

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

CARLOS TORRES

Applicant

vs.

ANAHEIM FOUNDRY CO.,  
self-insured; COMCO MANAGEMENT,  
adjusting agent

*Defendants.*

CASE NO: POM 179767.

ORDER REGARDING LIEN  
CLAIM

The litigants have made a separate list of evidence as exhibits and statement of issues and contentions, there being no testimony by witnesses, and the court reviewing the record of proceedings and taking judicial notice of the contents of the WCAB file(s) numbered above;

After submission for decision by the litigants present at trial the Honorable William J. Ordas, Workers Compensation Judge, now finds and orders as follows:

The lien claims in issue are: Pace Medical Group (hereafter Pace) and Stress Care, Inc. (hereafter Stress Care).

FINDINGS OF FACT AND OPINION ON DECISION

The medical reports of Dr. Markovitz and Dr. Sullivan are substantial evidence that applicant did not sustain any industrial injury in this case. Applicant filed this claim because he was angry with the employer for suspending him for being late to work. Applicant admitted to Dr. Sullivan that he had trouble getting to work on time and had been warned in the past. Once he was suspended applicant did not return to work. He called the Pace clinic at lunch on the last day of work before he had to begin the suspension to get treatment for his claim of injury. Where it is found that there is no work related injury no treatment expense is payable.

Applicant did not incur reasonable and necessary medical legal expenses with Pace or Stress Care.

Defendant has no liability to pay either lien claimant for any reason.

The trial court reserves jurisdiction over the lien claimant's Pace and Stress Care's failure to comply with the subpoenas and orders made by the trial court as set forth in the 4/18/94 Order. The court will schedule a separate hearing to show cause why the court should not hold Pace and Stress Care in contempt for failure to comply with the court's orders. The court also reserves jurisdiction over potential civil penalties for Stress Care and Pace not complying with L.C. 4628 as raised by defendant. This decision only concerns the merits of the lien claims as if there was compliance with the subpoenas and statutes, and rules.

C. Torres, Opinion, page 2:

Applicant was suspended for being late to work on 6/4/90 and called Pace that day to set up an appointment. Applicant was seen by Dr. Fan at Pace on 6/7/90 before there was knowledge by the employer of the claim of injury. The employer did not receive the DWC-1 claim form until 6/8/90 as shown by the certified mail receipt in Pace's exhibits. While Pace has withdrawn its claim of medical legal expense for this report it is important to other analysis to see the actual facts and how the facts affect the status of the physicians.

The report by Dr. Fan is worthless as any kind of report. It is merely as set of conclusions in the history that are passed through to the conclusion without medical reasoning. Then Dr. Fan immediately commences treatment by prescribing medications and taking over from applicant's regular physicians at Kaiser as to headaches but telling applicant to continue at Kaiser on the already prescribed medications. Dr. Fan never held the actual status as a medical legal examiner. At best he is a treating physician in this case.

Pace's permanent and stationary report is not medical legal either but is a final report after treatment under Rule 9785. There is no evidence that a medical legal report was requested by the then attorney. Further, the final report is based upon the same worthless history and has no value.

Applicant testified at deposition that Dr. Fan referred applicant to Stress Care and Dr. Fan's report indicates a referral to a psychiatrist. The referral is for treatment purposes and not medical legal since the referring source was not an actual medical legal provider and there is no evidence of a request for evaluation for medical legal purposes separately. Having considered what applicant voluntarily reported to defendant's examiner Dr. Sullivan and his testimony at deposition it is the court's opinion that the applicant provided an honest history but that Dr. Kline at Stress Care took an incomplete history. Applicant was not suspended for being on disability but for being late to work. He admitted he had been warned before about being late. The Dr. Kline reports are worthless because the history is incorrect, incomplete, and that improper history is merely passed through into a conclusion that in two summary sentences states applicant's condition is industrially related. Therefore, there is no recoverable medical legal expense. As there is no injury there is no recoverable treatment expense. There is no evidence that once Stress Care began treatment of applicant that its reports are anything but treatment reports. The final report is not medical legal expense.

O R D E R

THEREFORE, IT IS ORDERED THAT: defendant Anaheim Foundry Co. has no liability to pay any sums to lien claimants Stress Care, Inc. or Pace Medical Group.

Served personally on litigants present. Defendant shall serve these documents on affected litigants (liens) not present.  
By William Ordas, WCJ signed hereto

Date:

8/30/94

  
WILLIAM J. ORDAS  
WORKERS' COMPENSATION JUDGE