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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

JOSE GONZALEZ

*Applicant*

Case Nos. NOR 181687;  
NOR 184881; NOR 184882;

vs.

ACI GLASS PRODUCTS;  
TRAVELERS INSURANCE COMPANY

*Defendants.*

JOINT FINDINGS  
OF FACT AND ORDER  
RE: LIEN OF  
SCHEFFIELD MEDICAL GROUP

The matter having been heard and regularly submitted for decision, the Honorable Sue W. Kato, Workers' Compensation Judge, Finds, and Orders as follows:

**STIPULATIONS PER THE RECORD**  
(The only issue is lien of Sheffield Medical Group in the amount of \$7,157.00).

FINDINGS OF FACT

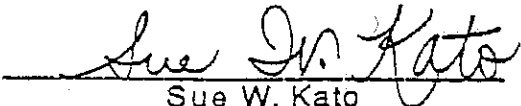
1. The lien of Schefffield Medical Group in the amount of \$7,157.00 is disallowed in its entirety, both medical/legal and treatment portions.

ORDER

It is ordered that lien claimant, Schefffield Medical Group, take nothing from defendant, Travelers Insurance Company, and said lien is disallowed in its entirety.

Date Signed: 5/15/97

Date Served: 5/16/97  
Filed and Served on all parties  
On the Official Address Record  
by S. Y. Drake S. Y. Drake

  
Sue W. Kato  
Workers' Compensation Judge

A Petition for Reconsideration from this decision shall be filed only at the Anaheim office of the Workers' Compensation Appeals Board.

F&A 268.1

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

CASE NUMBERS NOR 181687; NOR 184881; NOR 184882

JOSE GONZALEZ

v.

ACI GLASS PRODUCTS;  
TRAVELERS INSURANCE

SUE W. KATO  
WORKERS' COMPENSATION JUDGE

COUNSEL - Law Offices of Kegel, Tobin & Truce,  
by Steven M. Green, Attorney for Defendant

- Scheffield Medical Group,  
by Alton Brown, Representative for Lien Claimant

OPINION ON DECISION

**NOTE:** For easy reference, all the services claimed in the subject bill are numbered in chronological order starting with 8/15/91 as number 1 and ending with 11/14/91 as number 123. There are 123 services in issue covering a period of only 3 months.

**1. FIRST ISSUE-MAY LIEN CLAIMANT SCHEFFIELD MEDICAL GROUP RECOVER ON ITS TREATMENT CHARGES?**

It is found that Scheffield Medical Group may not recover on any of its treatment charges and they are all disallowed. The reasons are, as follows: Lien claimant has to meet the burden of proof of applicant's injury AOE/COE in order to be entitled to recover on its treatment charges. In the instant case, lien claimant, Scheffield Medical Group has failed to meet its burden of proof regarding applicant's having sustained an injury or injuries AOE/COE at this employer.

These cases were settled via Joint Compromise and Release with Order Approving Joint Compromise and Release issued on 3/8/93 <sup>by</sup> Judge Ball. A Thomas waiver was approved on all three claimed injuries.

At the lien trial on 3/26/97, applicant did not appear to testify to prove up his alleged industrial injuries. Instead, at the lien trial, the applicant's former supervisor, Richard Dashley, appeared and testified credibly that applicant was terminated for cause and never reported any injury or injuries at this employer. Specifically, Mr. Dashley testified that applicant was fired for leaving a safety chain off a pit and that another employee fell into the unchained pit and sustained an injury. Also, Mr. Dashley testified that applicant was told about this and "displayed an attitude of not caring". Mr. Dashley also testified that applicant was not harassed or mistreated at this employer. Mr. Dashley also testified, on cross-examination, that this employer had a sign posted in English and Spanish notifying employees of their workers' compensation rights. He testified that applicant had been terminated prior to submission of applicant's claim forms and that applicant never complained of anything or any injuries to applicant's immediate supervisor, Mr. Cicenio. Mr. Dashley also testified that if applicant had reported an injury to Mr. Cicenio, that it was company policy for Mr. Cicenio to report it to the witness, and that Mr. Cicenio did not report anything regarding applicant to the witness. Also, brought out in Mr. Dashley's direct examination was the fact that applicant had applied for unemployment insurance benefits after his termination for cause at this

employer. (This means that applicant would have certified under penalty of perjury therein that he was ready, willing, and able to work).

Therefore, for all the above reasons, it is found that lien claimant, Scheffield Medical Group, has failed to prove that applicant sustained an injury AOE/COE, at this employer, and that all their treatment charges must be disallowed.

The following numbers are treatment services referenced in Scheffield's bill that are disallowed: numbers 13-27, numbers 28-37, numbers 38-75, numbers 76-106, numbers 109-113 and numbers 116-123. (In other words, all of the treatment charges are disallowed).

2. SECOND ISSUE- SCHEFFIELD'S MEDICAL/LEGAL CHARGE ISSUES

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(a). CHARGES FOR NUMBERS 1-12. OR DATES OF SERVICE ON 8/15/91.

Scheffield charged \$1,493.00 for 13 alleged services provided on 8/15/91. Of these charges, numbers 1-12 are for medical/legal. These charges are disallowed per the case of Del Rio v. Quality Hardware, on the basis that the employer, per stipulation, did not receive the claim forms until somewhere between 8/19/91 to 8/21/91. Therefore, these charges on 8/15/91 are classic Del Rio violations and are disallowed. (Also, there was no need for lab tests). On 8/15/91, there was no contested claim in existence and these are therefore improper charges, barred by the Del Rio holding.

(b). MEDICAL/LEGAL CHARGES RUN UP ON 9/13/91 - NUMBERS 38-42, FOR X-RAYS, REPORT, AND "INITIAL EXAM".

These are also disallowed per Del Rio because the employer had not even had the claim for 30 days when these charges were run up. (Reason: Date employer received claim forms is between 8/19 - 8/21/91 per stipulations, and subject services were performed on 9/13/91).

(c). MEDICAL/LEGAL CHARGES FOR DATE OF 11/7/91 \$300.00 FOR "SPECIALIST" PERMANENT AND STATIONARY REPORT AND \$680.00 FOR INTERNAL MEDICINE PERMANENT AND STATIONARY EXAM. (REPORT BY DR. SANTOS).

These charges are disallowed because of several reasons. One is, as follows: incorrect, false history stated per cases of Penny and Guerrero. Specifically, Mr. Dashley, the employer's witness, testified at the lien trial that applicant never sustained nor reported any injury/injuries at this employer and was not harassed nor stressed, nor called bad names, nor mistreated. It is a skeletal report and is only 4 1/4 pages long. The report does not comply with Rule 10606. These cases were settled with a Thomas waiver. Del Rio also applies. This report does not address causation. It overgeneralizes everything and appears to be a boiler plate/word-processor or "template" report. The report does not indicate who assisted the doctor. It is conclusionary only. Also, Dr. Santos was paid less for the report than Scheffield has charged. The defense attorney stated that the Federal Court transcript revealed that Dr. Santos was paid \$50.00 per examination. (See information in the Federal Court transcript) in evidence from Zenith case, which is a defense exhibit regarding Dr. Santos' pay at

Scheffield). Specifically, reference is made to the transcript (copy) in defense exhibits, U.S. District Court, Zenith Insurance Company v. Leonard Breslaw, case numbers CV 92-1420 HLH and CV92-1421 HLH, October 29, 1993, Vol. IV, page 850 at lines 5-10, wherein Dr. Santos testified that he was paid \$80.00, for an initial medical/legal evaluation and \$50.00 for a permanent and stationary evaluation at Scheffield Medical Group.

(d). MEDICAL/LEGAL CHARGES FOR 11/20/91 ORTHOPEDIC PERMANENT AND STATIONARY EXAM AND SPECIALIST (ORTHOPEDIC) PERMANENT AND STATIONARY REPORT. CHARGES ARE NUMBERS 114 AND 115 -AMOUNTS ARE \$300.00 AND \$670.00 (REPORT IS BY DR. CHUE).

This is a medical/legal charge which most likely does not run afoul of Del Rio. Therefore, the report must be analyzed to see if it is a valid or a defective medical/legal report and if it complies with the requirements of medical/legal reports as clearly set forth/enumerated in Title 8, Cal. Code of Regs., §10606. The report in question is entitled "Final Orthopedic Re-Evaluation Report", it is dated 11/20/91, consists of 3 1/2 pages, (large print), and it is executed by Bevins Chue, M.D. The report states that Dr. Chue is "Board Eligible in Physical Medicine and Rehabilitation". It is also notes (at page 4) that Blanca Herrera, who was stated to be a licensed medical assistant and radiograph technician, assisted Dr. Chue.

The Workers' Compensation Judge is of the impression that Blanca Herrera was not licensed in California as so claimed in the

report, and that a recent case points this fact out. This one fact alone casts substantial doubt on the integrity of this report.

All of the above discussion for (c). Medical/legal (Dr. Santos' report) applies to Dr. Chue's report. And, in addition, the 11/20/91 report will be analyzed point by point for compliance with Rule 10606, aforesaid. The report of Dr. Chue fails to comply with the following requirements of Rule 10606, to wit:

(b). Fails to state the history of the injury, but merely states the following bald conclusion: "injured AOE/COE", but fails to describe how injured.

(d). Fails to state information reviewed and relied upon for formulation of opinion,

(e). Fails to state applicant's personal medical history, and injuries, conditions, and residuals thereof, if any,

(h). Does not give opinion on nature and extent of disability, and duration of disability, with any degree of specificity,

(i). Does not state cause of disability or describe causal link between alleged permanent disability and alleged industrial injury,

(j). Only gives future medical care in a boilerplate format which is overbroad and goes well beyond any treatment indicated for applicant's stated disability. (For example, given the other conclusions in this report, it is not reasonable to think that this applicant with allegedly minor injuries would require any "hospitalization" nor any "surgery", yet the boilerplate paragraph on "future medical ~~care~~" includes a recommendation for hospitalization and surgery, which is patently unreasonable.

(n). It is deficient in stating reasons for opinion, as report is overbroad and conclusionary. The report appears to be a boilerplate form with a few blanks filled in.

Thus, the report is based on an incorrect history (Penny and Guerrero), it states that Blanca Herrerra is licensed, when in fact, it is believed that she was not licensed as alleged, it is a boilerplate/word processor report, it is skeletal, it is overbroad, it is conclusionary, and fails to comply with many of the requirements for medical/legal reports as set forth in rule 10606. Also, most of the reasons for disallowing Dr. Santos' report, above, also apply to Dr. Chue's report.

Therefore, it is found that Dr. Chue's 3 1/2 page "orthopedic" report dated 11/20/91 is a defective medical/legal report, and therefore the charges claimed for it - (\$970.00) - are disallowed in their entirety.

In summary, the entire 123 line bill for 123 services provided in only 3 months, while the fact situation referenced in the case of Del Rio operated, is disallowed in its entirety, and it is ordered that Scheffield Medical Group take nothing on its lien for \$7,157.00. The lien of Scheffield Medical Group for \$7,157.00 is disallowed in its entirety, for all the reasons discussed above.

Date Signed: 5/15/97

Sue W. Kato  
Sue W. Kato  
Workers' Compensation Judge

Date Served: 5/16/97  
Filed and served on all parties shown  
on the Official Address Record by Sy. Drake Drake