

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

Case No. ADJ8149685

MIKE AMAIREH,

Applicant,

vs.

**ADEX TRANSPORT INC;
PROTECTIVE INSURANCE
INDIANAPOLIS;**

Defendants.

FINDINGS OF FACT

COUNSEL- MEHR & ASSOCIATES

**By: Alexander Brewsaugh
Attorney for Applicant**

COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

**By: Carrie M. Weaver
Attorney for Defendants**

The above entitled matter having been heard and regularly submitted, the Honorable Alicia D. Hawthorne, Workers' Compensation Judge, now decides as follows:

FINDINGS OF FACT

1. Applicant, Mike Amaireh, born April 1, 1968, while employed on December 30, 2011, as a driver, sustained orthopedic injuries and claims to have sustained a psychiatric injury.

2. At the time of injury, Employer's Workers' Compensation carrier was Protective Insurance Company.

3. Applicant did not obtain the QME report of Dr. Greils properly and therefore, all reports of Dr. Greils shall be inadmissible.

DATE: July 18, 2016



Alicia D. Hawthorne

WORKERS' COMPENSATION JUDGE

Served by mail on parties listed below:

BY: 
H. Samonte

MIKE AMAIREH, US Mail
MEHR ASSOCIATES, Email
PROTECTIVE INSURANCE CO, US Mail
COLANTONI COLLINS MARREN PHILLIPS & TULK, Email

OPINION ON DECISION**FACTUAL HISTORY**

Applicant, Mike Amaireh, born April 1, 1968, while employed on December 30, 2011, as a driver, sustained orthopedic injuries and claims to have sustained a psychiatric injury. At the time of injury, Employer's Workers' Compensation carrier was Protective Insurance Company. Defendant has accepted the orthopedic aspect of Applicant's claim pursuant to the AME, Dr. Lee Silver's findings. However, the nature and extent of the injury is still in dispute. Despite repeated objection by Defendant, Applicant obtained a Panel QME list from the Medical Unit and proceeded with an examination with Dr. Greils. Throughout the process, Defendant continued to object.

**PANEL #1658418 WAS OBTAINED IMPROPERLY RENDERING THE REPORT
INADMISSIBLE**

In accordance with Title 8 CCR §31.1(a), disputes regarding the validity of panel requests shall be resolved by a Worker's Compensation Administrative Law Judge.

In a letter to the employer dated January 11, 2012, Applicant Attorney wrote stating they are objecting "to the diagnosis and/or treatment of his/her prior treating physician, if any, in accordance with Labor Code §§4600, 4601, 4602, 4614, 4616, et. al." (Defendant Exhibit A) This Court finds these objections invalid, ambiguous, and/or irrelevant. Labor Code Section 4600 would allow Applicant to choose any physician within his Employer's MPN. Applicant has failed to explain why he is objecting to his choice of physician. Applicant objects under Labor Code Section 4601. However, this Labor Code Section would allow Applicant to change physicians. This does not allow Applicant to obtain a PQME. Applicant objected under Labor Code Section 4602. This section does not allow Applicant to obtain a

PQME. Rather, this section allows an employee to request a certification of competency of consulting physicians. In addition, neither Labor Code §§4641 or 4616 allow Applicant to secure a PQME.

Had Applicant objected under the correct Labor Code Sections, 4061 and 4062, Applicant still would not have properly obtained the PQME in psychiatry.

Labor Code § 4062(a) states in relevant part,

“If either the employee or employer objects to a medical determination made by the treating physician concerning any medical issues not covered by Section 4060 or 4061 and not subject to 4610, the objecting party shall notify the other party in writing of the objection within 20 days of receipt of the report if the employee is represented by an attorney.....If the employee is represented by an attorney, a medical evaluation to determine the disputed medical issue shall be obtained as provided in Section 4062.2, and no other medical evaluation shall be obtained.”

Here, Applicant has failed to comply with Labor Code Section 4062. Applicant has failed to object to any specific provider and any actual medical determination, a clear prerequisite to obtaining a panel properly. Rather, Applicant alleges he objects to a prior treater, if any. (Defendant Exhibit A) In addition, Applicant has failed to produce any medical reports indicating any need for psychiatric treatment. Therefore, there is no valid objection under Labor Code Section 4062.

Applicant argues that Defendant failed to litigate this issue until after seeing the report of Dr. Griels and contends that Defendant waived any objection. In addition, Applicant cites to the panel decision of *Granados v Barrett Business Services*, 2012 Cal.Wrk.Comp. PD Lexis 128 in support of their argument. First, it should be noted that the findings in *Granados* is not binding precedent, but this court will consider these decisions to the extent that it finds the reasoning persuasive. *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc Opinion) Second, and more importantly, the facts in *Granados* are clearly distinguishable than the facts in this case. In *Granados*, the Defendant failed to object

throughout the Panel request process. It was not until after receiving the report from the PQME that Defendant finally lodged their objection. Here, this is not the case. In abundance of caution and to ensure that the facts in this case are distinguishable, Defendant objected throughout the process. Defendant first objected to any psychiatric claim based on LC §3208.3 on November 8, 2012. (Def Ex. D) The next objection regarding the QME process is dated January 2, 2013. (Def Ex. F) Defendant objected to the Medical Unit on July 23, 2014. (Def Ex. J) Defendant objected to the QME process again on July 23, 2014. (Def Ex. K) The next objection is dated August 22, 2014. (Def Ex. L) Additional objections were communicated to Applicant's Attorney on October 10, 2014, November 25, 2014, & May 3, 2016. (Def Exs. N, O, & Q) Defendant sent objections to Dr. Greils directly as well on October 2, 2014 and December 16, 2014. (Def Exs. M & P) Taking the findings in *Granados* into consideration, and noting the distinct differences in the current facts from the facts in *Granados*, this Judge finds that the doctrine of waiver and invited error are inapplicable and the report of the QME, Dr. Greils was obtained improperly.

CONCLUSION

Applicant did not obtained the QME report of Dr. Greils properly and therefore, all reports of Dr. Greils shall be inadmissible.

DATE: July 18, 2016



Alicia D. Hawthorne
WORKERS' COMPENSATION JUDGE

ADH/hs