

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

Case No. ADJ8029279

ALICIA GONZALEZ,

Applicant,

vs.

**LIFEHOUSE PARKVIEW OPERATIONS,
LLC;
AMTRUST NORTH AMERICA,**

Defendants.

OPINION ON DECISION

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Objection to Defendant's Exhibit B

This exhibit is the January 24, 2014 report of Dr. Kenneth Baldwin. Applicant objected to its admission on the grounds that it is not substantial evidence and that the report is some six years after the date of injury.

The report is a Qualified Medical Evaluation (QME.) Dr. Baldwin could not do such an evaluation earlier since the parties only requested the QME panel recently. The objection on the ground that the examination is six years after the injury is overruled.

Both parties objected to the substantiality of their opponent's medical report. Both parties were given ten days to provide points and authorities on admission of their report. Neither side filed any.

As shown in *Bigel*,¹ where a physician's report is well-reasoned, is based on an adequate history and examination, and discloses a solid underlying basis for the opinion, the report is substantial evidence.² Dr. Baldwin spent over six hours of record review and forty-five minutes fact-to-face with the Applicant.³ The report discusses the history of injury for four paragraphs.⁴ The report discusses the physical examination for three pages.⁵ This is an adequate history and examination.

¹ . *AT&T v. WCAB (Bigel)*, 71 Cal. Comp. Cases 1146 (*writ den'd* 2006.)

² . *Id.* at 1149: "Dr. McQuinn's report successfully rebutted the Labor Code § 4604.5(c) presumption of correctness and constituted substantial evidence, since it was well-reasoned, based on an adequate history and examination, and disclosed a solid underlying basis."

³ . Exhibit B. QME report, Dr. Kenneth Baldwin, January 24, 2014, p. 1, para. 1 (under "Fee Disclosure.")

⁴ . *Id.* at p. 6, para. 2, to p. 7, para. 1.

⁵ . *Id.* at p. 8, para. 3, to p. 10, para. 8.

Dr. Baldwin's reasoning for finding the injury non-industrial covers nine paragraphs.⁶ It is well-reasoned and discloses a solid underlying basis for the opinion that Applicant's symptoms are related to a motor vehicle accident in 2004. Dr. Baldwin's January 24, 2014 report is substantial evidence on the issue of causation. The Applicant's objection on this basis is also overruled. The exhibit will be received and admitted into evidence.

Objection to Defendant's Exhibit C

This exhibit is the April 2, 2012 deposition of Applicant. Applicant objected to its admission on the basis that it was not filed timely. The exhibit is not filed in EAMS. Since it is not filed in EAMS, it cannot be admitted. The Applicant's objection to admission of this exhibit is sustained and the exhibit will not be received or admitted into evidence.

Objection to Applicant's Exhibit 2

This exhibit is the January 18, 2012 report of Dr. Michael Ciepiela. Defendant objected to its admission based on it not being substantial evidence based on an erroneous and/or false history, and that it was not filed timely. The exhibit is not filed in EAMS. Since it is not filed in EAMS, it cannot be admitted. The Defendant's objection to admission of this exhibit is sustained and the exhibit will not be received or admitted into evidence.

Injury AOE/COE

Based on the January 24, 2014 QME report of Dr. Kenneth Baldwin (Exhibit B) Applicant did not sustain injury to the head, neck, hands, back or shoulders arising out of, or in the course of, employment with Lifehouse Health Services during the period from October 25, 2007 to October 25, 2008.

Lien of EDD

Employment Development Department (EDD) claimed to have paid benefits as state disability indemnity from November 1, 2008 to October 31, 2009 at \$149.00 per week, for a total of \$7,748.00. EDD also claimed interest under Unemployment Insurance Code §2629.1

Since there was no industrial injury in this case, EDD is not entitled to any recovery in this case. The lien of EDD is disallowed.

Attorney's Fees

There is no pool of funds from which to draw any attorney fees.

⁶ . *Id.* at p. 14, last para., to p. 15, last para.

Other Issues

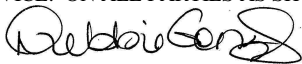
Since no industrial injury is being found, the other issues raised have been rendered moot. Those issues are: parts of the body injured; temporary disability; permanent and stationary date; need for further medical treatment; liability for self-procured medical treatment; and the post-termination defense under Labor Code §3600(a)(10.)

DATED: April 14, 2015



DONALD H. JOHNSON
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE: ON ALL PARTIES AS SHOWN ON THE ATTACHED SERVICE ROSTER

BY: 

ON: April 14, 2015

SERVICE ROSTER 4/14/15

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ALICIA GONZALEZ

ADJ8029279

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