

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. VNO 370738

ERNEST GARCIA,

Applicant,

vs.

L.A.C.M.T.A.;
PERMISSIBLY SELF-INSURED,

Defendants.

FINDINGS AND ORDER

The above-entitled matter having been heard and regularly submitted following further development of the record, the Honorable Ralph Zamudio, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

- (1) Applicant, ERNEST GARCIA, born on 11/26/48, while employed during the period from 10/23/73 to 10/8/96, as a bus driver, at Los Angeles, California by L.A.C.M.T.A, then Permissibly Self-Insured, claims to have sustained injury arising out of and in the course of employment to the internal, hypertension, cardiovascular system, psyche, heart, and kidneys.
- (2) Applicant's continuous trauma injury claim filed in VNO 370738 is barred by the Compromise and Release and OACR in POM 167936 and POM 124955 approved on 10/1/90. (*City of Anaheim v. W.C.A.B.* (1982) 128 Cal.App.3d 200 [180 Cal.Rptr. 132, 47 Cal. Comp. Cases 52].)
- (3) Jurisdiction is reserved over any outstanding medical-legal liens with the parties to attempt informal adjustment of the same, or to be determined in supplemental proceedings.
- (4) There is no basis to join the UTU and its workers' compensation insurer, SCIF, as a party-defendant in VNO 370738.
- (5) All other issues are rendered moot.

ORDER

IT IS ORDERED that applicant TAKE NOTHING by way of his Application for Adjudication of Claim, and that jurisdiction be reserved over outstanding medical-legal liens.

DATED: 11-26-09
Filed and Served by mail on
above date on all parties/liens
on the Official Address Record.
By: Mary Garcia

Mary Garcia


RALPH ZAMUDIO
WORKERS' COMPENSATION JUDGE

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. VNO 370737

ERNEST GARCIA,

Applicant,

vs

L.A.C.M.T.A.;
PERMISSIBLY SELF-INSURED,

Defendants.

FINDINGS AND AWARD

The above-entitled matter having been heard and regularly submitted after further development of the record, the Honorable Ralph Zamudio, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

- (1) Applicant, ERNEST GARCIA, born on 11/26/48, while employed on October 8, 1996, as a bus driver, at Los Angeles, California by LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY, then Permissibly Self-Insured, sustained injury arising out of and in the course of employment to the cardiovascular system/heart, and psyche, but did not sustain injury AOE/COE to the kidneys.
- (2) Applicant's earnings at the time of injury were maximum.
- (3) This injury caused temporary total disability payable by defendant at the weekly rate of \$490.00 for the period from 10/9/96 to 12/14/99, less credit for sums heretofore paid on account thereof, and less \$17,472.00 payable to EDD. The applicant became permanent and stationary on 12/14/99.
- (4) Applicant's injury caused permanent disability of 57:0%, after apportionment.
- (5) There is legal basis for apportionment of psychiatric permanent disability, but no legal basis for apportionment of cardiovascular/heart permanent disability to the applicant's prior disease and/or hypertension. The applicant's subsequent heart attack in 1998, and increased disability resulting from it, is not industrially related.
- (6) There is need for future medical treatment to cure or relieve from the effects of this injury, including treatment for the applicant's non-industrial kidney disease.
- (7) Jurisdiction is reserved over any outstanding medical-legal and/or self-procured treatment liens with the parties to attempt informal adjustment of the same in an amount not to exceed the Official Medical Fee Schedule, or to be determined in supplemental proceedings upon the filing of a declaration of readiness.

- (8) The defendant did not unreasonably delay and/or deny temporary disability and medical treatment benefits as it had a genuine medical and legal doubt as to its liability for the same. The applicant's request for penalties under Labor Code §5814 is denied.
- (9) This claim is not barred by applicant's prior compromise and release and OACR in POM 167936 and POM 124955, nor is the defendant entitled to credit under Labor Code section 5005 for said prior C&R amount received by applicant.
- (10) There is no legal basis to exclude the reports of Dr. Curtis from evidence.
- (11) There is no basis to join the UTU and its workers' compensation insurer, SCIF, as a party-defendant in VNO 370738.
- (12) The reasonable value of the services of applicant's attorney is \$8,667.00 payable to Adams, Ferrone & Ferrone.

AWARD

AWARD IS MADE in favor of ERNEST GARCIA against L.A.C.M.T.A., Permissibly Self-Insured, payable as follows:

- (a) Temporary disability, less the lien of EDD, in accordance with Findings of Fact No. 3 above;
- (b) Permanent disability of 57.0%, after apportionment, equivalent to 322.25 weeks of indemnity, payable beginning 12/15/99, at the rate of \$170.00 per week, in the total sum of \$57,782.50, less credit for permanent disability advances paid, if any, and less reasonable attorney fees in the sum of \$8,667.00 payable to Adams, Ferrone & Ferrone, commuted from the far end of the award in the event there are insufficient unpaid weeks of indemnity available in which to satisfy same;
- (c) Future medical in accordance with Findings of Fact No. 6 above;
- (d) Medical-legal and treatment expense liens in accordance with Findings of Fact No. 7 above.

DATED: 11-26-02
Filed and Served by mail on
above date on all parties/liens
on the Official Address Record.
By: Mary Garcia
Mary Garcia



RALPH ZAMUDIO
WORKERS' COMPENSATION JUDGE

CASE NOS. VNO 370738; VNO 370737

ERNEST GARCIA

v.

L.A.C.M.T.A.;
PERMISSIBLY SELF-INSURED

DATES OF INJURY:

10/20/73 TO 10/8/96; OCTOBER 8, 1996

WORKERS' COMPENSATION JUDGE:
DATE:

RALPH ZAMUDIO
NOVEMBER 25, 2002

JOINT OPINION ON DECISION

In VNO 370738, it is stipulated that applicant, Ernest Garcia, born on 11/26/48, while employed during the period from 10/23/73 to 10/8/96, as a bus driver, at Los Angeles, California by Los Angeles County Metropolitan Transit Authority, then Permissibly Self-Insured, claims to have sustained injury arising out of and in the course of employment to the internal, hypertension, cardiovascular system, psyche, heart, and kidneys.

The defendant denies injury AOE/COE in VNO 370738, and among other things, raises the defense that the applicant's Compromise and Release and Order Approving Compromise and Release issued by the appeals board on 10/1/90 in connection with a prior continuous trauma and specific injury claim filed against the SCRTD [now known as LACMTA] in POM 167936 and POM 124955, is a bar to the pending disputed continuous trauma claim, citing *City of Anaheim v. W.C.A.B.* (1982) 128 Cal.App.3d 200 [180 Cal.Rptr. 132, 47 Cal. Comp. Cases 52].

In VNO 370737, it is stipulated that applicant, Ernest Garcia, born on 11/26/48, while employed on October 8, 1996, as a bus driver, at Los Angeles, California by Los Angeles County Metropolitan Transit Authority, then Permissibly Self-Insured, sustained injury arising out of and in the course of employment to the heart, and claims

to have sustained injury arising out of and in the course of employment to the internal system, hypertension, kidneys, and psyche.

It is stipulated applicant's earnings at the time of injury were maximum at current rates. The defendant paid no benefits in connection with the denied continuous trauma injury claim in VNO 370738. The defendant paid temporary and permanent disability indemnity in connection with the admitted specific injury in VNO 370737 as set forth in the Minutes of Hearing of 12/18/00 at page 12:11-14.

The Employment Development Department paid state disability at the weekly rate of \$336.00 from 3/24/98 through 3/22/99 in the total sum of \$17,472.00 as set forth in EDD's closing lien dated 4/12/99. Applicant claims temporary disability from 10/8/96 to 8/9/00.

The above-entitled cases were consolidated for trial, and heard on 12/18/00, 2/13/01, and 4/10/01. The board's file in VNO 370738 was designated as the Master File, and all exhibits were filed in said case. Judicial notice was taken of the applicant's prior claims filed in POM 167936 and POM 124955. Multiple issues were framed, and the parties made various motions as set forth in the Minutes of Hearing of 12/18/00, 2/13/01, and 4/10/01. Pre-trial and post-trial briefs and motions were filed by the parties, and by lien claimant (Kaiser).

The testimony of the applicant (Ernest Garcia), and defense witnesses (Susan Friend, claims adjuster, and Donald Karlson, manager) was taken at trial as set forth in the Minutes of Hearing and Summary of Evidence. On November 29, 2001, a Findings and Order issued in favor of the defendant in VNO 370738, and a Findings and Award issued in favor of the applicant in VNO 370737. Timely petitions for reconsideration were filed concurrently by the applicant and defendant. In accordance with WCAB Rule 10859, an Order Rescinding Findings & Order and Findings & Award issued on

12/28/01. The parties returned for further conference, and the record was subsequently developed by the submission of cross-examination testimony of Dr. Robert Weissman dated 4/5/02 admitted in evidence as WCAB Exhibit X-1, and the filing of additional post-trial written argument, including a supplemental brief filed by lien claimant Kaiser Permanente dated 8/15/02, received on 8/19/02. The matter then stood submitted.

The undersigned has had an opportunity to again review the entire record, including, but not limited to the documentary evidence submitted, designated records, a copy of the WCAB files in POM 167936 and POM 124955, the medical reports of Dr. Stanley J. Majcher, Dr. Thomas A. Curtis, Dr. Robert A. Weissman, and Dr. William J. Sullivan, the deposition testimony of Dr. Weissman, and to observe the manner and demeanor of the applicant and defense witnesses when they gave testimony. Full weight is given to the credible testimony of applicant.

Notwithstanding the applicant's arguments to the contrary, found persuasive is the defendant's argument that the continuous trauma injury claim filed by the applicant in VNO 370738 is barred by the Compromise and Release and OACR of October 1, 1990 filed in POM 167936 and POM 124955. That settlement document clearly settled the applicant's claims of industrial cumulative injury to the "internal system, psyche, and entire body" during his employment by the SCRTD from "1972-Date of C&R Approval." Paragraph 3 of said C&R provides, in pertinent part, as follows:

"Upon approval of this compromise and release agreement by the Workers' Compensation Appeals Board or a workers' compensation judge and payment in accordance with the provisions hereof, said employee releases and forever discharges said employer and insurance carrier from all claims and causes of action, whether now known or ascertained, or which may hereafter arise or develop as a result of said injury, . . ."

Based upon review of the entire record, and the holding in *City of Anaheim v. W.C.A.B.*, *supra*, it is found that applicant's continuous trauma injury claim filed in VNO 370738 is barred by the Compromise and Release and OACR in POM 167936 and POM 124955 approved on 10/1/90. The applicant shall take nothing by way of said claim. Jurisdiction is reserved over any outstanding medical-legal liens with the parties to attempt informal adjustment of the same, or to be determined in supplemental proceedings. All other issues related to this disputed CT claim are rendered moot, including applicant's contention that the claim is rebuttably presumed compensable under Labor Code section 5402.

In VNO 370737, based upon review of the entire record, and the range of medical evidence presented, including but not limited to the medical opinion expressed by Dr. Robert Weissman, it is found that applicant, Ernest Garcia, born on 11/26/48, while employed on October 8, 1996, as a bus driver, at Los Angeles, California by Los Angeles County Metropolitan Transit Authority, then Permissibly Self-Insured, sustained injury arising out of and in the course of employment to the cardiovascular system/heart, and psyche, but did not sustain injury AOE/COE to the kidneys.

In VNO 370737, based upon review of the entire record, including the medical reports of Dr. Thomas Curtis, it is found that the injury caused temporary total disability payable by defendant at the weekly rate of \$490.00 for the period from 10/9/96 to 12/14/99, less credit for sums heretofore paid on account thereof, and less \$17,472.00 payable to EDD. Based upon review of the entire record, it is found that applicant became permanent and stationary on December 14, 1999.

Based upon review of the record, including the deposition testimony of Dr. Weissman, it is found there is good cause to strike the formal rating instructions dated 7/30/01, setting forth factors of permanent disability, and the recommended rating of

70:1% dated 8/7/01, served upon the parties on 8/9/01. Based upon review of the record, including the medical reports of Dr. Weissman, and his deposition testimony, and the range of medical evidence, it is found the industrial injury of October 8, 1996 to the cardiovascular system/heart and psyche produced disability as follows:

Heart

Subjectives

Occasional chest pain relieved by Nitroglycerin and shortness of breath with exertion, as well as orthopnea.

Objectives: Refer to report of Dr. Robert A. Weissman dated 1/10/00 (Def. Exhibit A).

Work Restrictions

Limitation to no heavy work with avoidance of more than an ordinary amount of emotional stress.

Psyche

Work Function Impairments

#1-Slight to Slight to Moderate; #2-Slight; #3-Slight; #4-Minimal to Slight; #5-Slight; #6-Minimal to Slight; #7-Minimal to Slight; #8-Slight.

Apportion out prior psychiatric disability utilizing an overall standard for "slight" disability under the old schedule for rating psychiatric disability.

The above-noted factors of permanent disability are within the range of medical evidence, and rate according to the following formula:

6.3 -40% - 46H- 46 - 50:0
1.4 -30% - 46I - 38 - 41:2
1.4 -20% - 46I - 27 - 30:0

11:2

MDT: 57:0%, after
apportionment

In accordance with the above-noted rating formula, it is found that applicant is entitled to a permanent disability award of 57:0%, after apportionment, equivalent to 322.25 weeks of indemnity, payable beginning 12/15/99, at the rate of \$170.00 per

week, in the total sum of \$57,782.50, less credit for permanent disability advances paid, if any, and less reasonable attorney fees in the sum of \$8,667.00 payable to Adams, Ferrone & Ferrone, commuted from the far end of the award in the event there are insufficient unpaid weeks of indemnity available in which to satisfy same.

Based upon review of the entire record, it is found there is legal basis for apportionment of psychiatric permanent disability, but no legal basis for apportionment of the cardiovascular/heart permanent disability to the applicant's prior disease and/or hypertension. Based upon the well-reasoned opinion of Dr. Weissman, the record further shows that the applicant's subsequent heart attack in 1998 and increased disability resulting from it is not industrially related.

Based upon review of the entire record, including the medical opinions expressed by Dr. Weissman and Dr. Curtis, it is found that there is need for future medical treatment to cure or relieve from the effects of the injury herein, including treatment for the applicant's non-industrial kidney disease.

Jurisdiction is reserved over any outstanding medical-legal and/or self-procured treatment liens with the parties to attempt informal adjustment of the same in an amount not to exceed the Official Medical Fee Schedule, or to be determined in supplemental proceedings upon the filing of a declaration of readiness.

Based upon review of the record, including the correspondence sent the applicant by defendant dated 3/19/97, 4/24/97 and 9/12/97 (Defendant's Exhibit J), it is found the defendant did not unreasonably delay and/or deny temporary disability and medical treatment benefits as it had a genuine medical and legal doubt as to its liability for the same. The applicant's request for penalties under Labor Code section 5814 is denied.


Because the specific injury of 10/8/96 filed in VNO 370737 is a separate and distinct injury from that claimed by applicant via continuous trauma in VNO 370738, it is

Because the specific injury of 10/8/96 filed in VNO 370737 is a separate and distinct injury from that claimed by applicant via continuous trauma in VNO 370738, it is not barred by the applicant's prior compromise and release and OACR in POM 167936 and POM 124955, nor is the defendant entitled to credit under Labor Code section 5005 for said prior C&R amount received by applicant.

Based upon review of the record, including the written Declaration of Dr. Thomas Curtis dated 12/26/00, it is found there is no legal basis to exclude the reports of Dr. Curtis from evidence.

Based upon review of the record, including the deposition testimony of Dr. Robert Weissman, it is found there is no basis to join the UTU and its workers' compensation insurer, SCIF, as a party-defendant in VNO 370738.

Based upon the WCAB Rules of Practice and Procedure Section 10775, the guidelines for awarding attorney fees found in Policy and Procedure Manual Index Number 6.8.4, a reasonable attorney fee is found to be \$8,667.00 payable to Adams, Ferrone & Ferrone from permanent disability indemnity.



RALPH ZAMUDIO
WORKERS' COMPENSATION JUDGE