

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

**KATHLEEN ZEPEDA, *Applicant***

**vs.**

**CALIFORNIA BAPTIST UNIVERSITY; CALIFORNIA RESTAURANT MUTUAL  
BENEFIT CORPORATION, administered by LWP CLAIMS SOLUTIONS, *Defendants***

**Adjudication Number: ADJ17068636  
Riverside District Office**

**OPINION AND ORDERS  
DENYING PETITION FOR RECONSIDERATION,  
GRANTING PETITION FOR RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Lien claimant Medland Medical Group (lien claimant) and defendant both seek reconsideration of the February 19, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in relevant part that lien claimant was entitled to payment for costs claimed in connection with an April 26, 2023 medical-legal report authored by the primary treating physician (PTP) plus statutory increase and interest.

Lien claimant's petition contends that the WCJ erred in not finding injury arising out of and in the course of employment and by not awarding reimbursement for medical treatment costs.

Defendant's petition contends the reporting for which the WCJ ordered reimbursement of medical-legal charges is not substantial evidence and is otherwise inadmissible.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny both lien claimant's and defendant's petitions.

Lien claimant has also filed a request to file a supplemental pleading and a proposed "Answer to the WCJ Opinion and Recommendation on the Lien Claimant's Petition for Reconsideration." We have read and considered both pleadings pursuant to Workers'

Compensation Appeals Board (WCAB) Rule 10964(a) and (b). (Cal. Code Regs., tit. 8, § 10964(a)-(b).)

We have considered the allegations of both lien claimant's and defendant's Petitions for Reconsideration, the supplemental pleadings, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will affirm the F&A, except that we will amend the decision to include a finding that lien claimant did not meet its burden of establishing injury arising out of and in the course of employment (AOE/COE).

### **FACTS**

Applicant claimed injury to her abdomen, back and lower extremities while allegedly employed as a service attendant by defendant California Baptist University on October 28, 2022. Defendant denies injury AOE/COE.

Applicant selected Omid Haghighinia, D.C., of Medland Medical Group as her PTP. Dr. Haghighinia issued an initial "Primary Treating Physician's Comprehensive Medical-Legal Report," dated April 26, 2023. (Ex. 12, Report of Omid Haghighinia, D.C., dated April 26, 2023.) Applicant continued to seek medical treatment with Dr. Haghighinia, who issued multiple treatment reports thereafter. (Exhibits 13-18, various dates.) The parties resolved the case in chief by Compromise and Release, approved March 28, 2024. Lien claimant Medland Medical has filed a lien for its services in the amount of \$11,019.86. (Finding of Fact No. 5.)

On December 2, 2024, lien claimant and defendant proceeded to trial on issues of, in relevant part, the lien of Medland Medical, employment, and injury AOE/COE. (Minutes of Hearing, dated December 2, 2024, at p. 2:12.) Neither party offered witness testimony, and the WCJ ordered the matter submitted as of December 23, 2024.

On February 19, 2025, the WCJ issued his decision, determining in relevant part that "Medland Medical is entitled to payment for April 26, 2023 medical-legal services in the amount of \$2,225.91 plus the 10 percent increase and 7 [percent] interest pursuant to Labor Code section 4622(a)(1)." (Finding of Fact No. 6.) The WCJ's Opinion on Decision explained that applicant's contemporaneous medical records disclosed no claimed injury. Moreover, the PTP reporting itself was inconsistent regarding the particulars of the claimed injury. Following a review of the entire record, the WCJ ultimately concluded that "[g]iving due consideration ... to the inconsistent

history reported by Medland Medical's Dr. Haghighinia this WCJ determines that lien claimant Medland Medical has not met its burden of proof in establishing industrial injury. Under such circumstance, this WCJ determines that Medland is not entitled to payment for treatment services provided." (Opinion on Decision, at p. 4.)

With respect to the issue of reimbursement for medical-legal costs, however, the WCJ found that defendant had denied liability for applicant's claim as of the time Dr. Haghighinia issued the April 26, 2023 comprehensive medical-legal evaluation. Accordingly, the WCJ awarded reimbursement to the lien claimant for the report preparation costs of \$2,225.91 as appropriate medical-legal costs along with statutory increase and interest under Labor Code<sup>1</sup> section 4622(a)(1). (Opinion on Decision, at p. 5.)

Lien claimant's petition avers that Dr. Haghighinia's April 26, 2023 report provides a substantive basis for finding injury AOE/COE. (Lien Claimant Petition, at p. 8:25.) Lien claimant further contends the WCJ should have taken judicial notice of additional records not offered into evidence or ordered development of the record.

Defendant's petition contends that the April 26, 2023 report of Dr. Haghighinia was based on applicant's inaccurate and incomplete medical history, which in turn rendered the resulting medical-legal report not substantial evidence. (Defendant's Petition, at p. 3:15.) Defendant also argues that by virtue of his status as PTP, Dr. Haghighinia could not render a compensability determination under section 4062.2, and that it was error to award costs under section 4620 as a result. (*Id.* at p. 7:13.)

The WCJ's Report observes that applicant's counsel clearly designated Dr. Haghighinia as the PTP and requested a comprehensive medical-legal report following defendant's denial of liability for the claim. (Report, at p. 3.) The WCJ also observes that the April 26, 2023 report of the PTP appropriately surveyed the records submitted to the doctor as of that time and based his conclusions on a competent clinical evaluation. Accordingly, the WCJ recommends we deny defendant's petition. (*Ibid.*) With respect to lien claimant's petition, the WCJ observes that following the denial of her claim, applicant self-procured treatment from Dr. Haghighinia, but that following the WCJ's review of the admitted evidence, lien claimant failed to meet its burden of establishing injury AOE/COE. (*Id.* at pp. 4-5.) Accordingly, the WCJ recommends we deny lien claimant's petition.

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

Lien claimant's supplemental petition asserts the WCJ should have ordered development of the record with respect to the issue of injury AOE/COE. (Proposed Answer to the WCJ Opinion, dated April 3, 2024, at p. 5:10.) Lien claimant further asserts that defendant failed to timely disclose and serve relevant records. (*Id.* at p. 5:17.)

## DISCUSSION

### I.

Former 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.

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 March 19, 2025, and 60 days from the date of transmission is Sunday, May 18, 2025. The next business day that is 60 days from the date of transmission is Monday, May 19, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, May 19, 2025, so that we have timely acted on the petition as required by section 5909(a).

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<sup>2</sup> 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.

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 March 19, 2025, and the case was transmitted to the Appeals Board on March 19, 2025. 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 March 19, 2025.

## II.

We first address lien claimant's contentions regarding the sufficiency of the evidentiary record. The WCJ's F&A observes that the lien filed by Medland Medical is comprised of both medical-legal costs and medical treatment expenses. (Finding of Fact No. 5.) The F&A finds that the April 26, 2023 report of PTP Dr. Haghighinia constitutes a valid medical-legal cost, and awards reimbursement of those costs. (Finding of Fact No. 6.) However, the WCJ did not award reimbursement for the subsequent medical treatment charges, observing in the opinion on decision that lien claimant did not meet its burden of establishing injury AOE/COE. (Opinion on Decision, at p. 4.) Lien claimant asserts that insofar as the PTP reporting was not substantial evidence for failure to review all available medical reporting, the deficiencies arose out of defendant's failure of timely service of medical and other records. (Lien Claimant Petition, at p. 6:17.) Lien claimant contends that inasmuch as the April 26, 2023 report of Dr. Haghighinia was sufficiently substantial to warrant reimbursement of medical-legal costs, the report also "provides a foundation for finding AOE/COE and medical necessity of medical treatment self-procured by the applicant" (*Id.* at p. 9:3.)

In *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc) (*Kunz*), we stated, "[w]here a lien claimant (rather than the injured employee) 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 preponderance of the evidence all of the elements necessary to the establishment of its lien. (Lab. Code, §§ 3202.5, 5705 ...).” Similarly, in *Tapia v. Skill Masters Staffing* (2008) 73 Cal.Comp.Cases 1338, 1342–1343 (Appeals Board en banc) (*Tapia*), we observed that the lien claimant “has the affirmative burden of proving that its lien is reasonable, and it must carry this burden by a preponderance of the evidence. (Lab. Code, § 5705 (“[t]he burden of proof rests upon the party or lien claimant holding the affirmative of the issue”; Lab. Code, § 3202.5 (“[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence.”))

Thus, insofar as defendant denies liability for this claim, it is lien claimant’s affirmative burden to prove by a preponderance of the evidence that applicant sustained injury AOE/COE. (Lab. Code §§ 3202.5; 5705; *Kunz, supra*, 67 Cal.Comp.Cases at p. 1592; *Tapia, supra*, 73 Cal.Comp.Cases at p. 1342.)

Here, the WCJ has appropriately reviewed and weighed the evidence responsive to the issue of whether lien claimant has met its burden of proof:

To receive treatment charges this WCJ determined that Medland is faced with an initial burden of proving that the injured worker sustained injury arising out of and in the course of employment. As noted above, injury arising out of and in the course of employment has been denied. Medland did not provide a witness or applicant to testify at trial, and to establish industrial injury. Whereas Medland’s examining physician Omid Haghighinia D.C. does report an injury in report of April 26, 2023, this WCJ takes note of further history of applicant denying prior or subsequent injuries or accidents off the job. Records/exhibits offered by defendant suggest otherwise. Records of Intercare Holdings (Defendant’s Exhibit F) reflect injury to the back requiring treatment at US Healthworks dating back to 7/30/2012. Records of ACE Property and Casualty (Defendant’s Exhibit G) reflect injury to back, arms and knees requiring treatment at Arrowhead Orthopedics back in May of 2017, and with diagnosis to include disc protrusion, fibromyalgia, and radiculopathy. Kaiser records (Defendant’s Exhibit H) show an entry of October 29, 2022 (1 day after purported industrial injury) with no mention of an industrial injury, but with history of chronic abdominal pain related to fibromyalgia and for the last 3 days. The first mention in Kaiser records of any industrial incident was on December 8, 2022. Again, prior history of injuries to same or similar body occurring on January 1, 2016 (ADJ10656673; Defendant’s Exhibit I) and April 10, 2017 (ADJ10898965) (Defendant’s Exhibit J) was not disclosed to the treating doctor Haghighinia. Giving due consideration to the above and to the inconsistent history reported by Medland Medical’s Dr. Haghighinia this WCJ determined

that lien claimant Medland Medical had not met its burden of proof in establishing industrial injury.

(Report, at p. 4.)

The WCJ further acknowledges lien claimant's assertion that the WCJ should have taken judicial notice of evidence that was not offered into the record, and that in the alternative, development of the record is warranted given the inconsistencies in the medical reporting. (Report, at p. 5; Lien Claimant Petition, at p. 18:9.) However, the WCJ determined that taking such action when lien claimant failed to offer the underlying evidence at trial would effectively abrogate the due process rights of the parties to respond and/or offer rebuttal evidence. (Report, at p. 5.) The WCJ has appropriately reviewed and weighed the medical reporting and testimony in evidence and based thereon concluded that lien claimant did not meet its affirmative burden of establishing industrial injury. (Opinion on Decision, at p. 4.) Following our independent review of the record occasioned by lien claimant's petition, we decline to disturb the WCJ's analysis and conclusions regarding the sufficiency of the evidence. Because lien claimant has not met its burden of establishing injury AOE/COE, the medical treatment component of its lien is not reimbursable. (*Kunz, supra*, 67 Cal.Comp.Cases at p. 1592; *Tapia, supra*, 73 Cal.Comp.Cases at p. 1342.)

However, we also observe that while the Opinion on Decision explains both the WCJ's analysis and conclusions regarding the issue of injury AOE/COE, and that lien claimant has sought reconsideration on this basis, it appears that these findings were omitted from the Findings of Fact. Accordingly, we will grant reconsideration for the sole purpose of amending the Findings of Fact to reflect that lien claimant has not met the burden of proving injury AOE/COE.

Turning to defendant's petition, defendant contends the WCJ erred in awarding reimbursement of medical-legal costs for the April 26, 2023 report of Dr. Haghighinia, because the report is not substantial medical evidence. (Defendant's Petition, at p.3:5.) Defendant further contends the report "should not be considered a medical-legal report to prove or disprove the compensability of applicant's alleged injuries under Labor Code [section] 4060." (*Id.* at p. 5:13.) The WCJ's Report observes that the April 26, 2023 report of Dr. Haghighinia is "based on both history provided to the doctor by applicant and examination and studies performed," and that "[t]here is no evidence that records noted above were either available or provided to the doctor at the time of examination and reporting." (Report, at p. 4.) The WCJ concludes:

Based on the provisions of section 4064 the employer is liable for the cost of medical-legal evaluations obtained pursuant to Labor Code section 4060. Therefore, this WCJ determined that lien claimant Medland Medical is entitled to payment for medical-legal expense based on fee schedule. As the parties did stipulate at hearing to fee schedule amounting to \$2,225.91, Medland is entitled to reimbursement of that amount plus 10 percent increase and 7 percent interest pursuant to Labor Code section 4622(a)(1). For reasons noted above, this WCJ continues to support Medland's entitlement to medical-legal reimbursement.

*(Ibid.)*

We agree. Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs “for the purpose of proving or disproving a contested claim.” (Lab. Code, § 4620(a).) Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a “contested claim” existed at the time the service was performed. Section 4620(b) sets forth the parameters for determining whether a contested claim existed. (Lab. Code, § 4620(b).) “Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim.” (*Colamonico v. Secure Transportation* (2019) (84 Cal.Comp.Cases 1059) (Appeals Board en banc).)

Insofar as the WCJ has determined that defendant had previously denied liability for applicant's claim at the time the PTP rendered his comprehensive medical-legal report, the WCJ appropriately determined that a contested claim existed. Following our independent review of the entire evidentiary record occasioned by defendant's petition, we conclude that the April 26, 2023 report of Dr. Haghighinia was reasonably, actually and necessarily incurred pursuant to section 4621(a). (Lab. Code, § 4621(a).) Accordingly, we discern no error in the WCJ's analysis and application of the standards for medical-legal costs, and corresponding award of costs, statutory increase, and interest arising out of the April 26, 2023 report of Dr. Haghighinia. (Finding of Fact No. 6.) We will deny defendant's Petition, accordingly.

In summary, the WCJ has weighed the evidentiary record and determined that lien claimant is not entitled to reimbursement of the medical treatment component of its lien because lien claimant did not meet its burden of establishing injury AOE/COE. Following our review of the entire record, we decline to disturb the WCJ's analysis or conclusions. However, we will grant reconsideration for the limited purpose of amending the Findings of Fact to include a specific



finding that lien claimant did not satisfy its evidentiary burden of establishing injury AOE/COE. We also conclude that the April 26, 2023 report of Dr. Haghighinia was a valid medical-legal report and accordingly decline to disturb the WCJ's award of corresponding medical-legal costs, statutory increase and statutory interest arising therefrom.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the February 19, 2025 Findings and Award is **DENIED**.

**IT IS FURTHER ORDERED** that lien claimant's Petition for Reconsideration of the February 19, 2025 Findings and Award is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of February 19, 2025 is **AFFIRMED**, except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

...

7. Lien claimant Medland Medical has not met its burden of establishing by a preponderance of the evidence that applicant sustained injury arising out of and in the course of employment.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

**I CONCUR,**

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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

**May 19, 2025**

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

**MEDLAND MEDICAL  
THOMAS KINSEY**

**SAR/abs**

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