

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CARESSE SANTANA,

Applicant

vs.

EL TORITO RESTAURANT; TRAVELERS
INSURANCE COMPANY,

Defendants.

Case No. VEN 069798

FINDINGS AND AWARD

Michael Beckwith, Attorney for Applicant.
Kegel, Tobin & Truce, by E. Charles Maki, Attorneys for Travelers Insurance Company.
Tobin, Lucks & Goldman, by Richard Goldman, Attorneys for Safeco Insurance Company.
Irene Adams, Hearing Representative for Employment Development Department.

FINDINGS OF FACT

1. That the applicant, born October 8, 1963, while employed on September 1, 1988, as a bookkeeper at Vennura, California, by El Torito Restaurant, sustained an injury to her right knee arising out of and occurring in the course of employment.
2. That the applicant, by way of her Petition to Reopen, did not sustain any further injury to her back.
3. The applicant was entitled to further medical treatment with regard to the right knee only.
4. Applicant is not entitled to additional temporary disability from September 22, 1992, to November, 1992, due to her right knee injury.
5. There is no new and further permanent disability in excess of that previously awarded pursuant to the recommended permanent disability rating instruction issued by the Judge herein.
6. The applicant may still require further medical treatment with regard to her right knee as was previously awarded and said Finding shall be maintained.

E. CHARLES MAKI

JUN 30 1995

FORM

177.1

7. The Employment Development Department lien is to be considered withdrawn for all dates subsequent to November 16, 1992, when the applicant testified that she returned to work and although continued to receive and accept Employment Development Department checks, she was also paid by her employer while working, that is Food Share, Inc. Otherwise the lien of E.D.D. is denied as her condition of the right knee is deemed permanent and stationary on July 9, 1992, per Dr. David Gordin.

8. The applicant is entitled to recover self-procured medical treatment with respect for treatment for her injured right knee only and not for her back and all lien claimants who provided such treatment, including Dr. Harris, George Erb, Harbor Pharmacy or Ocean Medical Imaging, shall be paid as stated for the right knee only, pursuant to the appropriate fee schedule with jurisdiction herein reserved.

9. The applicant is entitled to recover medical-legal costs in connection with her attempt to recover benefits for all medical-legal reports submitted, including any of the above lien claimants as may be appropriate in accordance with the appropriate fee schedule therefor.

10. Said medical-legal costs allowed herein shall be considered the liability equally of the defendant in the Companion Case VEN 093503, Safeco Insurance Company of America.

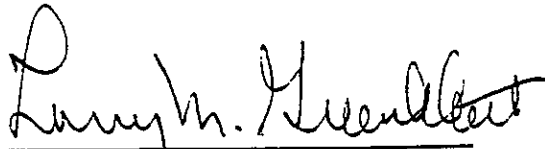
11. Inasmuch as there are no benefits from which an attorney's fee may flow, there can be no attorney fee allowed herein.

AWARD

AWARD IS MADE IN FAVOR OF Caresse Santana against Travelers Insurance Company, a corporation, for:

- (a) Further medical treatment pursuant to Finding No. 6, and together with
- (b) Self-procured and/or medical-legal costs pursuant to Finding Nos. 8, 9 and 10.

Filed and Served by mail on: 6-29-95
On all parties on the
Official Address Record
By: *Alice Bates*


LARRY M. GREENBLATT, PRESIDING
WORKERS' COMPENSATION JUDGE

1 JOINT OPINION ON DECISION

2 AOE-COE:

3 This case involves essentially an original Findings and Award
4 which found injury to the applicant's right knee with further medical
5 treatment, however, the applicant is now claiming that she has
6 sustained new and further injuries to include her back.

7 After reviewing the totality of possible histories and manners
8 in which the applicant injured her back, including various off-work
9 and nonindustrial allegations made by both witnesses and the
10 applicant herself on testimony with other referral of records to
11 earlier outside injuries, including a prospect that the treating Dr.
12 Harris had forwarded a Notice of Injury to the applicant's
13 hospitalization carrier Travelers Insurance regarding her back. The
14 applicant is claiming that the altered-gait theory is what caused the
15 injury to her back after subsequent knee surgery. However, after
16 observing the applicant's lack of candor on various other issues,
17 including an absolute misappropriation of temporary disability
18 indemnity payments when knowingly and accepting checks from
19 E.D.D. for temporary disability was also in fact working and
20 apparently signing over checks to her employer for whom she was
21 working, keeping both the E.D.D. payments and endorsing it over to a
22 bank account which we are not sure, however, we do know that her
23 mother was employed at that company as a controller or bookkeeper.
24 Under separate cover I am referring a copy of the Minutes of Hearing
25 for further investigation in this regard.

1 Basically, the Court relied upon the medical report of Dr.
2 David Gordin dated November 3, 1992, and specifically page 4
3 thereof as follows:

4 "Relative to the patient's lumbar spine, note that clinically she
5 continues to limit her lumbar spine motion. I would anticipate,
6 however, a normal lumbar spine motion. Her neurological
7 examination remains normal. Plain films reveal only the old
8 compression fracture of the first lumbar vertebra. The MRI scan of
9 the lumbar spine was normal. There was no evidence of any disk
10 protrusion. . . Likewise, there is no evidence to suggest that the
11 patient sustained any specific injury or cumulative trauma to her
12 lower back while in the employment of American International
13 Pacific. Note that the patient stopped working on June 5, 1991. I do
14 not anticipate the need for subsequent medical or surgical care. She
15 would not benefit from physical therapy or chiropractic care. She is
16 capable of performing her usual activities as an assistant
17 bookkeeper."

18 It is further referenced to David Gordin's subsequent report
19 dated December 1, 1993, in which he refers to the following:

20 "Your letter indicated that the patient was pushed down at a
21 party in August of 1991 and subsequently was seen by Dr. Harris.
22 My records and the report of October 22, 1991, of Dr. Harris indicate
23 that the patient was knocked over when a fight began on October 19,
24 1991. Dr. Harris' records indicate that the patient only injured her
25 right knee. No mention was made of any injury to the patient's
26 lower back and again the patient informed me that she did not have
27 any injury to her lower back at that time.

1 A review of the above records does not change my opinion
2 from that issued in my November 3, 1992 evaluation. . ."

3 In closing with the issue of injury to the back, it is most
4 probable that if the applicant had any injury whatsoever to her back,
5 it was done from the various and often forgotten nonindustrial
6 incidents that has occurred to the applicant both prior to and after
7 her employment from the employers herein claimed.

8 NEW AND FURTHER DISABILITY:

9 The Court submitted rating instructions which seemed to be
10 consistent with the medical reports on the right knee subsequent to
11 the last surgery, however, they have been stated by the Disability
12 Evaluation Consultant that the permanent disability rating therefrom
13 is actually lesser than the original permanent disability; therefore,
14 the Petition to Reopen on New and Further Disability must fall.

15 FUTURE MEDICAL TREATMENT:

16 The need for future medical treatment was reinstated as
17 originally stated, so that if in the event the condition does become
18 worse or need further treatment to the right knee, it shall be
19 available to the applicant.

20 ATTORNEY'S FEE:

21 There were no adequate benefits provide so that an
22 attorney's fee may not be allowed in this situation.

23 TEMPORARY DISABILITY:

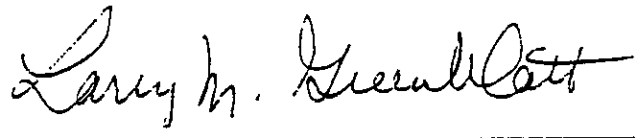
24 The temporary disability indemnity that was paid was
25 obviously adequate and, in fact, payments that were duplicately
26 received by the applicant while paid by E.D.D. after her return to
27 work in November of 1992, were withdrawn by E.D.D. at the time of

VEN 069798, VEN 093503
OPINION

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

trial, the representative stating that they would institute their own proceedings for indemnification thereon.

However, by separate cover I am submitting a copy of the transcript of the applicant's testimony regarding knowing receipt of duplicate payments so that it may be reviewed for further investigation of any abuse to the Workers' Compensation Reform.



LARRY M. GREENBLATT, PRESIDING
WORKERS' COMPENSATION JUDGE

LMG:ab