petition for Reconsideration.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to her back, bi-lateral hips, and nervous system while employed by defendant as a director on October 31, 2012.

On October 21, 2013, defendant denied injury to applicant's psyche and accepted injury to her back and legs only.

On April 1, 2015, applicant filed an Amended Application for Adjudication of Claim adding the following additional body parts; nervous system, circulatory system, ear, throat, reproductive system, excretory system, teeth, and weight gain. (Exhibit A, April 1, 2015.)

On October 12, 2018, applicant underwent a panel QME in psychiatry at the office of Barbara Justice, M.D. Dr. Justice issued a report dated November 8, 2018, which makes the following references to applicant's teeth: on page 70, "On the testing administered, the Claimant also reported . . . trouble with teeth, ..."; on page 73, "On the Wahler Physical Symptoms Inventory, the Claimant endorsed the following symptoms at the level of "nearly every day: . . . trouble with teeth, ..."; on page 77, "An 'Amended' Application for Adjudication of Claim filed

for the injury sustained on October 31, 2012, to ear, throat, teeth, the back, hips, “psych,” “nervous system,” “circulatory system,” “excretory system,” reproductive system” and “weight gain” as a result of fall, while employed with California State University Long Beach Research Foundation as a Director, GP 210.” (Exhibit 10, November 8, 2018, pp. 70, 73, 77.)

On January 16, 2020, an initial report in the field of dentistry and request for authorization (RFA) issued by Mayer Schames, D.D.S, following his examination of applicant on January 8, 2020. Dr. Schames stated that:

> Upon oral examination, I found that Ms. Zhang's periodontal health reveals bleeding and swelling of the gum tissues, which are objective findings of Ms. Zhang having Periodontal Disease /gum Inflammation.
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> ***
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> Even if Ms. Zhang had prior Periodontal Disease, there are numerous other industrially related factors that with reasonable medical probability, at the very least. would be contributing to the aggravation, acceleration and/or lighting up of any prior Periodontal Disease/inflammation.
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> The scientific literature has documented that Periodontal Disease can be contributed to by stress, loss of sleep, cortisol production because of pain, and that bruxism itself also contributes to Periodontal Disease /gum inflammation.
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> ***
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> Subsequent to the industrial exposure, Ms. Zhang developed orthopedic pain and resultant emotional stressors. It is with reasonable medical probability that Ms. Zhang would be clenching and bracing her facial muscles in response to the industrial pain and industrial related emotional stressors.
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> Ms. Zhang's caused or aggravated Periodontal Disease has understandably appeared at a later time than the original industrial injury, given that these processes are derivative consequences of Ms. Zhang's injuries.
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> ***
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> Based on the available data, the history provided to me by Ms. Zhang, my objective findings, the scientific literature, and my expertise in the field. It is my opinion that, with reasonable medical probability, Ms. Zhang’s presenting complaints and clinical symptoms in my area of expertise were caused or aggravated on an industrial basis.

(Exhibit 7, January 16, 2020, pp. 9-11.)

On November 30, 2020, Dr. Schames issued a report, concluding that applicant was permanent and stationary with respect to her teeth following his reevaluation of her on October 28, 2020. He opined that: "She received an overall subjective improvement of 40% in my area of expertise, with our treatment, with regard to Ms. Zhang's facial and jaw complaint." (Exhibit 3, November 30, 2020.) With respect to apportionment, he indicated that:

> As indicated, with reasonable medical probability, Ms. Zhang's bruxism was pre-existent but aggravated on an industrial basis. Any pre-existing bruxism did not cause her to have any prior facial pain nor any TMJ pain. Therefore, I apportion Ms. Zhang's resultant Mastication Impairment to be **90% apportioned to the industrial injuries and 10% apportioned to any prior pre-existing bruxism.** (Bold added for emphasis.)

(Exhibit 3, November 30, 2020.)

On March 11, 2021, defendant issued a formal objection letter pursuant to Labor Code section 4603.2 to the Dental Trauma Center, denying their claim for $13,035.90 in charges for services on January 8, 2020 for applicant. (Exhibit. C, November 22, 2021.)

On July 16, 2022, a WCJ issued an order approving a Compromise and Release, settling the case in chief.

On August 16, 2022, lien claimant's non-attorney hearing representative filed a Notice of Representation pursuant to Labor Code section 10868.

On August 31, 2022, defendant Sedgwick filed a Substitution of Attorneys substituting AM Lien Solutions, LLC as its non-attorney representative in the place of Tobin Lucks.

On August 29, 2024, the parties proceeded to trial on the issue of the lien. The issues were injury to applicant's teeth and defendant's liability for applicant's self-procured medical treatment for the lien of Dental Trauma Center, including the necessity of treatment, the reasonable value of the services, penalties and interest.

DISCUSSION

I.

Former Labor Code[2] 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:

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

> (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 November 5, 2024 and 60 days from the date of transmission is Saturday, January 4, 2025. The next business day that is 60 days from the date of transmission is Monday, January 6, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, January 6, 2025 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 November 5, 2024, and the case was transmitted to the Appeals Board on November 5, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

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[3] 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.

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 November 5, 2024.

II.

Pursuant to Labor Code section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) It is the applicant's burden to establish that industrial causation is reasonably probable. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297 [80 Cal.Comp.Cases 489]; *Lantz v. Workers' Comp. Appeals Bd.* (2014) 226 Cal.App.4th 298 [79 Cal.Comp.Cases 488].) When a lien claimant (rather than the injured worker) is litigating the issue of 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 of the elements necessary to the establishment of its lien. (Lab. Code, §§ 3202.5, 5705; *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592. (Appeals Board en banc.)

Here, defendant contends that lien claimant failed to meet its burden to establish entitlement to reimbursement for its medical treatment lien based on the medical reports from Dr. Schames who diagnosed applicant with bruxism, myofascial pain of the musculature, trigeminal nerve pain, and aggravated periodontal disease/gingival inflammation, without properly justifying the basis for his medical opinion on industrial causation. (Petition, at p. 3) Additionally, defendant contends that Marvin Pietruszka, M.D., diagnosed applicant with a litany of complaints, which included bruxism. (Petition p. 3.) Further, defendant states that Dr. Schames' and Dr. Pietruszka's reports failed to properly justify the basis for their medical opinions on industrial causation. (Petition p.3.) As the WCJ states on page 2 of his Report:

> Petitioner defendant asserts that the reporting of Mayer Schames D.D.S. and Marvin Pietruska [*sic*] are not substantial medical evidence based on a failure to review 'a plethora of medical reports from [applicant's] prior treating doctors, PQMEs Dr. [Thomas] Hascall, M.D., Dr. [Barbara] Justice, M.D., or Dr. [David] Woods, M.D., or any of the Kaiser records' related to this injury claim. Thus, the reports cannot, so the argument goes, support a finding of industrial injury to applicant's teeth.
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> The reports of Drs. Justice and Wood corroborate the complaint of applicant about her teeth and support the finding that the dental condition was industrially caused. The fact that Drs. Schames and Pietruszka did not specifically review reports of

physicians in other specialties that demonstrate a dental complaints does not render Lien Claimant's Exhibits 3 – 7 and 13 – 14 insubstantial." (Report, p. 2.)

We agree with the WCJ as there is no requirement that applicant's primary treating physicians review all of applicant medical records outside their medical specialty such as dentistry or orthopedic medicine. If the dentists do not review the non-dental treaters records, it does not render the dental treaters reporting non-substantial medical evidence. The same applies to the orthopedic records.

Petitioner also points to the absence of a review of the records of David Wood, M.D., panel QME in orthopedics, who reported on July 6, 2021. (Exhibit 12, July 6, 2021.) Petitioner contends that he was asked to address applicant's complaints about her mouth and teeth, but that he deferred the issue to the appropriate QME. (Report, p. 3.) Since Dr. Woods appropriately deferred applicant's complaints about her teeth to a dental professional because it is not his area of expertise, we see no error in the failure to review orthopedic records.

Petitioner also contends that the WCJ improperly relied on the unsubmitted records of Kristine Eroshevich, M.D., a treating psychiatrist. (Exhibit 10, p. 2.) As pointed by the WCJ, "Dr. Justice reviewed multiple medical records in her evaluation, including those of Kristine Eroshevich, M.D. which references the applicant's complaints about her teeth." (Report, p. 2.)

Since Dr. Justice reviewed the records and considered them in her capacity as the QME in psychiatry, we see no error in the WCJ's reference to them. However, we note that a psychiatrist is a medical doctor who specializes in diagnosing, treating, and preventing mental illnesses and disorders, not dentistry or orthopedic medicine. Rather, the reference in Dr. Justice's report to applicant's teeth complaints is instead significant because it provided notice to defendant over a year before applicant's first appointment with Dr. Schames that applicant required medical treatment for her teeth, and defendant has submitted no evidence that it ever proffered this medical treatment.

We now turn to the issue of defendant's liability for the medical treatment provided to applicant by Dr. Schames. Defendant asserts that, "Dr. Schames acknowledged the likelihood the applicant's dental issues were pre-existing, but nonetheless ***apportioned 90% of the applicant's*** dental complaints to ***industrial causation*** and 10% non-industrial causation." (Petition, p. 2.)

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"[F]or 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 … [Citation.]" (*Clark*, *supra*, 61 Cal.4th at p. 298.) Further, "the acceleration, aggravation or 'lighting up' of a preexisting disease is an injury in the occupation causing the same." (*Id.* at p. 301.)

An employer is required to provide medical treatment "that is reasonably required to cure or relieve the injured worker from the effects of his or her injury… " (Lab. Code, § 4600) There is no apportionment of the expenses of medical treatment. If the need for medical treatment is partially caused by applicant's industrial injury, the employer must pay all of the injured worker's reasonable medical expenses. (See *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647].)

Additionally, we note that section 4600 "consistently has been interpreted to require the employer to pay for all medical treatment once it has been established that an industrial injury contributed to an employee's need for it." (See *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1261 [82 Cal.Comp.Cases 679]; *Braewood Convalescent Hospital v. Worker's Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566] [employee suffering from pre-existing condition later disabled by industrial injury was entitled to treatment even for a non-industrial condition that was required to cure or relieve effects of industrial injury].)

Here, on August 16, 2019, applicant's attorney referred applicant by way of email to The Dental Trauma Center for an evaluation because she complained about a problem with her teeth. (Exhibit 2, August 16, 2019.) Defendant contends that the document the WCJ refers to as a referral is "devoid of an appointment." Actually, a handwritten note is written on Exhibit 2, "Appt. Wed 11.13.19 at 10:30a.m. Tustin sched w PT on 8/16." (Exhibit 2.) This may have been the first date offered but regardless, applicant was seen by Dr. Schames who initially evaluated her on January 8, 2020. And, as stated above, defendant already had notice of applicant's possible need for medical treatment to her teeth by way of Dr. Justice's 2018 reporting. Dr. Schames issued an initial report and an RFA on January 16, 2020. Applicant was treated by Dr. Schames on January 22, 2020, and had a comprehensive evaluation on March 11, 2020, a re-evaluation on October 28, 2020, and a final re-evaluation on November 28, 2020. On November 30, 2020, Dr. Schames issued a report concluding that 90% of applicant's disability to her teeth was industrially related to her injury. Here, once it has been established that an industrial injury contributed to an employee's need for medical treatment, section 4600 consistently has been interpreted to require

the employer to pay for all reasonable and necessary medical treatment without apportionment. Thus, defendant must pay for all the reasonable and necessary dental treatment performed by Dr. Schames.

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).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Here, the medical reports submitted by lien claimant constitute substantial medical evidence and can be relied upon in a finding of industrial injury to applicant's teeth and establish that applicant met its burden of proof.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the October 10, 2024, Findings & Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 6, 2025

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

LAW OFFICES OF SAAM AHMADINIA
AM LIEN SOLUTIONS

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