

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

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PRIORITY

JANETTE GUTIERREZ, ✓

*Applicant,*

vs.

CARDENAS MARKETS;  
LUMBERMAN'S UNDERWRITING  
ALLIANCE,

*Defendants.*

Case No. ADJ328355

(POMONA DISTRICT)

**FINDINGS OF FACT  
(LIEN)**

The above entitled matter having been heard and regularly submitted, the Honorable Rodney Johnston, Workers' Compensation Administrative Law Judge, now decides as follows:

**FINDINGS OF FACT**

1. JANETTE GUTIERREZ born on 02/02/1984 while employed on 05/10/2003 as a grocery clerk by CARDENAS MARKETS, whose workers' compensation insurance carrier was LUMBERMAN'S UNDERWRITING ALLIANCE, sustained injury arising out of and occurring in the course of employment to her left wrist and left shoulder, but not to her psyche.

2. The lien claimant Psychological Assessment Services filed a lien in the amount of \$13,175.98 for psyche treatment from 11/09/2007 through 11/28/2011.

3. The lien claimant Psychological Assessment Services medical reports (Exhibits 2, 3, and 4) are not substantial medical evidence.

DATE: 03/02/2015



**Rodney Johnston**

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

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PRIORITY

CASE NUMBER: ADJ328355 ✓

JANETTE GUTIERREZ ✓

-vs.-

CARDENAS MARKETS;  
LUMBERMAN'S  
UNDERWRITING  
ALLIANCE

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Rodney Johnston

OPINION ON DECISION (LIEN)

The case was bifurcated on the issue of psych injury AOE/COE. The lien claimant has the burden of proof to prove injury AOE/COE to the psych pursuant to Labor Code section 3202.5 and 5705. The lien claimant did not present the applicant to testify as a witness.

The lien claimant Psychological Assessment Services filed a lien for psyche treatment from 11/09/2007 through 11/28/2011 (Exhibit 1). The applicant besides office visits received five short individual psychotherapy sessions, two hypnotherapy/relaxation training session, and two group medical psychotherapy sessions and the gross bill is \$13,175.98. The lien claimant billed for five missed appointments which is not reimbursable.

The applicant sustained an admitted specific injury on 05/10/2003 (applicant was 19 years old). Her last day worked was 10/29/2003.

Dr. Flores from the lien claimant states that the applicant's psych permanent disability is apportioned 20% due to the applicant's *pre-existing*, mild, chronic, and depressive and anxiety condition. Apportionment to permanent disability is not the same analysis as the analysis of causation of the psyche causation. A doctor must still provide the facts as to the apportionment of permanent disability and causation. Nowhere in Dr. Flores report does he discuss these exact facts. The causation paragraph is boilerplate. We are not going to find the facts in any of the lien claimant's medical reports.

When the applicant was six or seven years old, some friends of the applicant's parents tried to [inappropriately] touch the applicant. The applicant was date raped when she was 16 years old. The applicant's father abused alcohol and he emotionally and verbally abused his wife and children. He physically abused his wife and the children. He continues to emotionally and verbally abuse his wife and children. The applicant was hospitalized for one week in December 2006 following an overdose of Vicodin following an argument with her father. She underwent four months of psychiatric treatment following this incident. She was on psych medication for six months. The referral for the lien claimant's psyche treatment was on 11/07/2007.

Pursuant to the medical reports of Dr. O'Brien (Exhibit A), the applicant did not sustain an industrial psych injury.

The medical reports from the lien claimant are not substantial medical evidence. Causation of a psychiatric injury requires competent medical evidence. (*San Francisco Unified School District v. Workers' Comp. Appeals Bd.* (2010) 190 Cal. App. 4<sup>th</sup> 1). Medical reports are not substantial medical evidence if they are based on an inadequate medical history. (*Hegglin v. Workers' Comp. Appeals Bd.* (1971) 4 Cal. 3d 162). The lien claimant has not met its burden of proof to prove a psyche injury.

DATE: 03/02/2015



**Rodney Johnston**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Pomona District Office of the WCAB, located at 732 Corporate Center Drive, Pomona, CA 91768.

On March 2, 2015 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of **FINDINGS OF FACT (LIEN) served with OPINION ON DECISION (LIEN)**, with postage fully paid, and/or Via Email addressed to the parties listed below. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



By: Laura G. Freedman

**BRADFORD BARTHEL**      *Law Firm, 3270 INLAND EMPIRE BLVD STE 200 ONTARIO CA 91764, e-docs@bradfordbarthel.com, VIA EMAIL*  
**ONTARIO**

**JEFF KEITH WEST**      *Law Firm, 2333 LINDSEY CT UNIT B WEST COVINA CA 91792*  
**COVINA**

**PSYCHOLOGICAL**      *Lien Claimant - Medical Provider, PO BOX 7294 LAGUNA NIGUEL CA*  
**ASSESSMENT**      *92607*  
**SERVICES**



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STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD

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JANETTE GUTIERREZ,  
Applicant,  
vs.  
CARDENAS MARKET; LUMBERMAN'S  
UNDERWRITING ALLIANCE,  
Defendants.

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CASE NO. ADJ328355  
MINUTES OF HEARING

DISTRICT OFFICE: Pomona  
LOCATION: Pomona, California  
DATE AND TIME: February 25, 2015; 11:19 - 11:29 a.m.  
JUDGE: THE HONORABLE RODNEY JOHNSTON  
REPORTER: Christie Lindblom, CSR #8221  
APPEARANCES: JEFF KEITH  
Representative for Lien Claimant  
Psychological Assessment Services  
BRADFORD & BARTHEL  
BY: SOPHIA MARTINEZ  
Attorneys for Defendants  
WITNESSES: None

EXHIBITS:

Lien Claimant's	1	Patient Ledger (bill) dated 2-25-15 (for EAMS purposes)
Lien Claimant's	2	Medical reports of Nelson Flores, Ph.D. dated 11-28-11 and 11-19-07
Lien Claimant's	3	Medical reports of Nelson Flores, Ph.D. dated 10-27-08, 10-23-08, 10-22-08, 8-11-08, 8-4-08 and 11-26-07

1 EXHIBITS (cont.):

2       Lien Claimant's       4       Medical report of Amal Tanagho, M.D.  
3                               dated 12-20-07  
4       Lien Claimant's       5       Notice and Request for Allowance of  
5                               Lien dated 11-4-08  
6       Lien Claimant's       6       Referral of Hamid Rahman, M.D. dated  
7                               11-7-07  
8       Defendants'            A       QME reports of James O'Brien, M.D.  
9                               dated 6-7-11, 6-30-10 and 5-8-09  
10       Defendants'            B       Proof of Service dated 6-5-13  
11

12 RECORD:

13       Let the record and Minutes reflect that the Court will  
14       take judicial notice of the Order Approving Compromise and  
15       Release dated May 29, 2013 and the Compromise and Release. The  
16       Compromise and Release regarding ADJ328355 lists the body part  
17       of left upper extremity. However, it does not list the body  
18       part of psyche.

19       Let the record and Minutes reflect that the Court has  
20       decided to bifurcate the issues, and the only issue to be tried  
21       will be Injury AOE-COE. All other issues shall be deferred  
22       with jurisdiction reserved by the WCAB.

23       Let the record and Minutes further reflect that defense  
24       counsel has objected to admitting into evidence Lien Claimant's  
25       Exhibits 3, 4 and 6 on the basis that in the Pre-Trial  
Conference Statement, the Psychological Assessment Services  
reports were listed for the period November 19, 2007 through

1 November 28, 2011, and the referral from Hamid Rahman, M.D.  
2 does not include a specific date.

3 However, it would appear that sufficient notice was  
4 provided to defendant, and, if they wanted to, they could have  
5 followed up and listed it as an issue in the Pre-Trial  
6 Conference Statement. Therefore, over defendants' objection,  
7 the Court will admit Lien Claimant's Exhibits 1 through 6 into  
8 evidence. In addition, Defendants' Exhibits A and B are  
9 admitted into evidence without objection.

10 THE FOLLOWING FACTS ARE ADMITTED:

11 1. The applicant, JANETTE GUTIERREZ, born February 2,  
12 1984, while employed on May 10, 2003 as a grocery clerk by  
13 Cardenas Market, sustained injury arising out of and occurring  
14 in the course of employment to the left wrist and left  
15 shoulder.

16 2. At the time of injury, the employer's workers'  
17 compensation carrier was Lumberman's Underwriting Alliance.

18 3. The parties utilized Lynn E. Wilson, M.D. as the Agreed  
19 Medical Examiner in orthopedics.

20 ISSUES:

- 21 1. Injury AOE-COE  
22 2. Lien of Psychological Assessment (as stated in the  
23 Pre-Trial Conference Statement) at 13,175.25, with  
24 payment of \$2,946.30, leaving a remainder after  
adjustments of \$8,099.99 (Lien Claimant's Exhibit 5)

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DISPOSITION:

The matter is submitted.

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RODNEY JOHNSTON  
Workers' Compensation Judge



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

02-26-2015

OFFICIAL ADDRESS RECORD

Case Number: ADJ328355

BRADFORD BARTHEL  
ONTARIO

Law Firm, 3270 INLAND EMPIRE BLVD STE 200 ONTARIO CA 91764, e-docs@bradfordbarthel.com

PSYCHOLOGICAL  
ASSESSMENT  
SERVICES

Lien Claimant - Medical Provider, PO BOX 7294 LAGUNA NIGUEL CA 92607

I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Pomona District Office of the WCAB, located at 732 Corporate Center Drive, Pomona, CA 91768.

On 2-26-15 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of Minutes of Hearing with postage fully paid, addressed to the party or parties with check mark (✓) above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: C. Barthel