

PAS 23894; PAS 10948
PAS 10951

LUIS GONZALEZ

V.

CONSOLIDATED
FABRICATORS; COMCO
MANAGEMENT, INC.

WORKERS' COMPENSATION JUDGE:

GEORGE C. ROTHWELL

OPINION ON DECISION

INTRODUCTION

The principal issues in this matter were resolved by two separate Compromise and Release agreements, both of which were approved by the Appeals Board. The matter came up on August 3, 1994 for supplemental proceedings on this issue of resolution of outstanding liens. At that time, both the lien claimants and the defendants waived the right to submit oral testimony and agreed to have the matter submitted on the record with both sides being given time to submit Points and Authorities and written rebuttal. The disposition further provided that the matter would not be submitted for decision until receipt of the parties' rebuttal, or written waiver of same. Because of the failure of the parties to timely comply with the disposition of this hearing, submission in this matter has been, unfortunately, delayed for many months.

At the time of Trial, the parties agreed that the remaining liens pertained only to Case PAS 10951. In that case it was admitted that applicant had sustained an industrial injury to his back on August 24, 1990.

LIABILITY FOR SELF-PROCURED
MEDICAL TREATMENT

Based on the findings of the Alameda Industrial Clinic, Dr. Nancy Sajben and Dr. Bernard Franklin, it is found that applicant's back condition became permanent and stationary in January of 1991 and that applicant was not in need of further medical treatment for his back after that time. He is not entitled to be reimbursed for medical treatment obtained from the Marco Chiropractic Clinic which occurred after Januar 1994 and this lien claimant has failed to sustain their burden of proof to show otherwise. Therefore, it is found that the treatment portion of the lien of Marco Chiropractic Clinic must be denied.

MEDICAL LEGAL COSTS

In their Points and Authorities, lien claimant Marco Chiropractic Clinic admits that their services were obtained prior to the filing of a claim form on the employer alleging industrial injury. However, they allege that payment for their services should not be barred under the doctrine of the Del Rio Case claiming that the employer had failed to provide the applicant with a claim form. Said lien claimant did not offer any testimony on this issue and has failed to produce any evidence to support this unsubstantiated allegation.

In fact, this appears to be a deliberate misstatement of the facts. The Workers' Compensation Appeals Board file contains three claim forms. One of these claim forms was filled out by the employer. This claim form noted that they were aware of applicant's August 24, 1990 injury and that they provided him with this claim form on September 4, 1990. The parts of the body injured were left blank for the applicant to fill out and return to the employer. There is no evidence the applicant ever filled out or returned this claim form to the employer.

The evidence indicates that the applicant was referred to an industrial clinic where he received a short course treatment. He then elected to discontinue the treatment which the employer had provided for him. Applicant continued to work for five months after this injury and there is no showing that he ever advised the employer that a "contested claim" existed. (i.e. although the employer admits knowledge of the incident, there is no showing that the employer was made aware that the applicant was claiming that he was in need of medical treatment or had suffered any temporary or permanent disability as a result of this injury.)

The other two claim forms in the Board file are dated January 21, 1991 and are, apparently, the claim forms referred to by the attorney for Marco Chiropractic in their Points and Authorities. Neither of these claim forms alleged a specific back injury on August 24, 1990 (one claim form alleges a hand injury on August of 1990 and the other alleges a repetitive trauma claim to the back and psyche.) Based on this evidence it is obvious that the employer did not have proper notice of a contested claim at the time of the diagnostic studies performed by Dr. Roitz, whose lien must therefore be denied in its entirety. Further, the employer did not have notice of the contested claim of the initial evaluation at the Marco Chiropractic Clinic.

It should be further noted that the medical reports of Marco Chiropractic Clinic do not constitute substantial evidence as the Chiropractor has failed to give reasons for his opinions on crucial issues. Although the applicant suffered his back injury in August for the defendant employer, he continued working without restriction until the following year when he was fired. Despite this history, the chiropractor finds the applicant to be suddenly "temporarily disabled" after being fired without giving any explanation for reaching this conclusion. As noted by Workers' Compensation Judge Pamela Foust in her thesis, Lien Claims in Workers' Compensation Cases at page 56. "Although such a conclusion is not impossible, it is

highly improbable and requires a logical explanation that does not insult the reader's intelligence in order to be believed." No such reason is forthcoming in the chiropractor's report. Also, as noted by the defendants, the chiropractor failed to review the reports and records of the previous treating doctors which was essential for an understanding of the claim. Based on this record, it is found that the medical legal reports from the Marco Chiropractic Center do not constitute substantial evidence and they are not capable of proving vital contested issues in these cases, i.e. temporary disability and need for treatment. Therefore, Marco Chiropractic Center is not entitled to be reimbursed for such defective reports.

Based on the finding that both the medical legal and treatment portions of the lien of Marco Chiropractic Center are not reasonable and necessary expenses, it is found that their lien must be denied in its entirety.

LIEN OF FAVELA ESPERANZA INTERPRETING

At the time of Trial, the Board noted on the record that they did not have a copy of the lien of Favela Esperanza Interpreter Service. In the Minutes of the Hearing, the disposition provided said lien claimant ten days to file a copy of their lien or otherwise show

good cause why their lien should not be submitted on the current record.

This lien claimant did comply with the disposition and filed a copy of lien showing that they were requesting reimbursement in the amount of \$210 for interpreting services rendered at proceedings before the Appeals Board on June 5, 1992 and July 2, 1992. Unfortunately, the response of this lien claimant was defective as they failed to serve a copy of their response on the defendant's attorney of record. In effect, the lien claimant's response was an "ex parte" communication in violation of the Board's rules. Although said lien claimant has made a prima facie case for the reasonableness of their lien, by failing to serve a copy of their response on the defendants they have denied the defendant's right to respond. To issue an Order granting their lien at this time would be a denial of defendant's due process. Therefore, the lien of Favela Esperanza is ordered off calendar at this time with jurisdiction reserved.

ADDITIONAL ISSUES

At the time of the Trial, defendants raised the additional issue of whether the treatment rendered by lien claimant Marco

Chiropractic was in violation of the Chiropractic Act and/or the Business Professions Code. Defendants also argued that the reports of this lien claimant were in violation of Labor Code Section 5703. In view of the above findings, these additional issues would appear to be moot.



GEORGE C. ROTHWELL

Workers' Compensation Judge

Dated: ~~and~~ Served ON: JUN 23 1995

ARMANDO CHAVIRA, 5900 SEPULVEDA BLVD #215, VAN NUYS, CA 91411
LEGION INSURANCE CO C/O COMCO, 200 EAST DEL MAR BLVD #310, PASADENA, CA 91105
KEGEL, TOBIN, ET AL, 3580 WILSHIRE BLVD, 10th FLOOR, LOS ANGELES, CA. 90076
MARCO CHIROPRACTIC CENTER, 8246 SUNLAND BLVD, SUN VALLEY, CA. 91352

By *Linda Plouffe*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

Case No. PAS 10951

LUIS GONZALEZ,

Applicant

vs.

CONSOLIDATED FABRICATORS; COMCO
MANAGEMENT, INC.

Defendants.

FINDINGS OF FACT AND ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable
GEORGE C. ROTHWELL, Workers' Compensation Judge, now makes his decision as follows:

FINDING OF FACT

1. Based on the finding that Marco Chiropractic Clinic failed to sustain their burden of proof, it is found that the treatment portion of the lien of Marco Chiropractic Clinic must be denied.

2. Based on the finding that the employer did not receive notice of a contested claim prior to the time the diagnostic studies were performed, it is found that the lien of Dr. Roitz must be denied. Based on the finding that the initial evaluation of Marco Chiropractic occurred prior to the employer receiving notice of a contested claim, and the finding that the reports of Marco Chiropractic did not constitute substantial evidence, the treatment portion of the lien of Marco Chiropractic must be denied.

3. Based on the finding that defendants were not served a copy of the response of Favela Esperanza to the Board's Notice of Intent, this lien is ordered off calendar with jurisdiction reserved.

4. It is found that all other issues raised by the defendants are moot.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LUIS GONZALEZ
PAGE 2

PAS 10951

ORDER

IT IS HEREBY ORDERED that lien of Marco Chiropractic Clinic for self-procured treatment must be denied as set forth in Finding No. 1. It is further ordered that the lien of Dr. Roitz and the lien of Marco Chiropractic for medical legal expenses must be denied as set forth in Finding No. 2. As set forth in Finding No. 3, the lien of Favela Esperanza is ordered off calendar with jurisdiction reserved.


GEORGE C. ROTHWELL
Workers' Compensation Judge

Service by mail on parties listed on
the Official Address record by: JUN 23 1995

