

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 0212911

SAMUEL STEPHENS,

*Applicant,*

vs.

BNS TECHNICAL INSTITUTE, and  
FIREMAN'S FUND INS. CO., --

*Defendants.*

FINDINGS & ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable David Bjelland, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. The defendants have denied injury AOE/COE in good faith, and the applicant has long since abandoned his case-in-chief, which has now been dismissed pursuant to Labor Code § 5404.5.
2. The applicant's act of abandoning his case, has effectively deprived the defendants of their due process rights to: (1) cross-examine the applicant under oath, by way of a deposition; and (2) obtain a medical/legal evaluation of the applicant by an expert chosen by the defendants.
3. Under the foregoing circumstances, all of the medical treatment charges from Lien Claimant Roger Kelley, Ph.D., must be and they are hereby disallowed. See Pamela W. Foust, *Lien Claims in Workers' Compensation Cases*, page 19 (Conf. of Calif. W. C. Judges 1994).
4. The DWC Form 1 Claim Form filed in this case was not actually served on the employer until June 19, 1991. This was one year after the applicant's termination. The defendants should have been afforded a reasonable period of 90 days from June 19, 1991, within which to conduct an investigation into the claimed injury. The applicant's workers' compensation claim did not become "contested," until the expiration of those 90 days. See Labor Code § 4620 and *Del Rio vs. Republic Indemnity*, 58 CCC 147, 21 CWCR 105 (BEB 1993).
5. All of the medical/legal charges in this case from Lien Claimant Roger Kelley, Ph.D., represent services rendered before there was a contested claim, in violation of Labor Code § 4620 and *Del Rio vs. Republic Indemnity*, *supra*. All of the medical/legal charges from Roger Kelley, Ph.D., must be and are hereby disallowed on that basis.

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6. There is insufficient evidence to support an inference of bad faith actions or tactics on the part of Lien Claimant Roger Kelley, Ph.D. The request by the defendants for awards of sanctions and costs is hereby denied.

ORDER

IT IS ORDERED that Lien Claimant ROGER KELLEY, PH.D., take nothing.

IT IS FURTHER ORDERED that the request by the defendants for awards of sanctions and costs be and it is hereby denied.

DATED: 12-29-95  
Filed and Served by mail on all parties and  
lien claimants on the Official Address Record.

  
\_\_\_\_\_  
DAVID BJELLAND  
WORKERS' COMPENSATION JUDGE

Date: 12-29-95 By: MS

SAMUEL STEPHENS

VS. BNS TECHNICAL INSTITUTE, and  
FIREMAN'S FUND INS. CO.

SBR 0212911

JUDGE : David Bjelland  
DATE : December 26, 1995

OPINION OF WCJ ON DECISION

Medical Treatment Lien

This alleged injury is a post-termination claim, which was filed by the applicant, under the most dubious of circumstances. The defendants have denied injury AOE/COE in good faith, and the applicant has long since abandoned his case-in-chief, which has now been dismissed pursuant to Labor Code § 5404.5.

The WCJ hereby finds that the applicant's act of abandoning his case, has effectively deprived the defendants of their due process rights to: (1) cross-examine the applicant under oath, by way of a deposition; and (2) obtain a medical/legal evaluation of the applicant by an expert chosen by the defendants.

Under the foregoing circumstances, it is the opinion of the WCJ that all of the medical treatment charges from Lien Claimant Roger Kelley, Ph.D., must be and they are hereby disallowed. See Pamela W. Foust, *Lien Claims in Workers' Compensation Cases*, page 19 (Conf. of Calif. W. C. Judges 1994): "If applicant's case is dismissed for lack of prosecution and if defendant had a good faith defense concerning a threshold issue, any medical treatment liens will effectively be dismissed with the case in chief if applicant's testimony and participation in the proceedings would be necessary in order for the threshold issue to be resolved in his favor."

Medical/Legal Lien

The DWC Form 1 Claim Form filed in this case was not actually served on the employer until June 19, 1991. This was a year after the applicant's termination. In the opinion of the WCJ, the defendants should have been afforded a reasonable period of 90 days from June 19, 1991, within which to conduct an investigation into the claimed injury. The applicant's workers' compensation claim did not become "contested," until

the expiration of those 90 days. See Labor Code § 4620 and *Del Rio vs. Republic Indemnity*, 58 CCC 147, 21 CWCR 105 (BEB 1993).

All of the medical/legal charges in this case from Lien Claimant Roger Kelley, Ph.D., represent services rendered before there was a contested claim, in violation of Labor Code § 4620 and *Del Rio vs. Republic Indemnity, supra*. All of the medical/legal charges from Roger Kelley, Ph.D., must be and are hereby disallowed on that basis.

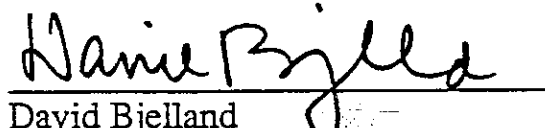
Requests for Sanctions and Costs

The defendants have asked the court to award sanctions and costs in their favor and against Lien Claimant Roger Kelley, Ph.D., for pursuing "completely frivolous" and "baseless" lien claims. Labor Code §§ 5811 and 5813

The WCJ disagrees with the contention by the defendants that the lien claims were "completely frivolous" or "baseless." In the opinion of the WCJ, there is insufficient evidence to support an inference of bad faith actions or tactics on the part of the lien claimant.

The request for awards of sanctions and costs is hereby denied.

DATED: 12.29.95

  
\_\_\_\_\_  
David Bjelland  
Workers' Compensation Judge

Service made on all parties and lien claimants,  
as listed on the Official Address record.

Date: 12.29.95 By: skw