

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Ate

Case No. LBO 0306260

DIANE VARGAS,

Applicant,

vs.

UNITED INTERNATIONAL
INVESTIGATION; Administered by CIGA
through its third party adjusting agency,
CAMBRIDGE INTEGRATED SERVICES, for
FREMONT INDEMNITY, in liquidation,

Defendants.

FINDINGS AND ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable MARY ANNE THOMPSON, Workers' Compensation Judge, Finds and Orders as follows:

Glow & Kreida
By: Alan N. Kreida, Esq.
Attorneys for Applicant

Kegel, Tobin & Truce
By: Ameneh K. Ernst, Esq.
Attorneys for Defendant

FINDINGS OF FACT

1. Diane Vargas, born March 5, 1962, while employed as a security officer on or about May 12, 1999 at Anaheim, California, by United Investigation Services, sustained injury to her low back arising out and occurring in the course of the employment.
2. Fremont Insurance, now in liquidation, was the employer's insurance carrier on the date of injury. CIGA now administers for Fremont by its servicing agency, Cambridge Integrated Services.
3. Applicant's actual earnings at the time of injury were sufficient to entitle her to a permanent disability rate of \$170 per week.
4. The injury caused temporary disability for which Applicant has been fully compensated.

AK

5. The injury caused permanent partial disability, after adjustment for age and occupation, of 44%. The Petition to Reopen is denied.

ORDER

(a) The Petition to Reopen is denied.

Mary Anne Thompson
MARY ANNE THOMPSON

Workers' Compensation Administrative Law Judge

Date: *November 19, 2004*

Service by mail on parties as
shown on Official Address
Record as of the above date.

By: *Del Rey*

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. LBO 0306260

DIANE VARGAS

VS.

UNITED INTERNATIONAL
INVESTIGATION; administered
By CIGA through its third party
Adjusting agency, CAMBRIDGE
INTEGRATED SERVICES, for
FREMONT INDEMNITY, in
liquidation

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

MARY ANNE THOMPSON

DATE: *November 19, 2004*

OPINION ON DECISION

PERMANENT DISABILITY:

Applicant, born March 5, 1962, sustained an industrial injury to her low back on May 12, 1999, while employed as a safety officer by United Investigation Services, administered by CIGA through its adjusting agency, Cambridge Integrated for Fremont Insurance, in liquidation.

On May 22, 2000, the parties stipulated that Applicant had permanent disability of 44% based upon the February 13, 2000 report of Dr. Rah, the then treating physician, who restricted Applicant from no heavy work and no prolonged sitting.

Thereafter, following vocational rehabilitation, Applicant worked for the Family Foundation Program from December 4, 2001 through March 1, 2002 on a part time basis as a vocational counselor. She worked full time from March 1, 2002 through November 13, 2002 as a vocational counselor. Her job as a vocational counselor required her to sit at times. It was like that of a teacher. She resigned due to a conflict with a supervisor.

Applicant also attended Pepperdine University commencing Spring 2002. She continued in school the rest of 2002 and 2003 in a masters program in psychology. Schoolwork required that she sit and study 4 to 6 hours per day.

In 1999, Applicant had a MRI with a 3.5 mm disc bulge. In July 2001, the disc bulge was measured at 6 mm.

In 2003, Applicant was treated by Dr. Henderson, chiropractor. He originally found that Applicant had a work restriction of "no heavy work, no prolonged sitting greater than 60 minutes without the opportunity to get up and move around for 30 minutes before resuming a continuous sitting activity. (See 3-13-03 report.) After Applicant required additional therapy and after receiving a letter of her attorney, Dr. Henderson found that Applicant was restricted to semi-sedentary work. (See Dr. Henderson reports of 8-16-04 and 7-22-04.)

Dr. Marinow, for defendant, opined that Applicant's permanent disability was appropriate at no heavy work and no prolonged sitting.

Based upon my review of the evidence, there is no evidence to really support any increase in disability. While it is true that Applicant's MRI disc bulge increased, no doctor has documented how the Applicant's functional disability has really increased. There is no noted change in motion or lifting capacity.

As to apportionment, defendant is attempting to assert that any increase in disability is due to Applicant's subsequent employment or schooling. It is to be noted, however, that the second MRI was undertaken in July 2001, well before Applicant's employment and schooling. Therefore, the MRI changes cannot be attributed to the subsequent employment or schooling.

Therefore, no additional permanent disability is awarded and the Petition to Reopen is denied.

ADMISSIBILITY OF DR. HENDERSON REPORTS:

Defendant asserts that the reports are based on a false and inaccurate history. There is nothing inaccurate about the history at all. Defendant further asserts that there is some violation of Labor Code Section 5703, 5307 and 139.9.

Labor Code Section 5703 (a) (2) specifically provides that "... reports are admissible under this subdivision only if the physician has further stated in the body of the report that there has not been a violation of Section 139.3 and that the contents of the report are true and correct to the best knowledge of the physician. The statement shall be made under penalty of perjury." The reports of Dr. Henderson dated August 16, 2004, July 22, 2004, June 15, 2004 and April 1, 2004 do not contain said required statement. Therefore, these reports are stricken from Applicant's Exhibit 1 as evidence.

ATTORNEY FEES:

None.


MARY ANNE THOMPSON

Workers' Compensation Administrative Law Judge