

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

EMILIO LOPEZ PARA, *Applicant*

vs.

**STENO ENTERPRISES; CIGA for CASTLEPOINT NATIONAL INSURANCE
COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ9219469; ADJ7174695
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to study the factual and legal issues of this case. This is our Opinion and Decision After Reconsideration.

Lien claimant Superior Chiropractic Care seeks reconsideration of the Joint Findings of Fact and Order (F&O) issued on July 12, 2022, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that (1) while employed by defendant on January 30, 2010, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the back, respiratory, upper extremities, hands, nerves, and fingers and lien claimant Del Carmen disputes injury to respiratory and nerves (ADJ7174695); (2) while employed by defendant during the period of August 1, 1996 through May 1, 2012, applicant sustained injury AOE/COE to the back, respiratory, upper extremities, hands, nerves, and fingers, and lien claimant Del Carmen disputes injury to respiratory and nerves (ADJ9219469); (3) lien claimant Del Carmen's exhibits 3 through 32 (Dr. Pietruszka's reports) were not reviewed and incorporated by the PTP Drakhshani pursuant to California Code of Regulations section 9785(e)(4) and Labor Code section 4061.5, and the reports of Dr. Pietruszka are not admissible and are stricken from the evidentiary record; (4) lien claimant Del Carmen Medical Center disputes injury to respiratory, TBS, and nerves, and failed to prove injury AOE/COE to respiratory, IBS, and nerves on January 30, 2010, and during the period of August 1, 1996 through May 1, 2012; and (5) the reports of lien claimant Superior Chiropractic Care's exhibits 1 through 4 (Dr. Drakhshani's reports) do not constitute substantial medical evidence and are stricken from the record.

The WCJ ordered that the liens of lien claimant Del Carmen Medical Center and lien claimant Superior Chiropractic Care be disallowed.

Lien claimant Superior Chiropractic Care contends that the WCJ erred in disallowing their lien based upon the erroneous findings that its medical reports do not constitute substantial medical evidence and are stricken from the record.

We did not receive an Answer.

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

We have reviewed the Petition and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will affirm the F&O, except that we will amend to find that lien claimant Superior Chiropractic Care's exhibits 1 through 4 (Dr. Drakhshani's reports) are admitted in evidence.

FACTUAL BACKGROUND

Applicant sustained industrial injury while employed by defendant on January 30, 2010 and during the period August 1, 1996 through May 1, 2012, to several parts of body. On September 28, 2011, the parties submitted, and the WCJ approved, a Stipulation with Request for Award of 11% with future medical care for the left ring finger due to the injury of January 30, 2010. Thereafter, the defense of these matters was taken over by attorneys on behalf of California Insurance Guarantee Association (CIGA) due to the liquidation of Castlepoint National Insurance Company. On March 2, 2020, a WCJ approved a Compromise and Release (C&R) between applicant and CIGA resolving both claims for the sum of \$ 77,500.

On May 17, 2022, both cases came to trial on the issue of the liens of Superior Chiropractic and Del Carmen Medical Center. The parties introduced evidence and submitted the matter for decision based upon the existing medical reports. Over the objection of defendant, the Court admitted into evidence all exhibits submitted by both lien claimants, stating that the determination on admissibility of the exhibits was to be made at the time of issuance of the Findings and Opinion on Decision. (Minutes of Hearing, 5/17/22, pp. 9:11-13; 10:11-13.)

In the Opinion on Decision, the WCJ states:

INJURY AOE/COE

...

Defendant objected to the Superior Chiropractic Care exhibits 1 - 4, which were admitted over defendant's objection. Defendant's objection was based upon the lack of a 4600 election letter, and the lack of review and incorporation by Dr. Drakhshani. The Medical report of Steven Brouman, M.D., dated 11/20/13 was addressed to Dr. Drakhshani as a primary treating physician. The lack of a 4600 letter is not conclusive on the issue of who the primary treating physician is. There is evidence that Dr. Drakhshani was the PTP. More importantly, the lack of review and incorporation by Dr. Drakhshani would go to the substantiality of those reports. Whether a medical report is substantial medical evidence goes to the weight of the evidence not the admissibility of the evidence.

...

The Brouman report was not reviewed or incorporated even though Dr. Drakhshani apparently referred applicant to Dr. Brouman pursuant to Exhibit 2 (Del Carmen Medical Center) . . . Pursuant to the Initial medical report from Superior Chiropractic, dated 9/11/2013. (Exhibit 4 Superior Chiropractic Care) Dr. Drakhshani notes in her description of applicant's job duties while working for Steno Enterprises, applicant "sometimes would lift items that weighed between 400 to 450 lbs." (Id. p. 2) Dr. Drakhshani apparently found this credible. This is the only narrative report in evidence. There is no review of records, although Dr. Drakhshani notes that applicant was taken to Valley Presbyterian Hospital and received X-rays.

...

Medical causation notes the specific injury to the left ring finger (crush injury), and chronic pain in the neck, left shoulder, left upper extremity and low back. Causation is industrial. The report neglects to opine on the 'how and why' of this diagnosis. Certainly, lifting 400 to 450 pounds may have something to do with it.

There is no substantive discussion of the basis for this determination, no detailed analysis of applicant's job duties at Steno Enterprises, or their relationship to his claimed injuries. The report is based on an inadequate medical history, and does not constitute substantial medical evidence.

For the above reasons, none of the reporting of Dr. Drakhshani constitutes substantial medical evidence and shall be stricken from the record.

(Opinion on Decision, pp. 2-3.)

In the Report, the WCJ states:

This matter came on for trial on May 17, 2022, stipulations and issues were framed and exhibits were taken into evidence. No testimony was elicited by either party. The matter was submitted on that day. EAMS Doc ID 75521578.

The issues included: The liens of Superior Chiropractic and Del Carmen Medical Center. Reasonableness and necessity of medical treatment. Failure to submit RFAs. Lack of PTP incorporation. AOE/COE. Parts of body injured. Respiratory, IBS, and nerves. Liability for self-procured medical treatment. The liens of Del

Carmen Medical Center in the amount of \$39,767.60 and Superior Chiropractic. Lien claimants raise defendant failed to pay or object to medical treatment. Penalties and interest. Whether defendant is liable for self-procured medical treatment on a denied claim. Whether an RFA is required for self-procured medical treatment.

The issues were identical on both ADJs.

(Report, p. 1.)

DISCUSSION

The burden of proving injury AOE/COE rests with the applicant or the lien claimant, who steps into the shoes of the applicant. (Lab. Code § 5705¹; see, e.g., *LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] (citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) The parties and lien claimants shall meet the evidentiary burden of proof by a preponderance of the evidence. (§ 3202.5.) The weight accorded the evidence, including of the medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].)

All findings of the WCJ and the Appeals Board, including of injury AOE/COE, must be based on substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) 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 opinion . . . fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess.” (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal. 3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Here, as stated in the Opinion on Decision, Dr. Drakhshani’s reporting fails to frame its conclusions in terms of reasonable medical probability, fails to show it is based on pertinent facts,

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

and fails to set forth reasoning to support its conclusions. (Opinion on Decision, pp. 2-3.) Thus, the WCJ correctly found that the reporting does not constitute substantial medical evidence.

Accordingly, we will affirm the WCJ's finding that lien claimant Superior Chiropractic Care's exhibits 1 through 4 (Dr. Drakhshani's reports) do not constitute substantial medical evidence.

We observe that the WCAB is broadly authorized to consider the reports of all examining physicians and that comprehensive medical evaluations obtained by the parties are to be admitted in evidence unless a statutory exception applies. (See *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231, 1239 [78 Cal.Comp.Cases 1209]; § 5703; § 4064.)

Even where medical reporting has limited or no evidentiary weight with respect to the medical-legal conclusions reached by the evaluating physician, the reporting may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of such relevant information include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations. (See, e.g., *Cervantes v. Pac. Am. Fish Co.* (2021) (2021 Cal. Wkr. Comp. P.D. LEXIS 93).)

Allowing substantively deficient medical-legal reporting to remain in evidence while assigning it the appropriate evidentiary weight is consonant with well-established principles favoring the broad admissibility of evidence in workers' compensation proceedings. (See *Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763] (stating the Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence).)

In this case, the WCJ effectively overruled defendant's objections to the admission of Dr. Drakhshani's reporting into evidence but nonetheless struck the reporting from the record on the basis that it did not constitute substantial medical evidence. (Opinion on Decision, pp. 2-3.) Yet, as the WCJ initially opined correctly, a determination that medical reporting is not substantial medical evidence goes to its evidentiary weight, not its admissibility. (*Id.*, p. 2.) It follows that the WCJ's finding that the reports of Drakhshani are stricken from the record is without support.

Accordingly, we will amend the F&O to find that lien claimant Superior Chiropractic Care's exhibits 1 through 4 (Dr. Drakhshani's reports) are admitted in evidence, but otherwise affirm the findings of the WCJ that such reports do not constitute substantial evidence.

Accordingly, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend to find that the reports of lien claimant Superior Chiropractic Care's exhibits 1 through 4 (Dr. Drakhshani's reports) are admitted in evidence.

For the foregoing reasons

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings of Fact and Order issued on July 12, 2022 is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

5. The reports of Superior Chiropractic Care exhibits 1 through 4 are admitted in evidence.

6. The reports of Superior Chiropractic Care exhibits 1 through 4 do not constitute substantial evidence.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 21, 2026

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

**EMILIO LOPEZ PARA
GUILFORD SARVAS & CARBONARA
EQUITABLE LAW GROUP**

SRO/kl

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