

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

KM

MARY WILLIAMS,

Applicant,
v.
LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Defendants.

CASE NO. MON 119962

FINDING OF FACT
AND
ORDER DISALLOWING
LIEN CLAIMS

*From Dr.
Prelim Rept is
not notice*

FINDING OF FACT

It is found that applicant did not actually, reasonably and necessarily incur costs for the purpose of proving a contested claim in connection with the lien of the Bloch Medical Clinic.

ORDER

IT IS ORDERED that said lien be, and it hereby is, disallowed in its entirety.

Pamela W. Foust
PAMELA W. FOUST
Workers' Compensation Judge

Date: JUL 09 1993

Service by mail on parties
and interested lien claimants
effected on the above date:

By: *Martha F. Kabba*
Martha F. Kabba

MARY WILLIAMS

v.

LOS ANGELES UNIFIED
SCHOOL DISTRICT

WORKERS' COMPENSATION JUDGE:

PAMELA W. FOUST

DATE OF INJURY:

MARCH 9, 1989

OPINION ON DECISION

This matter was submitted for decision on the sole issue of defendant's liability for the lien of the Bloch Medical Clinic, following resolution of the case in chief by Stipulated Award for low back injury and disability which did not have psychiatric consequences.

Devendant urged disallowance of the lien on a number of grounds. The Application, which was originally filed on May 15, 1989, alleged injury to the back only was never amended to include an allegation of psychiatric injury. Thus, defendant argued that there was no contested claim to prove or disprove at the time the costs were incurred.

Lien claimant contends that Dr. Heiman's preliminary report of January 8, 1991, the same day as the evaluation, was sufficient notice of the claim. The WCJ disagrees. The preliminary report gives no clue that applicant was, in the words of Labor Code Section 4620(b), "claiming entitlement to any benefit". She was involved in rehabilitation at the time and presumably receiving VRTD. She wasn't interested in psychiatric treatment. At this point, there was nothing for defendant to contest.

Aside from the lack of a contested claim, there is merit to defendant's contentions that lien claimant's services did not provide applicant with evidence. This is not to say that Dr. Heiman did not do a competent and thorough job in connection with the evaluation and report, which he did. However, taking all circumstances into consideration, the opinion of permanent disability, which was apparently the only "disputed" medical issue is so unreliable as to be incapable of proving such a claim.

Dr. Heiman evaluated applicant almost two years post-injury. There were a multitude of reports both from the doctors who treated and evaluated the back injury and in connection with vocational rehabilitation. Not a single one mentions possible psychiatric symptoms or disability, nor recommends psychiatric evaluation. Neither is there any evidence of circumstances taking place just prior to the referral that precipitated a psychiatric disability or necessitated psychiatric evaluation at that point in time.

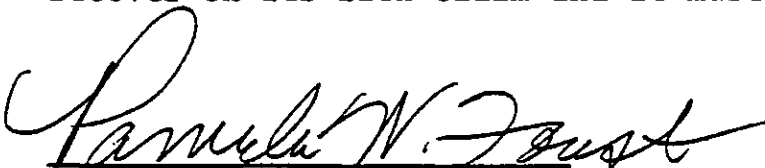
Dr. Heiman found certain deficits in the areas of the eight work function impairment factors and this was used to describe her psychiatric disability allegedly resulting from her industrial injury. However, even if Dr. Heiman's assessment was accurate, since he saw her on only one occasion two years after the injury, what made him think that she had no impairment in these areas prior to the industrial injury or that there was even a significant difference? If, as he noted, "She remains anxious and depressed regarding her impaired ability to function physically, her strained financial situation and her uncertain future", why would he think her condition was "permanent" if all of this was likely to change once she was rehabilitated and returned to the job market?

The answer is, of course, that Dr. Heiman had no control over the timing of the referral and merely saw her when requested to do so by her attorney. In this regard, the purpose of the referral, particularly at that point in time, remains obscure. Only applicant's attorney knows the answer to this question, but it does not appear that applicant had a good faith belief that she was entitled to benefits for a psychiatric condition unless one subscribes to the theory that any employee has an automatic right to a psychiatric evaluation at the expense of the employer on the outside chance that there might be something wrong with him that's due to his job, whether he's aware of it or not.

This leaves the Bloch Medical Clinic somewhat in the position of being an "innocent victim" in this affair since applicant kept the appointment with Dr. Heiman and he did the best he could with what he had. However, lien claimant's gripe should be with applicant's attorney and not with defendant who has no obligation under the law to indemnify doctors for their losses in connection with ill-advised referrals from applicant's attorneys. Unfortunately, there has been a prevailing notion in past years that the right to incur medical-legal costs is something like a blank check on the employer's account, which it is not.

Whether or not defendant formally objected to the lien is irrelevant under these circumstances because there was not compliance with Labor Code Section 4620(b) or (c), a prerequisite for application of Section 4622.

Based on the foregoing, the Bloch Medical Clinic cannot recover on its lien claim and it must be disallowed.



PAMELA W. FOUST
Workers' Compensation Judge