WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JANETTE GARCIA, ***Applicant***

vs.

FINE HOME HEALTH, INC.; NORGUARD INSURANCE COMPANY; administered by GUARD INSURANCE, ***Defendants***

Adjudication Number: ADJ11186589
Los Angeles District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant Ameri Chiropractic (lien claimant) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order (F&O) of May 10, 2021, wherein it was found that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to the neck, arm, wrist, and back pursuant to the prior Findings & Order of April 12, 2019; that lien claimant is not entitled to any payments pursuant to Labor Code[1] section 5402(c) as it failed to establish when the claim form was supplied to the employer by applicant or when the employer had knowledge of the injury alleged herein from any other source; that the services provided by lien claimant were self-procured medical expenses and defendant is not liable for reimbursement of those expenses; that lien claimant failed to establish any basis for reimbursement of the lien claim; and there is no basis to award costs to defendant or impose sanctions on lien claimant.

Lien claimant contends that defendant's January 30, 2018 denial letter is an admission that defendant had notice of the claimed injury; and that the claim form was previously judicially

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

noticed in the case-in-chief trial of March 26, 2019. Lien claimant also contends that it is entitled to payment for its reporting as a medical-legal expense.

We received an Answer from defendant. In its Answer, defendant admits that the claim form exists but alleges that there is no evidence as to when it was received.

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 for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, as our Decision After Reconsideration, we will affirm the F&O, but we will amend it to defer the issue of whether lien claimant is entitled to payment for its claimed medical-legal expenses (Finding of Fact 4; Order a).

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to her neck, back, right arm, right wrist, waist, shoulders, body systems while employed by defendant as a caregiver, during the period from January 23, 2016 to January 25, 2017.

On January 18, 2018, applicant's Primary Treating Physician (PTP), Humberto Rodriguez, D.C., examined applicant and completed a Doctor's First Report of Occupational Injury or Illness Form. (Exhibit 5, 1/18/2018, p. 1.)

On January 30, 2018, defendant issued a letter denying applicant's claim. (Exhibit B, 1/30/2018, p. 1.)

According to the Patient Account Ledger submitted by lien claimant, applicant's first day of treatment was on February 1, 2018, as a new patient. (Exhibit 6, Bill of Ameri Chiropractic.)

On February 2, 2018, applicant filed an Application for Adjudication of Claim (Application) alleging a cumulative injury from January 23, 2016, through January 25, 2017.

On March 26, 2019, the parties proceeded to trial on the issue of AOE/COE. As relevant herein, the Minutes of Hearing/Summary of Evidence (MOH) state that: "The Court will take judicial notice of the claim form dated 1-3-18." (MOH, p. 3.)

On April 12, 2019, the WCJ issued a Findings and Order, which found that applicant while employed as a caregiver by defendant during the period of January 23, 2016 to January 25, 2017 did not sustain injury AOE/COE and ordered that applicant take nothing by way of her Application.

On June 3, 2020, lien claimant filed a lien for its services.

On June 11, 2020, lien claimant filed a Declaration of Readiness to Proceed (DOR) on the issue of its lien, due to the parties' inability to reach a resolution.

On September 2, 2020, the parties proceeded to a mandatory settlement conference. They were ordered to prepare a pre-trial conference statement (PTCS), but there is no PTCS in the record.

On April 13, 2021, the parties proceeded to trial. The issues listed were:

1. Liability for self-procured medical treatment.
2. Liens: Specifically the lien of Ameri Chiropractic, who are claiming a balance of $19,311.91 with zero paid.
3. Defendant's liability for payments prior to the denial pursuant to Labor Code Section 5402(c).
4. Defendant's claim for costs and sanctions.

On May 10, 2021, the WCJ issued the F&O.

On May 27, 2021, lien claimant filed a Petition for Reconsideration.

DISCUSSION

I.

A lien for self-procured medical treatment is allowable when the treatment rendered is reasonably required to cure or relieve an injured worker from the effects of an industrial injury. (Lab. Code, §§ 4600(a), 4903(b).) A defendant will not be liable for self-procured medical treatment where there is no industrial injury. (*Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588, 1593 (en banc).) Therefore, where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz*, *supra*, 67 Cal.Comp.Cases at p. 1592.)

Here, we agree with the WCJ's finding that defendant is not liable for applicant's self-procured medical treatment because even if we treated the denial letter as an admission, lien

claimant's billing reflects that applicant's first visit was on February 1, 2018, two days after the denial. While lien claimant submitted a medical treatment report dated January 18, 2018, there is nothing to indicate that it was served or that there was a charge for it. Thus, we affirm the WCJ's finding that lien claimant failed to prove that it was entitled to payment for treatment rendered before the denial on January 30, 2018.

II.

Next, we will examine if lien claimant should be reimbursed for the medical-legal expenses it incurred. A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 3205.5, 5705.5; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) As we explained in our en banc decision in *Colamonico v. Secure Transportation* (2019) 84 Cal. Comp. Cases 1059 (Appeals Board en banc), section 4622 provides the framework for reimbursement of medical-legal expenses. Subsection (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (§ 4622(f).)

Pursuant to *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059 (Appeals Board en banc), a lien claimant holds the initial burden of proof under sections 4620 and 4621 to show that a contested claim existed at the time the expenses were incurred, that the expenses were incurred for the purpose of proving or disproving a contested claim, and that its services were reasonably, actually, and necessarily incurred. We stated that:

> 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." (§ 4620(a).) Copy service fees are considered medical-legal expenses under section 4620(a). (Citations) 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. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 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. (§ 4620(b).)

…[W]e note that a determination of whether a purported medical-legal expense involves a "contested claim" is a fact-driven inquiry. Thus, a lien claimant is required to establish that: 1) a

contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *Colamonico*, *supra*, 84 Cal.Comp.Cases 1059.)

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 medical-legal expense is to show that a "contested claim" existed at the time the service was performed.

Section 4620(b) states that:

> A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists:
>
> (1) The employer rejects liability for a claimed benefit.
> (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim.
> (3) The employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.

(Lab. Code, § 4620(b).)

In the present matter, the WCJ found that lien claimant failed to establish any basis for reimbursement for the lien claim filed in this matter. We disagree. Here, the issue of whether lien claimant was entitled to payment for medical-legal costs was not an issue raised at trial. In the Petition for Reconsideration, lien claimant raises the issue because the WCJ found that it was not entitled to any payment.

The WCJ failed to address the applicability of sections 4620 and 4621 and several factors show that a contested claim existed when the medical-legal expenses were incurred. We note however that, defendant issued a denial letter on January 30, 2018, and thus, here it is likely there was a contested claim under section 4620(a). We will amend the F&O to defer the issue of whether lien claimant is entitled to payment for medical-legal expenses, so that the issues raised under sections 4620, 4621, and 4622 may be adjudicated in the first instance.

Accordingly, we affirm the F&O, except that we amend it to defer the issue of whether lien claimant is entitled to payment for medical-legal expenses.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of May 10, 2021 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

4. The issue of whether defendant is liable for payment of medical-legal expenses is deferred.

ORDERS

a. Lien claimant, Ameri Chiropractic, is not entitled to payment by defendant for the cost of medical treatment it provided to applicant. The issue of whether lien claimant is entitled to payment for medical-legal expenses is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2026

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

AMERI CHIROPRACTIC
PINNACLE LIEN SERVICES, INC.
ALBERT & MACKENZIE

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