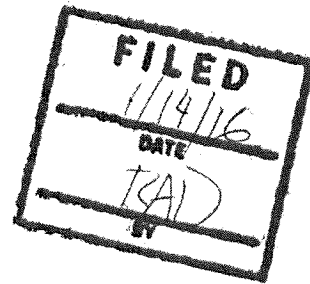


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA



NOEL CASKEY,

ADJ9913495

Applicant,

FINDINGS AND ORDER

vs.

LINEN WAREHOUSE, INC., and PROCENTURY
INSURANCE COMPANY, adjusted by ILLINOIS
MIDWEST INSURANCE AGENCY, LLC;

Defendants.

The above-entitled matter having been heard and submitted for a decision, Jason E. Schaumberg, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

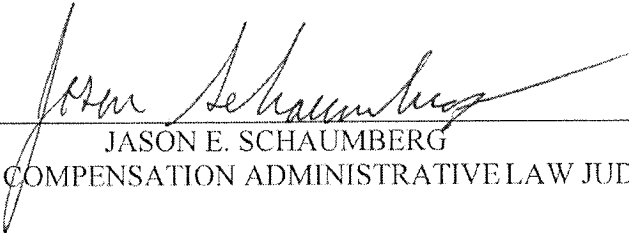
1. Applicant Noel Caskey, born November 25, 1985, while employed on July 17, 2013 as an assistant manager at Linens and Things, sustained industrial injury in the course of employment.
2. At the time of injury the employer was insured by Procentury Insurance Company adjusted by Illinois Midwest Insurance Agency.
3. Defendant requested a panel in orthopedic surgery on August 14, 2015.
4. Applicant requested a panel in pain management on August 19, 2015.
5. At the time that defendant requested a panel in the specialty of orthopedic surgery, applicant's primary treating physician was Dr. Roche, an orthopedic surgeon.
6. Defendants request complied with the requirements of Labor Code §4062.2 and QME Administrative Rule 30.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Applicant has not shown good cause under QME Administrative Rule 31.5 to replace the panel in orthopedic surgery issued at defendant's request, Panel 1787958

ORDER

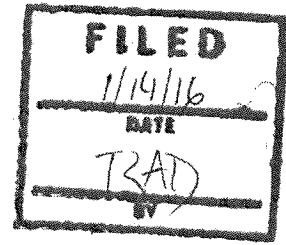
IT IS ORDERED that Panel 1787958 issued September 4, 2015 is valid.



JASON E. SCHAUMBERG
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

Please see attached Proof of Service

Noel Caskey
ADJ9913495



OPINION ON DECISION

FACTS

This case came to a hearing on November 18, 2015 on the sole issue of whether defendant's request for a panel of orthopedic Qualified Medical Examiners was valid.

Applicant Noel Caskey, born November 25, 1985, while employed on July 17, 2013 as an assistant manager at Linens and Things, sustained industrial injury to her right shoulder¹. She came under the care of Dr. Roache, an orthopedic surgeon, on or about March 11, 2014. After treatment and diagnostic studies, he performed surgery on applicant's right shoulder on August 11, 2014. Dr. Roache made a referral to Dr. Toy on or about April 21, 2015, who treated applicant for pain management.

On July 29, 2015 defendant objected to the reporting of Dr. Roache and on August 14, 2015 requested a panel from the Medical Unit in the specialty of Orthopedic Surgery. Applicant objected to defendant's request claiming that Dr. Toy was the applicant's primary treating doctor and requested a panel in Pain Management. The Medical Unit issued a Panel in Orthopedic Surgery on September 4, 2015, Panel 1787958. On or about September 15, 2015, the Medical Unit declined to issue a Replacement Panel with the specialty of Pain Management.

Of note is the fact that the parties are in agreement that the defendant's request for a panel was first in time and was more than 15 days after its objection to the report of Dr. Roache under Labor Code §4062.2.

¹ No finding is made with respect to any body part alleged to have been injured.

DISCUSSION

1. The applicant's primary treating physician on August 14, 2014 was Dr. Roache.

At the time of defendant's request for a panel, the applicant was being seen by both Dr. Roache as well as Dr. Toy. However, the applicant may only have one primary treating doctor (See, Administrative Rule 9785(b)(1), 8 Cal. Code Regs. § 9785(b)(1)). Accordingly, the parties dispute the identity of the primary treating doctor.

The applicant was initially under the care of Dr. Roache. Following surgery and due to persistent pain, Dr. Roache ordered a referral to a pain management specialist for "consultation & treatment [sic]" (See, Report of Dr. Roache dated February 17, 2015, at page 1). A referral specifically to Dr. Toy was made on April 21, 2015 (See, Report of Dr. Roache, dated April 21, 2015, at page 4). The applicant was seen by Dr. Toy on May 19, 2015. At that time he issued a report he titled "Initial Physiatry Consultation Report" (See, Report of Dr. Toy dated May 19, 2015, at page 1). On page two of that report he indicated that the applicant's work status was "As per PTP" (Id., at page 2).

On July 28, 2015, Dr. Toy issued a "Recheck Report" in which he indicates that the applicant's work status as "Restrictions as per PCP, Dr. Roache" (See, Report of Dr. Toy dated July 28, 2015, at page 2). In this context, this court understands "PCP" to mean "primary care physician" or, in the current context, the applicant's primary treating doctor as defined in Administrative Rule §9785.

It is also worth noting that the applicant never made any designation of primary treating physician pursuant to Administrative Rule §9785(b)(2).

Based on the forgoing it is held that Dr. Roache was the applicant's primary treating doctor at the time of defendant's request for an orthopedic panel. Defendant's request for a panel pursuant to QME Administrative Rule §30 was therefore proper.

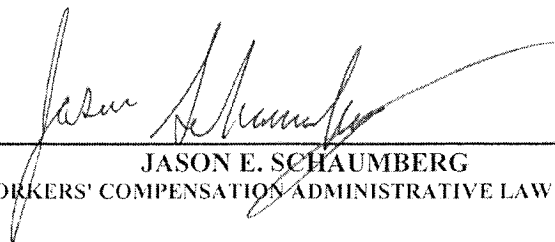
2. In the event that Dr. Roache was not the primary treating doctor, defendant's request would still be valid.

Even if Dr. Roache were not deemed to be the applicant's primary treating doctor, the fact that applicant was a surgical candidate at the time of the request would justify the selection of a panel in orthopedic surgery. In his June 23, 2015 report, Dr. Roache recommends surgical intervention in the form of an orthoscopic biceps tenotomy and tenodesis (See, Report of Dr. Roache dated June 23, 2015, at page 4). Defendant objected to this report.

Where need for surgery is at issue, a panel in the field of orthopedic surgery may be appropriate even in the event that the applicant's primary treating doctor is not a surgeon (See, e.g. *Adams v. Merced City School District*, 2015 Cal. Wrk. Comp. P.D. LEXIS 649 ("With regard to defense counsel's statement that 'an orthopedic evaluator would be able to determine potential need for surgery[.]' we believe that statement is reasonable in view of the particular factual circumstances here. Applicant had a prior low back injury and claims an additional back injury. Thus, she may have a potential need for surgery and an orthopedic evaluator would be best suited to provide guidance on such possible need."))).

Accordingly, a panel in the field of orthopedic surgery would be warranted here even if the applicant's primary treating doctor were not an orthopedic surgeon.

Based on the forgoing it is found that the panel of doctors issued at defendant's request is valid and a doctor from that panel should be selected by the parties.



JASON E. SCHAUMBERG
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

OFFICIAL ADDRESS RECORD

Case Number: ADJ9913495

BRADFORD BARTHEL SANTA ROSA	Law Firm, 100 STONY POINT RD STE 225 SANTA ROSA CA 95401, E-DOCS@BRADFORDBARTHEL.COM
EDD SDI OAKLAND	Lien Claimant - Other, PO BOX 1857 OAKLAND CA 94604
ILLINOIS MIDWEST SPRINGFIELD	Insurance Company, PO BOX 13369 SPRINGFIELD IL 62791
LINEN WAREHOUSE	Employer, 1001 CLEMENT ST SAN FRANCISCO CA 94118
NOEL CASKEY	Injured Worker, 320 JOHN ROBERTS DR COTATI CA 94931
TIMOTHY EGAN PETALUMA	Law Firm, 30 FIFTH ST STE 100 PETALUMA CA 94952

PROOF OF SERVICE

ADJ9913495 NOEL CASKEY

The 'Findings and Award' and 'Opinion on Decision' were filed and served to the following parties from the Official Address Record:

BRADFORD BARTHEL SANTA ROSA, EMAIL
TIMOTHY EGAN PETALUMA, US MAIL
ILLINOIS MIDWEST SPRINGFIELD, US MAIL
NOEL CASKY, US MAIL
EDD SDI OAKLAND, US MAIL

On: January 14, 2016

By: 
Rachel D.