

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

Case No. ADJ9389866

TONY CORNEJO,

Applicant,

vs.

**EVS INC DBA ALL CITY TOW;
INSURANCE CO OF THE WEST SAN
DIEGO;**

Defendants.

FINDINGS OF FACT AND ORDERS

The above entitled matter having been heard as a lien trial and regularly submitted, the Honorable Dean Stringfellow, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. Tony Cornejo, born 3/28/1968, while employed on 2/6/2014, as a truck driver, Occupational Group # unknown, at Culver City, California, sustained injuries arising out of and in the course of his employment to his right shoulder, neck and chest.
2. Applicant did not sustain injuries to his nose, ears, mouth, head or psyche.
3. Applicant did not sustain injuries in the field of internal medicine and specifically diabetes.
4. At the time of the injury the employer's workers' compensation carrier was Insurance Co. of the West.
5. The WCJ has jurisdiction to determine the lien claim of Del Carmen Medical Center.
6. Del Carmen Medical Center failed in its burden to prove that the treatment rendered was reasonably calculated to cure or relieve the industrial injury.
7. The primary treating physician was Johathan Nassos M.D.
8. Dr. Nassos did not make the referral to Del Carmen Medical Center.
9. Dr. Nassos did not review nor comment on the reports of Del Carmen Medical Center.

ORDERS

1. The lien claim of Del Carmen Medical Center is disallowed.
2. The case is ordered off calendar.

DATE: 3/17/2021

/s/ Dean M. Stringfellow

Dean Stringfellow

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by email on selected Parties as shown on the attached Official Address record on the above date.

By: 
Rocelynn Roncal

STATE OF CALIFORNIA
Division of Workers' Compensation
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CASE NUMBER: ADJ9389866

TONY CORNEJO

-vs.-

EVS INC DBA ALL CITY

TOW;

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WEST SAN DIEGO;

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE: Dean Stringfellow

DATE: 3/17/2021

OPINION ON DECISION

This matter comes on for lien trial on the lien claim of Del Carmen Medical Center.

Statement of Facts

Based upon the multiple histories taken and relying primarily on the history from Dr. Senador who acted as PQME in orthopedics, it appears that Applicant sustained a right shoulder injury on or about 2/6/2014 after which he developed a very significant infection at or near the injury location. This infection resulted in emergency care, hospitalization and surgery to the cite. He had residuals in the shoulder and neck area that were treated by several physicians the last of who was Jonathan Nassos M.D.

Dr. Nassos referred the patient to Dr. Kohan who acted as a secondary treating physician in pain management. Both doctors treated the patient. Both doctors submitted multiple progress reports that were placed into evidence.

Neither physician made any referral to an internist. Internal problems were not discussed other than the fact that Applicant was a diabetic. Dr. Nassos in his report of 5/20/2016 did discuss needed referrals specifically. He recommended urology and psychiatry. He made no mention of internal medicine.

Nonetheless the patient appeared in the offices of Del Carmen Medical Center on or about 3/7/2017. There is no information imparted as to the source of the referral. The reports address the Applicant's attorney as well as Dr. Nassos.

Dr. Pietruszka then sees the patient 10 times over a year and a half. The reason he was sent the patient is unknown. He diagnoses diabetes among many other observations from the case involving the shoulder injury and resulting infection and its complications. He conducts numerous tests such as blood tests, urine tests, ultrasound of the abdomen, Doppler ultrasound. His list of diagnoses lists “diabetes mellitus accelerated by work injury.” He does not explain how this shoulder injury accelerated the condition. The 10 visits are billed out at \$13,519.00.

Dr. David Waldman acted as PQME in internal medicine. His reports indicate that there is insufficient evidence to support a finding of industrial causation of diabetes in this patient. He also found no evidence of hypertension nor gastrointestinal problems with this patient.

For reasons unknown, the parties then utilized Dr. Graham Woolf M.D. as a PQME in internal medicine as well. His reports may have found some stomach problems as well as diabetes. However he agrees with Dr. Waldman that there is insufficient evidence to justify a finding of injury resulting in diabetes or stomach problems. Dr. Woolf confirms that there is no medical doubt that this patient had diabetes for years before this injury. Dr. Pietruszka did not diagnose stomach problems, and his history does not reveal any such complaints.

Dr. Nassos did not review or discuss any of Dr. Pietruszka’s reports. There is no evidence that he ever saw them.

Discussion

Body Parts

Based upon the observations and conclusions of Dr. Senedor and coupled with the findings of Dr. Nassos the Applicant injured his right shoulder and neck. The surgery also impacted his upper chest. There is no evidence that there was injury to an ear or to his mouth, nose or head. Based upon the QME reports of Drs. Woolf and Waldman Applicant did not sustain an injury resulting in internal injuries. There was no psychiatric evidence submitted.

Jurisdiction to Determine Lien Claim

No formal bill reviews were conducted. Hence the jurisdictional limits of Cal. Lab. Code sec. 4603.2 do not apply. The WCJ has full jurisdiction to determine all the

issues herein.

Lien of Del Carmen Medical Center

Based upon the multiple reports from Dr. Pietruszka, all of the treatment rendered by this organization was related solely to diabetes. It is the only diagnosis made in internal medicine. It is the only treatment actually rendered.

The lien shall be denied for the following reasons:

The medical evidence proffered by the two QME's in internal medicine do not support a finding of industrial causation of diabetes in this case.

The referral to Dr. Pietruszka is unknown. There is no evidence that the primary or secondary treating physicians made such a referral. Their reports are devoid of any such discussion or recommendation. It must also be emphasized that Dr. Nassos very specifically addressed himself to the need for outside referrals in his report of 5/20/2016. Hence Dr. Nassos did consider what referrals may be necessary and internal medicine was not one of them.

Dr. Nassos did not review or comment on the reports from Dr. Pietruszka as required by Cal. Lab. Code sec. 4061.5 and Cal. Code of Regs. sec. 9785(e)(4). Hence the billing is denied. *Optima Health Inst. v. WCAB* (2008) 74 CCC 64, *writ denied*.

If the primary treating physician has no knowledge of the referral or the reports, the lien is denied. *Guevara v. Life Long Learning* 2019 Cal. Wrk. Comp. P.D. LEXIS 366.

If the primary treater did not make the referral nor approve of it, the lien is denied. *Barcenas v. In Home Social Services* 2012 Cal. Wrk. Comp. P.D. LEXIS 330.

Based on the facts and law set forth above, the lien is denied.

DATE: 3/17/2021

/s/ Dean M. Stringfellow

Dean Stringfellow

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE