

WORKERS' COMPENSATION APPEALS BOARD

CASE NO. 86 MON 94791

GREGORY MIMS,

Applicant

MINUTES OF HEARING  
( SUPPLEMENTAL )  
AND  
FINDINGS AND AWARD

SHERWIN WILLIAMS,  
permissibly self-insured  
(c/o GALLAGHER BASSETT, adjusting agent),

Defendants

Place and Time: Santa Monica, California; August 4, 1992  
August 4, 1992; 9:00 a.m.

Judge: THE HONORABLE FRANK M. QUINONES  
Reporter: Janet Auxier, CSR #2529

Appearances: NO APPEARANCE BY OR ON BEHALF OF APPLICANT

KEGEL, TOBIN & TRUCE  
By: HUMBERTO GONZALEZ  
Attorneys for Defendants

MICHAEL D. ROBACK, M.D.  
By: OSCAR MAESE  
Lien Claimant

ROXSAN RADIOLOGY  
By: KATHLENE BLAKE  
Lien Claimant  
(Lien was resolved before hearing began.)

Witnesses: None

Exhibits: Defendant's A - Report of Richard L. Masserman, M.D.,  
Agreed Medical Examiner, under cover  
letter dated 12/7/88; and Job Analysis  
from Susan Asai & Associates dated 4/29/88.

Lien Claimant's 1 - The following medical reports: reports of  
Michael D. Roback, M.D., dated 12/15/89,  
12/20/87, 11/2/87, 8/15/87, 6/19/87,  
5/4/87, 4/20/87, 4/8/87, 2/10/87; itemized  
statement and lien from Dr. Roback dated  
6/4/92 in the amount of \$5,352.75 (the lien  
is not signed by applicant), and attached to  
the lien is an itemization of services  
provided.

Appeals Board's X- Subpenaed records of Michael D. Roback, M.D.

1                    RECORD:

2                    The sole issue is reasonableness of the liens  
3 and charges and necessity of liens and reports, service of  
4 reports, and services provided by Michael D. Roback, M.D.

5  
6                    SUMMARY OF EVIDENCE

7                    OSCAR MAESE

8 was called, sworn, and testified substantially as follows:

9                    Defendants admit to the injury of September 24,  
10 1986. Under Labor Code 4600, the patient elected to select  
11 Dr. Roback as his free-choice physician. Notice of this fact  
12 was given to defendants on February 2, 1987, and by way of  
13 Dr. Roback's medical report of February 10, 1987. Under A.D.  
14 Rules and Regulations 9785, Dr. Roback submitted a report of  
15 February 10, 1987 to defendants and thereafter submitted  
16 periodic medical reports as dictated by 9786.

17                    Dr. Roback provided treatment according to  
18 his medical reports, which included the use of a TENS unit,  
19 analgesics, recommendation for physical therapy, referral to a  
20 psychiatrist, and referral to an internal medicine specialist.  
21 Dr. Roback, in connection with his evaluations, performed  
22 various studies and thermograms. Dr. Roback submitted  
23 periodic billings to defendants as the treating physician.  
24 Defendants failed to pay the treatment charges of the treating  
25 physicians as required under 9786 and 9785.

26                    HUMBERTO GONZALEZ

27 was called by defendant, sworn and testified substantially as  
follows:

                  First of all, he would like to bring to the  
Court's attention that some of the charges that are being  
raised by Dr. Roback are for failed appointments. There are  
three for which he charged \$50.00 each: one on May 28, 1987;  
one on December 29, 1987; and one on May 2, 1988.

                  Secondly, Dr. Roback charged for the rental  
of a TENS unit. According to Dr. Masserman, the Agreed  
Medical Examiner, there was no indication that there was a  
need for such use of a TENS unit, and therefore defendant  
specifically requests that the charges for the TENS rental  
unit be disallowed.

                  Thirdly, the witness would like to point out

1 that Dr. Roback's charges do exceed the RVS Code, and Dr.  
2 Roback is not here to explain why he charged in excess of the  
3 RVS Code. And at the time that he made the charges, he failed  
4 to comply with the Labor Code section that requires that at  
5 the time that he made charges in excess of the RVS Code, he  
6 simultaneously accompany a explanation of why the charges are  
7 in excess. And the Labor Code section is 5307.1(b).

8 The witness would also like the Court to take  
9 notice of the fact that throughout the billing Dr. Roback  
10 charges for special, extensive, comprehensive re-examinations  
11 which he performs twice per month. Defendant questions the  
12 reasonableness and the necessity of such extensive evaluations  
13 on such a frequent basis, given the fact that it appears that  
14 Dr. Roback is merely prescribing analgesics and the use of a  
15 TENS unit. He wasn't actually providing the applicant with  
16 any specific type of treatment other than prescribing these  
17 things, and those charges appear to be unreasonable and  
18 unnecessary.

19 Also, there are charges for services rendered on  
20 March 9, 1987, an extensive re-examination, and on March 25,  
21 1987, another extensive re-examination, for which no reports  
22 were provided to substantiate those services. And also there  
23 were charges on December 2, 1987 for an extensive  
24 re-examination and comprehensive medical report, and no report  
25 was submitted.

26 The witness subpoenaed Dr. Roback's records and  
27 compared the reports which he submitted and the chart notes,  
and did not find anything to indicate that any services were  
in fact rendered on those dates. The documents basically  
consist of the medical reports that Dr. Roback submitted, and  
there are also some charges. The witness gave credit to the  
chart notes as if they were reports in order to substantiate  
the charges.

3 In regard to payments made to Dr. Roback,  
4 defendant paid for the initial medical-legal evaluation and  
5 permanent and stationary report for which the doctor charges  
6 \$800.00 on October 18, 1988. Defendant's payments are in  
7 fact reflected in the billing. The SDT records are  
8 inconsistent with the billings in that there were no reports  
9 or case notes to indicate that there was an extensive  
10 re-examination for which there was a billing on March 9, 1987,  
11 March 25, 1987, and December 2, 1987. Those were the only  
12 ones for which the witness was not able to locate either a  
13 report or a case record or some indication that Dr. Roback had  
14 in fact provided some services. The charges are excessive and  
15 the examinations are repetitive, basically twice per month in  
16 many instances. They are billed as extensive comprehensive  
17 when, in fact, they should probably be limited given the fact  
18 that the doctor was merely prescribing analgesics and the use  
19 of a TENS unit.

1  
2 Defendant wishes to introduce the subpoenaed records of Dr. Roback into evidence.

3 After an off-record discussion, the Court  
4 stated that Mr. Maese, lien claimant's representative,  
5 indicated that the copying service did not copy all the records, and as proof of same, provided the Court with the case report dated March 25, 1987.

6 Mr. Gonzalez, attorney for defendant, responded  
7 that the records that were obtained from Dr. Roback were in fact obtained by a subpoena duces tecum, so it was actually Dr. Roback's office who copied the reports and provided them to defendant. Therefore, any errors or omissions therein are Dr. Roback's.

9 Mr. Maese stated in response that, having  
10 selected Dr. Roback as the free-choice physician, if defendants did not agree with the kind of treatment Dr. Roback was providing or wished to regain medical control, they have an obligation under 9786 and Labor Code 4603 to file a petition requiring the employee to select an employer-designated physician; that such was not done and, until such time as a petition is filed, then defendants have an obligation to pay the billing as it arises.

14 Mr. Maese then stated that the A.D. Rule 9785  
15 does not require a physician to submit a report for every visit. It only requires that the physician submit reports not less frequently than 45 days.

17 Mr. Gonzalez contended that there is no  
18 obligation pursuant to the Labor Code which requires the defendant to request a change of doctors. Furthermore, there is medical evidence per Dr. Masserman's report to indicate that the type of treatment that Dr. Roback provided was not reasonable and necessary. Therefore, in fact, there was no need for an ongoing treating doctor.

21 Mr. Maese responded that the A.D. Rule 9785 does  
22 not require a physician submit a report for every visit. It only requires that the physician submit reports not less frequently than 45 days.

23 Mr. Gonzalez then stated that there should have  
24 been some record of the fact that some services were performed in that, and that's exactly the reason why defendant subpoenaed the doctor's records.

26 One last thing defense counsel would like to  
27 indicate is that a formal objection was made to Dr. Roback pursuant to defendant's letter of objection dated April 13, 1988.



1 the lumbosacral area, the dorsal spine, and the pelvis that  
2 took place on December 18, 1986; charges for a re-examination  
3 that took place on April 8, 1987; a cold pack that was  
4 provided on April 8, 1987; special medical ortho exam that  
5 took place on June 8, 1987; comprehensive medical exam that  
6 took place on April 5, 1988. All other charges are found to  
7 be unreasonable and not necessary to prove a disputed claim  
8 and unnecessary self-procured treatment.

9 AWARD

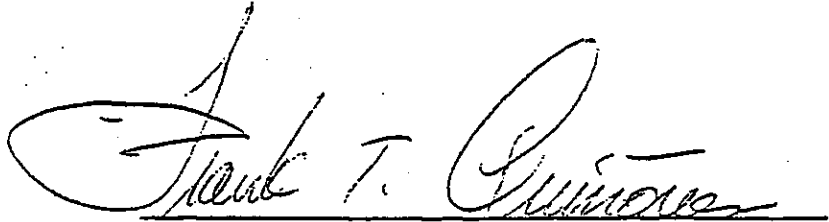
10 AWARD IS MADE in favor of MICHAEL D. ROBACK,  
11 M.D., against SHERMAN WILLIAMS for payment of medical-legal  
12 costs and self-procured costs as set out in the Findings 2  
13 through 5 above.

14 OPINION ON DECISION

15 This matter came to trial on August 4, 1992, at  
16 which time testimony was taken from lien claimant's  
17 representative. The parties at that time submitted evidence  
18 by way of medical reports. After reviewing the entire record  
19 in this matter, the issues are decided as follows:

20 Based upon the medical report, and in reliance  
21 on the Agreed Medical Report of Richard L. Masserman, Agreed  
22 Medical Examiner in this case, it is the Court's opinion that  
23 applicant became permanent and stationary and received the  
24 maximum benefit of treatment as of April 1987. In view of  
25 same, the Court finds that treatment subsequent to that time  
26 was not necessary, except as to the following future medical  
27 care needs: The Court finds that applicant is not entitled to

1 the use of local heat to the low back, exercise and occasional  
2 mild analgesic medications. In view of same, the Court does  
3 not find that this would entail the need of a physician or the  
4 need of a physician's supervision, and that all such services  
5 provided by lien claimant other than those outlined in the  
6 Award herein are found to be unreasonable.

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11 FRANK T. QUINONES  
12 Workers' Compensation Judge  
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15 Service by mail on parties as shown  
16 on Official Address record effected  
17 8/7/92

18 By: 

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