

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **JOSHUA HUBBARD,**

5 *Applicant,*

6
7 **vs.**

8 **UNITED PARCEL SERVICE; LIBERTY**
9 **MUTUAL INSURANCE COMPANY,**

10 *Defendant.*

Case Nos. ADJ4142754 (AHM 0142785)
ADJ6726440
(Long Beach District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

11 We granted lien claimant's Petition for Reconsideration to further study the factual and legal
12 issues in this case. This is our Opinion and Decision After Reconsideration.

13 Lien claimant Southern California Psychodiagnostics sought reconsideration of the Joint Findings
14 and Order (F&O) issued on October 20, 2014 by a workers' compensation administrative law judge
15 (WCJ). The WCJ found that the lien was related to treatment and not medical-legal services, and
16 disallowed the lien. She also denied defendant's claim for attorney's fees. Lien claimant contended that
17 the neuropsychological testing provided to applicant was a medical-legal evaluation of causation of
18 injury pursuant to Labor Code¹ section 4620 and therefore recoverable even though applicant's claimed
19 injury was found to be non-industrial.

20 We received an Answer from defendant. We received a Report and Recommendation (Report)
21 from the WCJ in response to the Petition for Reconsideration, which recommended that lien claimant's
22 petition be denied.

23 We have reviewed the record and considered the allegations in the Petition for Reconsideration
24 and the Answer and the contents of the Report. Based on our review of the record, and for the reasons
25 discussed below, as our decision after reconsideration, we will rescind the F&O and substitute a new
26 F&O which finds that the lien is one for medical-legal services.

27
1 Unless otherwise stated, all statutory references are to the Labor Code.

1 FACTS

2 Applicant was employed by defendant as a part-time supervisor and suffered a cardiac arrest on
3 December 1, 2006 while in the course of his employment, and claimed injury to his neuro, psyche and
4 internal. (ADJ4142754) He also claimed cumulative injury from January 7, 2008 to February 3, 2009 to
5 his psyche, internal, chest and nervous system. (ADJ6726440)

6 I.

7 On February 13, 2012, May 21, 2012, and March 12, 2013, the parties proceeded to trial on the
8 underlying cases. They stipulated that both claims were timely denied. The issues at trial were whether
9 applicant's injury arose out of his employment and whether Jens Dimmick, M.D., was applicant's
10 primary treating physician. Defendant also asserted a good faith personnel action defense under section
11 3208.3 to applicant's claimed injury to psyche. Applicant testified on May 21, 2012 in pertinent part as
12 follows. He collapsed at work on December 1, 2006; he was treated at San Antonio Hospital and then
13 was an inpatient at Casa Colina for a year. (Minutes of Hearing, Summary of Evidence (MOH) May 21,
14 2012, p. 3, lines 14-17.) "He treated for memory problems and problems with his cognitive skills. . . .
15 [and] for a brain injury. . . . [He] has problems with both his short term and long term memories." (*Id.*, p.
16 3, lines 17-21.) A Joint Finding and Order issued on June 21, 2013, finding that applicant did not sustain
17 a cumulative industrial injury to his neuro, psyche and internal and that he did not sustain the burden of
18 proof to show that he sustained an industrial injury on December 1, 2006.² The WCJ did not make a
19 finding as to whether Dr. Dimmick was applicant's primary treating physician, although she considered
20 his reports in reaching her decision.

21 On August 26, 2014, the issue of lien claimant's lien for \$3,602.50 proceeded to trial. The parties
22 stipulated that Dr. Dimmick referred applicant to Dr. Procci "as described in Dr. Dimmick's report dated
23 12/14/10." Defendant contended that since the primary treating physician referred applicant for
24 diagnostic testing, the charges were for treatment.

25
26 ² On September 5, 2013, we denied reconsideration of the June 13, 2012 decision. Commissioner Moresi,
27 who was on the Appeals Board panel that issued that order, no longer serves on the Appeals Board. Another panel
member was assigned to take his place.

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II.

Physiatrist David Patterson, M.D., is the medical director at Casa Colina. On July 23, 2007, Dr. Patterson issued a letter. (Exhibit 3, David Patterson, M.D., July 23, 2007.) He stated that he had been applicant's physiatrist since his admission to Casa Colina on December 14, 2006, and under his care, applicant had transitioned from Casa Colina Acute Care Unit to Casa Colina Transitional Center for physical and cognitive therapies. Upon discharge, applicant was referred to Gentiva Rehab Without Walls. In pertinent part, he concluded that: "Client's progress has allowed him to return home with his family but this client's barriers remain his attention and memory deficits. . . Client has been involved in individual counseling and will need updated neuropsychological evaluation for reassessment."

On September 28, 2007, Dr. Patterson wrote to applicant's attorney. (Exhibit 3, September 28, 2007.) In pertinent part he stated that: "It is of my opinion that Mr. Hubbard does need treatment and I am requesting that we seek a possible second opinion to help make the case that this is, in fact, an industrial related injury. . ."

On September 24, 2008, internist and panel Qualified Medical Evaluator (QME) Paul J. Grodan, M.D., examined applicant and issued a report. (Exhibit A, Paul J. Grodan, M.D., September 24, 2008.) He reviewed and summarized extensive medical records. He concluded that applicant had "significant anoxic damage to his brain" and "clearly sustained cognitive residuals from hypoxia of his brain." (*Id.*, pp. 17-18.) He then stated that:

However, in order to assess accurately the degree of his cognitive disorder he requires neuropsychological testing. There was one report I reviewed from January 11, 2007, but that was too proximal to the occurrence. He will require updated neuropsychological evaluation and based on those conclusions I may comment further.

Furthermore, I would recommend that the Whole-Person impairment assessment in Mr. Hubbard, due to his memory and cognitive impairment, would be best deferred to neurological expertise with neuropsychological assessment. At this time, I do not find sufficient information in the file to allow such assessment from my perspective. . . . [A]ny and all current residuals have to be attributed to the occurrence on December 01, 2006. However, whether it was industrial or not is deferred.

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In summary, as noted in the joint letter point #9 I do recommend a neurological assessment including neuropsychological testing to objectively assess the cognitive/memory deficits. (*Id.*, pp. 19, 20, 21.)

On December 30, 2008, neuropsychologist Laura Seibert Ph.D., Director of Neuropsychology at Casa Colina evaluated applicant. (Exhibit 9, Laura Seibert Ph.D., December 30, 2008.) She reported that applicant had a comprehensive neuropsychological evaluation on January 11, 2007 while at Casa Colina (*Id.*, p. 1.) She reviewed applicant's medical records, interviewed applicant and his mother, and administered tests. She gave applicant printed materials which outlined his rights under the Americans with Disabilities Act (ADA), recommended that applicant discuss treatment with Ritalin with Dr. Patterson, encouraged applicant to seek psychotherapy treatment for therapy and for cognitive coping strategies and advised him to refrain from driving. (*Id.*, pp. 7-8.) She did not opine as to industrial causation and did not discuss workers' compensation benefits, including applicant's ability to work, entitlement to temporary or permanent disability, or level of impairment.

On March 29, 2009, Dr. Grodan issued a supplemental report. (Exhibit A, March 29, 2009.) He reported that after applicant's cardiac arrest "there was sufficient cerebral anoxia period to cause central nervous system residuals. I suggested in my report that he should have a neuropsychological evaluation and evaluation by a neurology specialist to ascertain the degree of his cognitive impairment." (*Id.*, p. 4.) He stated that "[i]f the neuropsychological assessment is obtained, I will issue a supplemental report, if necessary." (*Ibid.*)

On January 13, 2010, Dr. Grodan reevaluated applicant and issued a report. (Exhibit A, January 13, 2010.) In pertinent part, he concluded that applicant's "subjective and objective facts of disability are solely related to his cerebral dysfunction – a consequence of anoxic encephalopathy. The only objective assessment would be comprehensive neuropsychological profile and cognitive function testing. The opinions I expressed in my initial evaluation report remain unchanged." (*Id.*, p. 22.) He noted that he had "not seen a neuropsychological evaluation since the one performed on January 11, 2007." (*Id.*, p. 23.) He further concluded that:

1 The only recommendation I would have is to obtain an updated evaluation
2 by a Board Certified Psychiatrist with expertise in neuropsychological/
3 cognitive disorders. Considering there was a baseline assessment on
4 January 11, 2007 an updated assessment may reveal whether there was an
5 interval change. It may be helpful in further assessing the continuous
6 trauma submission considering that if he had deterioration and if the
7 stress, even though caused by his medical condition, is considered legally
8 as employment stress, then there may be a nexus to cerebral dysfunction
9 deterioration. However, it is not likely that this will be the finding. (*Ibid.*)

7 On December 7, 2010, specialist in internal medicine Jens Dimmick, M.D., issued a primary
8 treating physician's supplemental report which was a review and summary of applicant's medical
9 records. (Exhibit 2, Jens Dimmick, M.D., December 7, 2010.) He stated that he had received notice that
10 defendant insurance company had denied liability for applicant's claim so that applicant's claim was a
11 contested claim and he was preparing the report at applicant's attorney's request "for the purpose of
12 proving or disproving a contested claim." (*Id.*, p. 1.) In pertinent part, with respect to applicant's hospital
13 admission in 2009 and applicant's claim of cumulative injury, he opined that: "The disability that ensued
14 following his 2009 admission was primarily of a psychiatric nature and a psychiatrist needs to evaluate
15 the patient to discuss the work-relatedness of those psychiatric issues." (*Id.*, p. 14.)

16 On December 13, 2010, Dr. Patterson issued a report after review of Dr. Grodan's reports of
17 March 29, 2009 and January 13, 2010. (Exhibit 3, December 13, 2010.) He noted that:

18 Dr. Grodan also states there has been no formal neuropsychological
19 testing. However, there has been formal neuropsychological testing, but it
20 did not render an opinion regarding factors related to ongoing stress at
21 work versus Mr. Hubbard having difficulty working due to consequences
22 of his anoxic encephalopathy and injury, and therefore Mr. Hubbard's
23 continuous struggles in the workplace environment are in fact related to
24 the consequences of his anoxic encephalopathy. I would concur with Dr.
25 Grodan that a qualified medical examination by a neuropsychologist may
26 help delineate further the issue regarding cumulative trauma with a
27 February of 2008 to February of 2009 timeframe. (*Id.*, pp. 1-2.)

25 On December 14, 2010, Dr. Dimmick examined applicant and issued a narrative PR-2 report.
26 (Exhibit 2, December 14, 2010.) Under the category of "MEDICAL TREATMENT," he stated that:
27 "The patient needs neuropsychological testing at this time to assess the intellectual impairments that he

1 may have developed, if any, as a result of his injury.” (*Id.*, p. 2.)

2 On March 1, 2011, Dr. Dimmick examined applicant and issued a narrative PR-2 report. (Exhibit
3 2, March 1, 2011.) He noted that applicant had not yet had neuropsychological testing. Under the
4 category of “MEDICAL TREATMENT,” he stated that: “The patient needs neuropsychological testing
5 before his case is wrapped up.” (*Id.*, p. 2.)

6 On June 7, 2011, Dr. Grodan issued a supplemental report after reviewing Dr. Dimmick’s March
7 1, 2011 report. (Exhibit A, June 7, 2011.) He stated that: “[Dr. Dimmick] then noted that Mr. Hubbard
8 can continue working daylight hours and that neuropsychological testing is necessary and everybody is in
9 agreement with that.” (*Id.*, p. 2.)

10 On July 19, 2011, Martin V. Ross, PhD., of Southern California Psychodiagnostics issued a report
11 following his evaluation of applicant, which included interviewing applicant and administering tests.
12 (Exhibit 1, Martin V. Ross, PhD., July 19, 2011.) Dr. Ross reviewed Dr. Dimmick’s report of December
13 14, 2010 and noted that he was willing to review any other medical records if they were provided to him.
14 (*Id.*, p. 2.) He stated that: “Because of Mr. Hubbard’s history of anoxic brain injury and cognitive
15 impairment, he was referred for comprehensive neuropsychological examination by Jens W. Dimmick,
16 M.D., in order to determine the nature and extent of neuropsychological impairment. . . . It was noted [in
17 Dr. Dimmick’s report] that the patient needed neuropsychological testing, thus the current referral, in
18 order to assess the intellectual impairment that the patient may have developed, if any, as a result of his
19 injury.” (*Ibid.*) Dr. Ross concluded that applicant had a moderate degree of neuropsychological
20 impairment “primarily attributed to the anoxic episode” but that “[s]ome degree of dysfunction may be
21 secondary to physical and emotional symptoms, such as fatigue, depression, and anxiety.” (*Id.*, p. 14.) In
22 his opinion, applicant had a whole person impairment of 26% “solely within the realm of cognitive
23 functioning.” (*Id.*, p. 15.) He further concluded that “[i]n light of the continuing emotional symptoms,
24 additional psychotherapy, in conjunction with psychotropic medication, is recommended. I defer to Dr.
25 Dimmick regarding the appropriateness of additional cognitive or vocational rehabilitation.” (*Ibid.*)

26 On February 2, 2012, Dr. Dimmick examined applicant and reviewed the report from Dr. Ross.
27 (Exhibit 2, February 2, 2012.) Dr. Dimmick stated that: “Dr. Ross’ report is appreciated. He clearly puts

1 in perspective the patient's impairments and disabilities as a result of his brain injury that occurred as a
2 result of anoxia in December 2006." (*Id.*, p. 2.) Dr. Dimmick concluded that applicant had reached
3 maximum medical improvement and that his impairment was "best described by Dr. Ross as an
4 approximately 26% whole person impairment that occurred with those findings" and that "[a]s pointed
5 out by Dr. Ross, the patient should have ongoing psychological support including psychotropic
6 medications on an indefinite basis for the time being." (*Ibid.*)

7 DISCUSSION

8 An employer's liability for services by a medical provider to an injured worker arises under two
9 circumstances. Under section 4600, an employer is required to provide reasonable and necessary
10 medical treatment to cure and relieve from the effects of an industrial injury. An employer may also be
11 liable for medical-legal expenses. "[T]he employee . . . shall be reimbursed for his or her medical-legal
12 costs" when "reasonably, actually and necessarily incurred;" "reasonableness of, and necessity for,
13 incurring these expenses shall be determined with respect to the time when the expenses were actually
14 incurred." (§ 4621(a).) Costs may be reimbursable even if the injured worker's claim was unsuccessful.
15 (*Costa v. Hardy Diagnostic* (2007) 72 Cal.Comp.Cases 1492, 1498 (Appeals Board en banc) (*Costa II*.)

16 Section 4620 states in pertinent part that:

17 (a) For purposes of this article, a medical-legal expense means any costs
18 and expenses incurred by or on behalf of any party . . . which expenses
19 may include . . . medical reports [and] medical records. . . for the purpose
of proving or disproving a contested claim.

20 (b) A contested claim exists when the employer knows or reasonably
21 should know that the employee is claiming entitlement to any benefit
22 arising out of a claimed industrial injury and one of the following
conditions exists:

23 (1) The employer rejects liability for a claimed benefit.

24 ***

25 (c) Costs of medical evaluations, diagnostic tests, and interpreters
26 incidental to the production of a medical report do not constitute medical-
27 legal expenses unless the medical report is capable of proving or
disproving a disputed medical fact, the determination of which is essential
to an adjudication of the employee's claim for benefits. In determining

1 whether a report meets the requirements of this subdivision, a judge shall
2 give full consideration to the substance as well as the form of the report, as
3 required by applicable statutes and regulations.

4 Diagnostic testing may be a cost of medical treatment or a medical-legal expense depending on
5 the purpose to be served by the testing results. Specifically, a lien claimant seeking reimbursement for
6 diagnostic testing is required to establish that a contested claim existed at the time the expenses were
7 incurred, that the expenses were incurred for the purpose of proving or disproving the contested claim,
8 and that the expenses were reasonable and necessary at the time they were incurred. (§§ 4620, 4621;
9 *American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd. (Hurtado)* (1995) 36
10 Cal.App.4th 1626 [60 Cal.Comp.Cases 559]; see *Torres v. AJC Sandblasting* (2012) 77 Cal. Comp.
11 Cases 1113, 1117 (Appeals Board en banc) (*Torres*) [lien claimant holds the burden of proof to establish
12 all elements to establish its claim].)

13 Here, all of the physicians agreed that applicant suffered an anoxic brain injury with cognitive
14 residuals as a result of a cardiac arrest, and while defendant agreed that applicant's cardiac arrest
15 occurred at work, it denied that it arose out of employment. Applicant's treating neuropsychologist at
16 Casa Colina, Dr. Seibert, evaluated applicant for the purpose of treatment and made treatment
17 recommendations; she did not opine on the issue of industrial causation. However, both before and after
18 Dr. Seibert's evaluation, applicant's treating doctor at Casa Colina, Dr. Patterson, recommended that
19 applicant be separately evaluated in order to consider industrial causation. Significantly, panel QME Dr.
20 Grodan recommended on several occasions that applicant needed to be evaluated by a neuropsychologist
21 to address industrial causation and disability. Once he became applicant's treating physician, Dr.
22 Dimmick recommended neuropsychological evaluation and testing as a diagnostic tool for the purpose of
23 assessing applicant's industrially claimed cognitive injury and not in order to plan for applicant's
24 ongoing treatment.

25 Neuropsychological evaluator Dr. Ross took a history from applicant and administered diagnostic
26 tests and concluded that applicant had 26% whole person impairment; while he opined on applicant's
27 need for future medical treatment, he did not make the type of recommendations that treating

1 neuropsychologist Dr. Seibert made. Applicant's primary treating physician Dr. Dimmick then reviewed
2 Dr. Ross' report and issued a medical-legal report that opined on the issue of industrial causation and
3 applicant's disability. Thus, section 4620 applies, and we will amend the F&A to find that the claimed
4 lien is for medical-legal expenses. Upon return, lien claimant must still demonstrate that the expenses
5 were reasonably, actually and necessarily incurred.

6 Accordingly, we rescind the F&O and substitute a new F&O, and find that the lien is one for
7 medical-legal services.

8 For the foregoing reasons,

9 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
10 Board that the Joint Findings and Order (F&O) issued on October 20, 2014 by the WCJ is **RESCINDED**
11 and the following **SUBSTITUTED** therefor:

12 **FINDINGS OF FACT**

- 13 1. The lien of Southern California Psychodiagnostics is not related to
14 treatment and is one for medical-legal services.
- 15 2. Defendant is not entitled to attorney's fees related to lien claimant's
16 claim for attorney's fees for filing a frivolous Declaration of Readiness to
Proceed.

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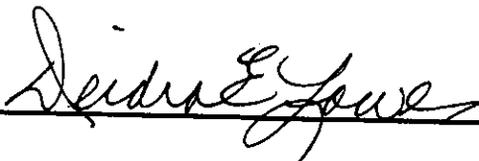
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ORDER

IT IS HEREBY ORDERED that the lien of Southern California Psychodiagnostics is allowed per Finding of Fact #1.

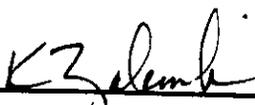
IT IS FURTHER ORDERED that the Defendant's claim for attorney's fees for filing a frivolous Declaration of Readiness is denied per Finding of Fact #2.

WORKERS' COMPENSATION APPEALS BOARD



DEIDRA E. LOWE

I CONCUR,



KATHERINE ZALEWSKI

I DISSENT. (*See Attached Dissenting Opinion*)





RONNIE G. CAPLANE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA APR 21 2015
SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR
ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

SOUTHERN CALIFORNIA PSYCHODIAGNOSTICS
LAW OFFICES OF LYNN P. PETERSON



AS/bea

1 **DISSENTING OPINION OF CHAIRWOMAN CAPLANE**

2 I respectfully dissent, for the reasons discussed below and for the reasons set forth in the WCJ's
3 Report which I adopt and incorporate herein.

4 I emphasize that lien claimant stipulated that applicant was referred by his treating physician Dr.
5 Dimmick. Moreover, lien claimant never contended that any other provider recommended
6 neuropsychological evaluation for the purposes of determining whether applicant's claimed injury arose
7 out of his employment.

8 The WCJ correctly found that the lien was for medical treatment and not for a medical-legal
9 evaluation, and I would not disturb her decision.

10 Thus, I respectfully dissent.



WORKERS' COMPENSATION APPEALS BOARD

R. G. Caplane

RONNIE G. CAPLANE, Chairwoman

16 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA** APR 21 2015
17 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
18 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

19 **SOUTHERN CALIFORNIA PSYCHODIAGNOSTICS**
20 **LAW OFFICES OF LYNN P. PETERSON**

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22 **AS/bea**
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1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**

3
4 **JOSHUA HUBBARD,**

5 *Applicant,*

6 *vs.*

7 **UNITED PARCEL SERVICES; LIBERTY**
8 **MUTUAL INSURANCE COMPANY,**

9 *Defendants.*

Case No. ADJ 4142754 (AHM 0142785)
(Long Beach District Office)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION

10 Reconsideration has been sought by lien claimant with regard to a decision filed on October 20,
11 2014.

12 Taking into account the statutory time constraints for acting on the petition, and based upon our
13 initial review of the record, we believe reconsideration must be granted in order to allow sufficient
14 opportunity to further study the factual and legal issues in this case. We believe that this action is
15 necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned
16 decision. Reconsideration will be granted for this purpose and for such further proceedings as we may
17 hereinafter determine to be appropriate.

18 For the foregoing reasons,

19 **IT IS ORDERED** that the Petition for Reconsideration is **GRANTED**.

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STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No.: ADJ4142754
ADJ6726440

JOSHUA HUBBARD vs. UPS; Liberty Mutual

Workers' Compensation Judge: JANET M. COULTER

Date: November 18, 2014

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Identity of
Petitioner: Lien Claimant Southern California Psychodiagnostics

Timeliness/
Verification: Petition was timely filed.
Petition was verified.

Date of Issuance
of Order: 10/20/2014 disallowing the lien as the services rendered were med-legal in
nature and not treatment.

Petitioner's
Contentions: Petitioner contends that the WCJ acted without or in excess of her power,
that the evidence does not justify the findings of Fact and that the Finding
of Fact does not support the Order, Decision or Award.

Petitioner/Lien claimant contends that the court erred in finding the testing
services performed by Southern California Psychodiagnostics to be
treatment rather than medical-legal in nature.

II

FACTS

Applicant filed two claims, one for a specific injury (ADJ4142754) and one for a cumulative
trauma claim (ADJ6726440) contending that his injuries occurred in the course and scope of his
employment with defendant, United Parcel Service. Defendant admitted that the applicant's cardiac

arrest (specific injury of 12/1/2006) occurred while in the course of his employment but denied that applicant sustained a cumulative trauma injury arising out of and in the course of his employment during the period from 1/7/2008 and 2/4/2009.

Both claims were timely denied. A Priority Conference was scheduled on the issue of AOE/COE and the matter proceeded to trial solely on that issue. A Joint Findings and Order issued June 21, 2013 finding that applicant did not sustain either a specific or cumulative trauma injury.

Subsequent to the trial, on 12/24/2013, lien claimant, Southern California Psychodiagnostics (hereinafter SCP) filed a lien in the amount of \$3,602.50.

III

DISCUSSION

Petitioner/lien claimant contends that the services it rendered in this case were medical-legal in nature because the purpose of the services were to prove or disprove a contested claim.

Defendant/Respondent contends that the services rendered by SCP were for treatment.

The law is well established in that where there is a finding of no injury, a carrier is not liable for medical treatment. Medical-legal expense is defined in Labor Code 4620 as any cost or expense that is used to prove or disprove a contested claim. A medical-legal evaluation is usually obtained as a means of attempting to resolve a disputed issue.

Applicant was referred to SCP by Jens Dimmick, M.D. In Dr. Dimmick's 12/14/10 report (Applicant's trial Exhibit "2"), Dr. Dimmick states that "The patient needs neuropsychological testing at this time to assess the intellectual impairments that he may have developed, if any, as a result of his injury". [Emphasis Added]

In the 7/19/11 report (Applicant/Lien claimant's Exhibit 1 at lien trial) issued by Martin v. Ross, PhD of SCP, Dr. Ross states that the applicant "was referred for comprehensive neuropsychological

examination by Jens W. Dimmick, MD, in order to determine the nature and extent of neuropsychological impairment that the patient may have developed, if any, as a result of his injury”.

[Emphasis Added] Dr. Ross also indicated in his report that “additional medical records, although requested, were unavailable at the time of this dictation. The patient has apparently had extensive psychological testing in the past.”

Nowhere in Dr. Ross’ report does he indicate that neurological psychological testing would determine whether or not the injury occurred in the course and scope of applicant’s employment. In fact, Dr. Ross did not address causation at all, only impairment.

There was nothing in the SCP report that touched on a disputed issue. Dr. Ross’ report is not probative as to whether injury arose out of and in the course of applicant’s employment. His report did not assist the trier of fact in determining the threshold injury (AOE/COE) issue.

As such, it was found that the report issued by SCP at the request of his treating physician, Dr. Dimmick was for treatment purposes and was not medical-legal in nature. Once it was found that the charges incurred by SCP were for treatment, it follows that, since there was a finding of no injury, that the lien of SCP was correctly disallowed.

IV

RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be denied.



JANET M. COULTER
WORKERS’ COMPENSATION JUDGE

DATE:

SERVICE:
LYNN PETERSON GLENDALE, US Mail
SCP PASADENA, US Mail
ON: 11/18/2014 BY: SD