WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VICTORIA ESCOBAR, *Applicant*

vs.

PARKVIEW COMMUNITY HOSPITAL; permissibly self-insured, administered by BETA HEALTHCARE GROUP, *Defendants*

Adjudication Number: ADJ10790437
Riverside 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.[1] Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant The Dental Trauma Center seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on June 21, 2021, wherein the WCJ found in pertinent part that applicant, while employed during the period of November 1, 2011 through September 20, 2016 as a Charge Nurse by defendant, sustained injury to her cervical spine and did not sustain a dental injury. The WCJ further found that lien claimant did not meet its burden of proof that its services were reasonable and necessary; that the services "do not constitute medical-legal services, in part"; and that defendant properly deferred Utilization Review (UR) pending a determination of liability. The WCJ ordered that lien claimant take nothing further on the lien, but also ordered that the lien was disallowed.

Lien claimant contends in relevant part that it met its burden to show that its treatment was reasonable and necessary; that testimony by applicant was not relevant to the issues raised at trial; and that it is entitled to medical legal costs for the reporting and diagnostic testing.

We have not received an Answer from any party.

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[1] Commissioner Marguerite Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

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 and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will rescind the WCJ's F&O, and substitute a new Findings of Fact, that finds applicant sustained dental injury and defers the issue of whether lien claimant is entitled to payment for the medical treatment it provided; finds that a contested claim existed at the time lien claimant provided its services and that its services were reasonable and necessary and defers the issue of the amount owed by defendant. We return this matter to the trial level for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed cumulative injury to multiple body parts while employed by defendant during the period from November 1, 2011, to September 20, 2016.

On October 13, 2016, defendant denied applicant's psychiatric claim based on a good faith personal action pursuant to Labor Code[2] 3208.3 and lack of medical evidence. (Exhibit B, 10/13/2016.) At this point, applicant's claim became contested.

On November 17, 2016, applicant had an initial visit with her Primary Treating Physician (PTP), orthopedic surgeon Edward G. Stokes, M.D. In his initial report, Dr. Stokes stated, applicant had complaints about frequent pain in her head, shoulders, neck and lower [*sic*] back. (Exhibit 3, 11/17/2016, p. 4.) Applicant also complained about difficulty falling asleep due to pain, waking during the night due to pain, dizziness, headaches, decreased muscle mass and strength, numbness with pain, and grinding and locking of jaws. (Exhibit 3, 11/17/2016, pp. 4-5.) Dr. Stokes requested authorization for a dental specialist due to applicant's grinding of her teeth. (Exhibit 3, 11/17/2016, pp. 11, 12.) The report states, "applicant takes Ibuprofen (Motrin) for pain, 800 mg, #90, 1 tablet 3 times per day and finds it helpful (Take 1 tab every 8 hours.)" Exhibit 3, 11/17/2016, p.5.)

On December 29, 2016, applicant had a follow-up visit with Dr. Stokes. The PR-2 form states, ". . . 18. G47.63 – Sleep related bruxism; teeth grinding deferred to appropriate specialist (new diagnosis)." (Exhibit 4, 12/29/2016, p. 7.)

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

On January 30, 2017, applicant filed an Application for Adjudication of Claim (Application) claiming cumulative injury to multiple body parts including teeth while employed by defendant from November 1, 2011, to September 20, 2016. (Application For Adjudication, 1/30/2017.) Paragraph 9 of the Application for Adjudication states, "This application is filed because of a disagreement regarding liability for: Temporary disability indemnity, Reimbursement for medical expense, Medical treatment, Compensation at proper rate, Permanent disability indemnity, Rehabilitation, Supplemental Job Displacement/Return To Work, Other (Specify) ALL BENEFITS; 132A."

On March 9, 2017, May 4, 2017, and October 19, 2017, applicant had follow-up visits with Dr. Stokes and after each appointment he issued PR-2's, which state, "I am continuing to request authorization for a dental specialist due to grinding of teeth with Dr. Schames." (Exhibit 5, Exhibit 6, Exhibit 7, March 9, 2017, May 4, 2017, October 19, 2017, all on p. 7.)

On January 9, 2018, Mayer Schames, D.D.S., one of the providers of The Dental Trauma Center examined applicant and issued an "Initial Report In The Field Of Dentistry And Request For Authorization (RFA)" following his examination of applicant. He stated,

> . . . .Ms. Escobar finds that in response to her industrial related orthopedic pain, she has developed emotional stressors. The patient finds she is clenching her teeth and bracing her facial musculature not only in response to her orthopedic pain, but also in response to the resultant emotional stressors experienced.

(Exhibit 11, 1/9/2018, p.11.)

Dr. Schames then concluded that:

> With reasonable medical probability, the myofascial pain of the facial musculature was caused and/or contributed to by Ms. Escobar's bruxism in response to her industrial pain and/or emotional stressors.
>
> Even though Ms. Escobar objectively presents with industrial related facial muscular problems; however, due to the chronicity of the facial pain and the continued Bruxism, Ms. Escobar's facial pain has evolved into having Trigeminal Neuralgic I Neuropathic components to her facial pain.
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> ***
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> Thus, the medications of Ibuprofen and Aleve taken by Ms. Escobar on an industrial basis are, with reasonable medical probability, causing and/or contributing to the patient's Xerostomia condition, which in effect is contributing to Ms. Escobar's aggravated Periodontal Disease and dental decay.

> As discussed in the enclosed scientific literature attached hereto, even if Ms. Escobar 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 well 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 and inflammation.
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> ***
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> Ms. Escobar injured her cervical area on an industrial basis. Even though a latency period may have occurred since the original industrial injury, the cervical nerve damage can cause facial problems to occur at a later date.
>
> ***
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> There were objective classical textbook referral patterns of pain from the upper quadrant/cervical musculature referring pain into the facial areas which caused or aggravated the facial myofascial pain, headaches, Bruxism, and resultant TMJ Disorder/Inflammation.
>
> Subsequent to the industrial exposure, Ms. Escobar developed orthopedic pain and resultant emotional stressors. It is with reasonable medical probability that Ms. Escobar would be clenching and bracing her facial muscles in response to the industrial pain and industrial related emotional stressors.
>
> ***
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> It is my opinion that, with reasonable medical probability, this patient's presenting complaints and clinical symptoms in my area of expertise were caused or aggravated on an industrial basis.

(Exhibit 11, 1/9/2018 pp. 12-15, bold and italics in original omitted.)

On February 6, 2018, panel qualified medical evaluator (QME) Alex H. Etemad, M.D., performed a medical-legal examination of applicant. Dr. Etemad issued a report and mentions in his report that applicant was referred to Dr. Mayer Schames, D.D.S for oral medical care.

On February 14, 2018, defendant issued its first objection followed by three additional objections to Dr. Schames' requests for treatment. (Exhibits G, H, I and J, 2/14/2018) On the grounds that a liability decision was still pending, defendant continued to defer the requests for authorization from Dr. Schames.

On March 22, 2018, applicant had a follow-up visit with Dr. Stokes, and he issued a PR-2, which discusses applicant's use of the mouth guards Dr. Schames made for applicant to relieve her bruxism. (Exhibit 10, March 22, 2018, p. 2.)

On October 9, 2018, defendant accepted liability for injury to the cervical spine only. (Exhibit D, 10/9/2018.)

On April 16, 2019, lien claimant filed a lien for its services.

On March 12, 2020, the case in chief was resolved by way of a Compromise and Release (C&R). Paragraph 9 of the Compromise and Release stated in pertinent part that liability was only accepted for the body part of injury to the cervical spine, and that "the additional body parts of psyche, internal and teeth are also dismissed by applicant."

On May 12, 2021, lien claimant and defendant proceeded to trial on the lien of Dental Trauma Center.

On June 21, 2021, the WCJ issued the F&O.

On July 7, 2021, lien claimant filed a Petition for Reconsideration.

DISCUSSION

I.

We first consider the issue of defendant's liability for applicant's medical treatment 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].)

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a) & 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

In the F&O, the WCJ found that applicant did not sustain a dental injury arising out of and in the course of employment. We disagree. Based on our review, there is substantial medical evidence to find that applicant did sustain a dental injury arising out of and in the course of employment based on the reporting of Dr. Schames.

Dr. Schames examined applicant and summarized the history of her injury. He stated that: "With reasonable medical probability, the myofascial pain of the facial musculature was caused and/or contributed to by Ms. Escobar's bruxism in response to her industrial pain and/or emotional stressors." He concluded that: "It is my opinion that, with reasonable medical probability, this patient's presenting complaints and clinical symptoms in my area of expertise were caused or aggravated on an industrial basis." Thus, Dr. Schames' findings indicate that applicant's dental injuries were caused on an industrial basis.

The next issue is to determine is whether the treatment provided by Dental Trauma Center provider Dr. Schames was reasonable and necessary. 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].)

Dr. Schames acknowledged the likelihood that applicant's dental issues were pre-existing, but nonetheless states in the report, that, ". . . **Treatment is not** apportioned . . " "[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.)

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, the reporting from Dr. Schames acknowledges that even if applicant, ". . . 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."

However, as defendant has raised the issue of whether the determination as to whether the treatment was reasonable and necessary should have been made by Utilization Review, and the WCJ has not considered it in the first instance, we will defer the issue of whether lien claimant is entitled to payment for the medical treatment it provided.

II.

We next consider the issue of whether lien claimant met its burden to show that it was entitled to payment for the medical-legal reporting.

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 Lab Code, §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) 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 they were incurred. (Lab. Code, §§ 4620, 4621, 4622(f); *American Psycometric Consultants Inc. v. Workers' Comp. Appeals Bd.* (*Hurtado*) (1995) 36 Cal.App.4th 1626 [60 Cal.Comp.Cases 559].) 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 pursuant under sections 4620 and 4621, and once a lien claimant has established these elements, it then may proceed to address the reasonable value of its services under section 4622. As we explained, 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." (Lab. Code, § 4622(f).)

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. (Lab. Code, § 4620(b).) 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. (*Id.*)

Here, applicant's claim has been contested since at least October 13, 2016, when defendant denied applicant's psychiatric claim. (Exhibit B, 10/13/2016.) On November 17, 2016, applicant had her initial evaluation with her PTP Dr. Stokes where he made his first request for a dental evaluation for teeth grinding. Dr. Stokes deferred the issue of applicant's teeth grinding to the appropriate specialist and requested an authorization for a dental specialist several times before lien claimant was appointed. Dr. Stokes made several requests, and defendant objected each time to a dental specialist evaluation request. Defendant never authorized a referral to dental specialist for possible injury to applicant's teeth, so that a contested claim existed. Further evidence supporting the existence of a contested claim is that on January 30, 2017, applicant filed the Application due to the pending disputes as to liability.

Thus, we conclude that lien claimant met its burden pursuant to section 4620(a) that a contested claim existed when applicant was evaluated by Dr. Schames on January 9, 2018. Further, lien claimant met its burden pursuant to section 4620(b) when defendant objected and deferred Dr. Schames' requests for authorization for evaluation and treatment. (Exhibit 12, 2/7/2018.)

Next, we turn to the issue of section 4060(b) which allows a medical-legal evaluation by the treating physician. Section 4620(a) defines medical-legal expense as "any costs and expenses…for the purposes of proving or disproving a contested claim." Section 4064(a) provides that the

employer is liable for the cost of a comprehensive medical evaluation that is authorized by section 4060.[3]

It is clear that the intent of section 4060(b) when read together with section 4064(a) is that a medical-legal evaluation performed by an employee's treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of the reasonable and necessary medical-legal reports that are performed by a treating physician. To the extent that the WCJ was concerned about whether lien claimant's recovery for payment was implicated by the language of section 4061.5 regarding the requirement for a primary treating physician, section 4061.5 is concerned with treatment. Nothing in the language of section 4060(b) with respect to a medical-legal evaluation incorporates the reporting requirement in section 4061.5 that there be a "physician primarily responsible for managing the injured worker's *care*. . ." who reviews other reporting and issues a single report. Moreover, the Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from a treating physician, and in turn, the report from that physician is a medical-legal expense for which the defendant is liable. (See *Warren Brower v. David Jones Construction* (2014) 79 Cal. Comp Cases 550(Appeals Board en banc).)

Here, throughout 2017, applicant's treating physician requested a referral for applicant to a dental provider on three separate occasions. Yet, defendant never authorized it. Finally, applicant was evaluated by Dr. Schames on January 1, 2018. Based on our review, we believe that the reporting requested by applicant was reasonable and necessary. Thus, we conclude that lien claimant met its burden under section 4621.

Finally, the amount owed by defendant is determined under section 4622, and we will defer that issue so that the WCJ may consider it in the first instance.

Accordingly, we rescind the F&O, substitute a new Findings of Fact that finds applicant sustained dental injury and defers the issue of whether lien claimant is entitled to payment for the medical treatment it provided; finds that a contested claim existed at the time lien claimant provided its services and that its services were reasonable and necessary and defers the issue of the amount owed by defendant. We return this matter to the trial level for further proceedings consistent with this decision.

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[3] To the extent that AD Rule 9793(h) (Cal. Code Regs., tit. 8, § 9793(h)) contains additional requirements that are not enumerated in the statutes, we must disregard it.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the June 21, 2021, Findings and Order is **RESCINDED** and that a new Findings of Fact be **SUBSTITUTED** in its place as follows:

FINDINGS OF FACT

1. Victoria Escobar, while employed during the period from November 1, 2011 through September 20, 2016 as a Charge Nurse, by Parkview Community Hospital sustained injury to her cervical spine and a dental injury arising out of and in the course of employment as a Charge Nurse.

2. The issue of whether lien claimant The Dental Center is entitled to payment for medical treatment provided to applicant is deferred.

3. Lien claimant The Dental Trauma Center met its burden under Labor Code section 4620 to show a contested claim existed at the time it provided its services beginning on January 9, 2018.

4. Lien claimant The Dental Trauma Center met its burden under Labor Code section 4621 to show its services were reasonable and necessary at the time they were provided beginning on January 9, 2018.

5. Lien claimant The Dental Trauma Center is entitled to payment under Labor Code section 4622 for services it provided beginning on January 9, 2018, the issue of the amount owed, including interest and penalties, is deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 9, 2026

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

LAW OFFICE OF SAAM AHMADINIA
LAW OFFICES OF STEPHANIE SMITH
THE DENTAL TRAUMA CENTER

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