STATE OF CALIFORNIA

Division of Workers' Compensation
Workers' Compensation Appeals Board

[redacted], *Injured Worker;* [redacted], *Applicant,* vs. [redacted], *Defendants.*	**Case No.** [redacted] **FINDINGS AND ORDER**

The above-entitled matter having been heard and regularly submitted, Christopher Miller, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

(1) [redacted], born [redacted], while allegedly employed on August 7, 2023, in California, by [redacted], insured for workers' compensation by [redacted] and [redacted], its claims administered by [redacted] [redacted], sustained an injury arising out of and in the course of employment to his head.

(2) Lien claimant [redacted] has failed to sustain its burden of proving said injury to be compensable under the Workers' Compensation Act.

ORDER

Lien claimant [redacted] shall take nothing by reason of the lien it has filed herein.

Date: August 12, 2024

Christopher Miller
Workers' Compensation Judge

Served electronically on above date on: Getixhealth (Alex Khazin) and Siegel & Moreno (Tim Rose), by CM.

Document ID: [redacted]

OPINION ON DECISION

The underlying facts of this case, to the extent they can be ascertained, are interesting, in that they are unusual. The issues to be decided are less so, as they hinge on basic legal principles.

The employee, [1], was reportedly at an Air Gas facility when he fell and struck his head, losing consciousness. He was transported to Medical Center and admitted. There, two people, at least one of them a physician, completed a doctor's first report of occupational injury or illness form indicating that Mr. was employed as a mechanic by , fell "on job, hit head – intracranial hemorrhage." Those notations appear in the upper half of the form. In the lower half, in handwriting that appears to match the signature of a , the section for subjective complaints states, "head injury, loss of consciousness, no recall of event." provided treatment and released the patient after about nine days. then initiated this litigation, beginning with an application for adjudication and culminating with the trial over its lien, which comes to more than $500,000.

Any understanding of the events preceding Mr. admission to is taken from the representations of lien representative at two pretrial conferences and at trial, and from the one document mentioned above, which is found at page 29 of Exhibit 1. Neither party called a witness at trial, and neither presented any direct evidence of the injury itself or its circumstances. The source of the factual representations in Exhibit 1 is not identified; presumably, it was the patient. According to lien claimant , Mr. regained consciousness believing that he was or had been at work for . then submitted documents to and its insurer's claims administrator, , indicating that the employee has sustained a work-related injury and seeking payment for its services. processed the claim, initially paying a portion of bill.[2] It then denied liability, by notice dated November 6, 2023. (Exh. J)

Since that date, the available evidence does not suggest that the injured worker made any effort to assert or prove that his injury arose out of his employment by . Neither is there any indication that either of the parties litigating this lien attempted to take his testimony or even locate him, except that, on the day of trial (a Monday), representative had managed, over the previous weekend, to contact Mr. sister, who reportedly advised that her brother had been institutionalized with dementia. effort, on the day of trial, to file a post-deadline brief, or

[1] By "employee" or "injured worker," I do not mean to imply that Mr. was employed or working at the time of his injury, only that he has been employed and he was injured, even if he was not working at that time. I will not refer to him as "applicant," as is common, because he did not file an application for adjudication of claim. Nor is there any indication that he has made or filed any claim alleging that his injury is compensable.

[2] *See,* § 5402, subd. (c). "…Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars…" All statutory references not otherwise identified are to the Labor Code.

introduce unlisted evidence, or call an unlisted witness, encountered resistance and were denied.

Section 3600, at subd. (a), provides that an employer is liable for workers' compensation for any injury "arising out of and in the course of the employment…" It requires, at subd. (a)(2), as a condition of employment, that "at the time of injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment" and, at subd. (a)(3), that the injury be "proximately caused by the employment, either with or without negligence." Injuries arising out of certain off-duty activities are compensable "where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment," under subd. (a)(9). The "reasonable expectancy" requirement has been interpreted as identical to the "arising out of and in the course of employment" condition. *Mason v. Lake Dolores Group* (2004) 117 Cal.App.4th 822 [669 Cal.Comp.Cases 353, at 363]; see, *Ezzy v. Wkrs. Comp. Appeals Bd.* (1983) 146 Cal.App.3r 252 [48 Cal.Comp.Cases 611].

Where the injured employee has already compromised and settled his or her claim, or has declined to prosecute it, a lien claimant has a due process right to pursue its own claim. *Beverly Hills Multispecialty Group v. Wkrs. Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [79 Cal.Comp.Cases 461]. Of course, a medical lien claimant can recover on its lien only if its services were reasonably required to cure or relieve from the effects of a work-related injury. Sections 4600, 4903 at subdivision (b); *Kaiser Foundation Hospitals v. Workmen's Compensation Appeals Bd.*[3] *(Keifer)* (1974) 13 Cal. 3d 20 [39 Cal.Comp.Cases 857]. Thus, it falls to the lien claimant to prove the elements of compensability: It is said to "stand in the shoes of the employee" in that effort. *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (appeals board en banc) (*Torres*) ; *Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588 (appeals board en banc).

Here, the sum total of the evidence linking [REDACTED] injury with his employment with [REDACTED], which defendant contended at trial was some eight months behind him at that point, consists in the words recorded by [REDACTED] own employees upon the employee's admission to that facility. It is at least double hearsay, and its veracity has never been tested. It is patently inadequate. Moreover, no payroll records or other indicia of employment at the time of injury have been made available. No subsequent medical or medical-legal reporting connects the employment in question with the injury on August 7, 2023. [REDACTED] cannot therefore recover any payment by reason of its lien. Moreover, a party proceeding to trial with evidence that is indisputably incapable of establishing its claim or affirmative defense may be subject to sanctions,

/ / /

/ / /

/ / /

[3] Later renamed Workers' Compensation Appeals Board in recognition of the entrance of women to the workforce some centuries previously.

attorney fees and costs. *Torres, supra.* While I make no decision and express no opinion with respect to such penalties, I do urge caution in that regard.

Date: August 12, 2024

Christopher Miller
Workers' Compensation Judge

Document ID: