

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

JOSE MONCLUS, *Applicant*

vs.

**CITY OF SANTA BARBARA, permissibly self-insured,
adjusted by ADMINISURE ONTARIO, *Defendants***

**Adjudication Number: ADJ10713497
Santa Barbara District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted reconsideration to further study the legal and factual issues raised by the Petition for Reconsideration (Petition) filed by Roberta L. Falke, Ph.D., (cost petitioner).¹ This is our Opinion and Decision After Reconsideration.

Cost petitioner seeks reconsideration of the Findings of Fact and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on March 23, 2022. As relevant herein, the WCJ permitted defendant, City of Santa Barbara, to apply a \$5,220.00 credit against "all species of benefits" to offset its payment of cost petitioner's bill for services rendered as a Qualified Medical Evaluator (QME) in the amount of \$8,375.00, resulting in a net award to cost petitioner in the amount of \$3,155.00.

Cost petitioner contends that her QME services were not a "benefit" conferred to applicant, but rather, a "medical-legal expense" incurred under Labor Code section 4620 against which defendant's credit did not apply.² Cost petitioner seeks full payment of her bill, as well as penalties, interest, and sanctions for late payment

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

¹ Commissioner Marguerite Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been substituted in her place.

² All future references are to the Labor Code unless noted.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the March 23, 2022 F&A and substitute a new F&A that finds that defendant is liable for payment of the entire amount of \$8,375.00 to Dr. Falke, together with appropriate interest and penalties pursuant to section 4622, and defers the issue of sanctions.

BACKGROUND

The following factual background is not disputed.

Applicant claimed injury arising out of and in the course of employment (AOE/COE) to his psyche while employed as a carpenter by defendant during the cumulative trauma period January 1, 2009 to January 12, 2017.

Defendant denied the claim, and the parties selected cost petitioner as the Panel Qualified Medical Evaluator (QME) to evaluate applicant. Cost petitioner evaluated applicant on September 20, 2016 and issued a QME report on October 16, 2016. Cost petitioner also issued a bill for services rendered, dated October 19, 2016, in the amount of \$8,375.00.

On February 6, 2017, the Employment Development Department (EDD) filed a lien totaling \$39,520.00 for payment of State Disability Insurance (SDI) benefits to applicant.

On May 2, 2018, the matter proceeded to trial on various issues, including injury AOE/COE, liability for self-procured medical treatment, and the liens of EDD and cost petitioner. According to the May 2, 2018 Minutes of Hearing, only EDD's lien was tried because cost petitioner had not filed a lien claim. (Minutes of Hearing (Further) and Summary of Evidence, May 22, 2018, p. 3.)

On July 10, 2018, the WCJ issued his first F&A, in which he found, among other things, that applicant suffered injury AOE/COE, applicant was entitled to reimbursement for out-of-pocket medical costs, and that "[d]efendant is responsible for the lien of the Employment Development Department." (F&A, July 10, 2018, pp. 2-3.)

On August 3, 2018, defendant sought reconsideration, contending that the WCJ failed to resolve two issues in the July 10, 2018 F&A, namely: 1) the specific amount owed on EDD's lien, and 2) whether defendant was entitled to a credit against its liability for benefits in the amount paid to EDD.

On August 8, 2018, the WCJ issued an Amended F&A and Opinion on Decision, concluding that defendant was responsible for EDD's lien in the amount of \$5,220.00 and that

defendant was entitled to a \$5,220.00 credit “against all species of benefits.” (Amended F&A, August 8, 2018, Finding of Fact No. 7; Amended Opinion on Decision, August 8, 2018, p. 2.)

On April 7, 2021, cost petitioner filed a Declaration of Readiness to Proceed requesting a status conference on her QME bill, totaling \$8,375.00.

On January 5, 2022, the parties proceeded to a lien trial on cost petitioner’s bill, where the issues were framed as follows:

1. Whether medical-legal costs are a species of benefits from which defendant is excused from paying.
2. PQME asserts since the Opinion on Decision provided for reimbursement to applicant for all self-procured medical costs, that they are entitled to the full amount of their bill.

(Minutes of Hearing (MOH), January 5, 2022, p. 3.)

There was no testimony offered during trial and the sole exhibit admitted into evidence was cost petitioner’s \$8,375.00 bill. (MOH, January 5, 2022, p. 3.)

On March 23, 2022, the WCJ issued the currently disputed F&A, finding, in relevant part:

5. Roberta Falke, Ph.D. evaluated applicant in the capacity of a PQME and issued medical reporting and a bill for services rendered in the amount of \$8,375.00.
6. Based on the medical billing of \$8,375.00 by Roberta Falke, Ph.D. and defendant’s credit right of \$5,220.00, defendant is required to pay the balance of \$3,155.00.

(F&A, March 23, 2022, pp. 1-2.)

In the Opinion on Decision, the WCJ’s only reasoning for his decision was the following:

[D]efendant is excused from paying med-legal and /or any other benefits up to the amount of \$5,220.00, which extinguishes the credit right and leaves a balance owing by defendant in the amount of \$3,155.00. Therefore, [cost petitioner] is entitled to recover the sum of \$3,155.00 in full satisfaction of their lien.

(Opinion on Decision, March 23, 2022, p. 1.)

On April 18, 2022, cost petitioner sought reconsideration of the F&A. Cost petitioner contends that the WCJ erred applying defendant’s \$5,220.00 credit against “all species of benefits” to her bill because the costs of her QME services constituted medical-legal expenses, rather than “benefits,” under section 4620. (Petition, p. 3, citing Lab. Code, § 4620.)

The WCJ’s Report recommended denial of cost petitioner’s Petition.

DISCUSSION

The issue before us is whether the WCJ properly applied defendant's credit against "all species of benefits" to offset its liability for payment of cost petitioner's QME bill.

We first note that the total amount claimed by cost petitioner was \$8,375.00. Defendant did not challenge the WCJ's finding as to the total amount of \$8,375.00, which included \$5,220.00 as a "credit" and \$3,155.00 as a payment by defendant. Thus, defendant appears to have waived any argument that the amount owing was \$8,375.00 and that the amount was reasonable. (Lab. Code, § 5904.)

Therefore, we consider the issue of whether defendant's liability for medical-expenses may be satisfied by way of a credit against applicant's benefits.

Section 3207 states that: "Compensation" means compensation under this division and includes every benefit or payment conferred by this division upon an injured employee, or in the event of his or her death, upon his or her dependents, without regard to negligence."

Section 4903 states in relevant part that:

The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

- (b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), and to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2, except those disputes subject to independent medical review or independent bill review.

(Lab. Code, § 4903.)

Therefore, "compensation" includes benefits that are owed to an applicant and payments on behalf of an applicant. If an applicant incurs a cost or an applicant would be liable for a cost, a cost petitioner in that case can seek a lien against the applicant's compensation. However, there is no provision for a lien against an applicant's compensation for costs that a defendant is obligated to pay. Instead, liability for those costs is determined under sections 4620, 4621, and 4622.

Section 4064(a) states in pertinent part that: "The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee

pursuant to Sections 4060, 4061, and 4062.” By the clear language of the Labor Code, defendant is solely responsible for payment of medical-legal costs for evaluations obtained by way of sections 4060, 4061, and 4062. Here, Dr. Falke’s panel qualified medical evaluation was obtained under section 4062. Thus, liability for payment lies solely with defendant.

Section 4622 states in part that: “*All medical-legal expenses for which the employer is liable shall . . . be paid to whom the funds and expenses are due. . .* (emphasis added).”

Here, cost petitioner seeks payment for a medical-legal evaluation.

In the decision of August 8, 2018, the WCJ found that applicant was not entitled to temporary disability benefits and that defendant was responsible for the lien of the Employment Development Department and entitled to a credit in the amount of \$5,220.00 “against all species of benefits.” In his Opinion on Decision, the WCJ stated:

Defendant is responsible for the Employment Development Department lien in the amount of \$5,220.00. Defendant is entitled to credit in the amount of \$5,220.00 against all species of benefits.

Clearly, payment to cost petitioner for the bill is not a “benefit” owed to applicant. Thus, defendant’s claim that the credit applies so that it can avoid payment to cost petitioner for services that it is statutorily obligated to pay cost petitioner is meritless. Defendant admits in its Answer that “Dr. Falke’s examination was a panel QME exam obtained under authority from defendant and, therefore, it is not self-procured.” Yet, defendant provides no legal authority to support its proposition that it may exercise its right to credit against payment to applicant for benefits against a non-party. By claiming it was entitled to a credit against applicant’s benefits, defendant is improperly shifting the burden of payment onto applicant, when it is defendant who is liable.

Based on the foregoing, as our Decision After Reconsideration, we rescind the WCJ’s March 23, 2022 F&A and substitute a new F&A that finds that defendant is liable for payment of the entire amount of \$8,375.00 to Dr. Falke, together with appropriate interest and penalties pursuant to section 4622, and defers the issue of sanctions.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 23, 2022 Findings of Fact and Award is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Jose Monclus, while employed during the period of January 1, 2000 through April 18, 2016, by the City of Santa Barbara sustained injury to his psyche.
2. At the time of the injuries, the employer was permissibly self-insured insured for workers' compensation injuries.
3. The employer has furnished some medical treatment. The primary treating physician is Barbara Kloss.
4. An Amended Opinion on Decision and Amended Findings of Fact and Award issued on August 8, 2018, which provided inter alia, defendant to have a credit right of \$5,220.00 against all species of benefits.
5. Roberta Falke, Ph.D. evaluated applicant in the capacity of a PQME and issued medical reporting and a bill for services rendered in the amount of \$8,375.00.
6. Defendant is not entitled to a credit for its liability for Roberta Falke, Ph.D., against its liability for benefits owed to applicant.
7. Based on the medical billing of \$8,375.00 by Roberta Falke, Ph.D., defendant is liable for payment of \$8,375.00 to Roberta Falke, Ph.D.
8. The issue of whether defendant is liable for sanctions is deferred.

AWARD

AWARD IS MADE in favor of cost petitioner Roberta Falke, Ph.D. against Defendant City of Santa Barbara, permissibly self-insured adjusted by ADMINSURE as follows:

- a. Cost petitioner shall recover the sum of \$8,375.00 from defendant, together with automatic penalties and interest pursuant to Labor Code section 4622.
- b. The issue of whether defendant is liable for sanctions is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 10, 2025

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

**BARRINGTON PSYCHIATRIC SERVICES, ATTN: ROBERTA FALKE, PH.D.
LAW OFFICE OF SCOTT A. SCHWARTZ
GOLDMAN MAGDALIN & KRIKES**

AC/mt

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