

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. PAS 19 438

MARITZA PALACIO,

Applicant

vs.

JAM ONE WAREHOUSE/JAM INDUSTRIES,
INC.; FIREMAN'S FUND INSURANCE
COMPANY,

Defendants.

FINDINGS AND ORDER

The above-entitled matter having come on regularly for hearing on December 16, 1993, applicant having personally failed to appear for trial and for prior settings, applicant and defense counsel having appeared for trial and having submitted the case on the record; and

The Board having complied with Board rule 10562 (8 Cal. Adm. Code section 10562), the Honorable Ruby A. Theophile, Workers' Compensation Judge makes findings of fact and orders as follows:

FINDINGS OF FACT

1. Maritza Palacio, born March 10, 1960, while employed on August 21, 1992, as a machine operator/general laborer, at Gardena, California by Jam One Warehouse/Jam Industries, Inc. having failed to sustain her burden of proof with respect to the alleged injury and this Court finds did not sustain injury arising out of and occurring in the course of the employment.

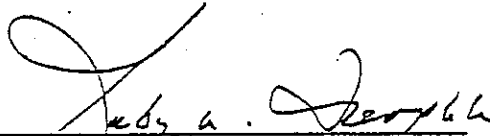
2. The issue of injury arising out of and occurring in the course of employment having been contested herein and it appearing that medical-legal expenses were incurred with respect to the contested issue, the Court retains jurisdiction of this issue pending resolution of said medical-legal costs in amounts to be adjusted by the parties or determined herein upon the filing of petition and supporting documents.

3. All liens other than medical-legal and/or over which jurisdiction have been reserved are denied.
4. All other issues have been rendered moot.
5. There are no funds from which to award attorney fees.

ORDER

IT IS ORDERED that applicant take nothing.

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On all parties on the
Official Address Record.
By: *Sherry V. Allen*
Sherry V. Allen



RUBY A. THEOPHILE
WORKERS' COMPENSATION JUDGE

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CASE NUMBER: PAS 19 438

MARITZA PALACIO

vs.

JAM ONE WAREHOUSE/
JAM INDUSTRIES, INC.;
FIREMAN'S FUND
INSURANCE COMPANY,

Workers' Compensation Judge:
Date of Injury:

RUBY A. THEOPHILE
August 21, 1992

OPINION ON DECISION

INJURY AOE/COE

The allegedly injured employee has the burden of proof and burden of going forward with the evidence on all issues necessary to prove her case. In the instant case injury AOE/COE was denied by defendant. That denial placed upon the applicant the necessity to offer substantial evidence in support of the occurrence of the alleged injury.


In failing to appear for trial to offer testimony in support of the critical issues(s), this Court had no credible or substantial evidence that the applicant sustained an industrial injury.

Although the only medical evidence of record was the applicant's medical reports (Neurologic Orthopedic Associates, dated 9-8-92, 10-6-92 and 10-20-92), in the absence of the applicant's testimony these reports do not go to establish injury AOE/COE. The latter issue constitutes the necessity for a legal and not medical finding. None of the above reports substantiate the occurrence of the injury. Thus, based on the lack of substantial evidence, it is found that the applicant did not sustain injury arising out of and occurring in the course of the employment.

MEDICAL-LEGAL COSTS

Based upon the medical-reports of Neurologic Orthopedic Associates the applicant may have incurred reasonable and necessary medical expense relative to the instant claim, payable in amounts to be adjusted by the parties or determined herein upon the filing of petition and supporting documents.

The court retains jurisdiction of this issue.


RUBY A. THEOPHILE
Workers' Compensation Judge

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