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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

Case No. MON 282613; VNO 380543

ILUMINADA CARAAN,

*Applicant,*

v.

ROBINSONS-MAY DEPARTMENT  
STORES; P.S.I.,

*Defendants.*

FINDINGS AND ORDER

THE LAW OFFICES OF LEO HERNANDEZ  
By: Leo Hernandez  
Attorney for Applicant

LAW OFFICES OF KEGEL, TOBIN AND TRUCE  
By: D'arcy Swartz  
Attorneys for Defendants

The above-entitled matter having been heard and regularly submitted, the Honorable Marilyn Kay Ward, Workers' Compensation Administrative Law Judge, now makes her decision as follows:

FINDINGS OF FACT

1. Stipulations as set forth by the parties at time of trial are accepted as true and are incorporated herein as Finding of Fact.

2. Iluminada Caraan, born April 19, 1935, while employed during the period June 11, 1997 through May 30, 2000 as a audit clerk, Group No. 214, at Redondo Beach, California, by the Robinsons-May Department Stores sustained injury arising out of and in the course of employment to her bilateral carpal tunnel and elbows. (MON 0282613)

3. A Stipulation with Request for Award for 36 percent permanent disability issued previously in Case No. VNO 380543, which is the companion case.

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**VNO 0380543**

The date of injury of 06/11/97, the primary treating physician was Dr. Jan Duncan. The applicant was permanent and stationary from that injury on 04/21/99. Thereafter, she made a new claim. Dr. David Auerbach became the primary treating physician for this injury. Dr. Auerbach was applicant's primary treating physician at least as of the time the applicant was declared permanent and stationary on 06/05/01.

Did applicant make a valid election of primary treating physician in the Monica case when she treated with Dr. Capen on 10/02/01. It does not appear to be the case. Dr. Auerbach released the applicant on 06/05/01 with a statement that the applicant does not require future medical care. However, even if future medical care were given by Dr. Auerbach, the applicant would not be entitled to select a new primary treating physician until the question of whether the applicant was in need of further medical treatment was resolved.

Since Dr. Auerbach did not find continuing or ongoing treatment, the applicant cannot be said to need ongoing or continuing care. At the time, applicant attempted to elect Dr. Capen as her primary treating physician, Dr. Auerbach had already found that no ongoing or continuing care was necessary. Therefore, the applicant was required to seek agreement on a AME, pursuant to Labor Code Section 4061; 4062. This did not occur. Thus, Dr. Capen's report cannot be considered the report of the primary treating physician.

**PERMANENT DISABILITY:****VNO 0380543**

Permanent disability has already been resolved by the report of Dr. Duncan. There is already a stipulation and no evidence in Dr. Duncan report that would allow for a finding of new and further disability. There is no report supporting the notion that applicant sustained new and further disability as a result of the stipulated 06/11/97 injury. There is no evidence to support a finding that she had new and further disability specifically related to the 06/11/97 injury.

**MON 0282613:**

There is no admissible evidence of any permanent disability. Dr. Capen's report is not admissible. Even it were admissible, it is not sufficient to overcome the presumption of correctness of the primary treating physician.

~~Dr. Auerbach has been established to be the primary treating physician in the Santa Monica case.~~

4. Prior to the injury in this case, applicant's earnings were \$11.34 per hour based upon a 40 hour week which equals to \$453.60 per week.

5. Applicant's temporary disability earnings are zero because she retired due to longevity. Labor Code Section 3600.10.

6. Applicant takes nothing for purposes of temporary disability.

7. There is no admissible evidence of any permanent disability.

8. It is found there is no further medical care is necessary.

**ORDER**

Applicant takes nothing by way of her application.

Dated: 8/7/03



**MARILYN KAY WARD**  
Workers' Compensation  
Administrative Law Judge

A Petition for Reconsideration from this decision shall be filed only at the *Santa Monica District Office of the Workers' Compensation Appeals Board.*

Service on Parties as Shown  
on the Official Address Record  
on the above date.

By: [Signature]

CASE NO. MON 0282613; VNO 380543

ILUMINADA CARAAN

v. ROBINSONS-MAY; P.S.I.

DATE OF INJURY

06/11/97 - 05/30/2000

WORKERS COMPENSATION  
ADMINISTRATIVE LAW JUDGE

MARILYN KAY WARD

OPINION ON DECISIONSTIPULATION:

Based upon stipulation of counsel, applicant, born April 19, 1935, while employed during the period June 11, 1997 through May 30, 2000 as a audit clerk, Group No. 214, at Redondo Beach, California, By the May Department Stores sustained injury arising out of and in the course of employment to her bilateral carpal tunnel and elbows.

At the time of injury, the employer was permissibly self-insured.

There is a Stipulation with Request for Award for 36 percent permanent disability in Case No. VNO 380543 which is the companion case.

The following are the issues in Case No. MON 282613 (MF):

1. Earnings
2. Temporary disability
3. Permanent and stationary date
4. Permanent disability
5. Apportionment
6. Need for further medical treatment
7. Liability for self-procured medical treatment.

Defendant relies upon Dr. Auerbach's reporting that the applicant requires no further medical treatment and has no new and further injury. This applies to both cases. In both cases the presumption of correctness is raised in favor of Dr. Auerbach. Defendant contests the admissibility of Dr. Capen's reporting and Rule 9785 and TD should not be payable to applicant because applicant had zero earnings because she was retired based upon Tenet/Centinel Hospital also, in the Monica case, the defendant claims that the applicant voluntarily retired from work unrelated to the industrial injury. This is disputed by the applicant. Defendant contends the date of injury is pursuant to Labor Code Section 5412 per Dr. Duncan's April 21, 1999 report.

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In the VNO 380543 case, the date of injury is June 11, 1997.

Applicant contends that the primary treating physician was Jan Duncan and the defendant contends Dr. Auerbach is the primary treating physician. This case settled by Stipulation with Request for Award and Award issued January 13, 1999 by Judge David Klinger. A Petition to Reopen was filed in this case on June 3, 2002.

**INJURY AOE/COE:**

**MON 0282613**

Earnings: Prior to the injury in this case, applicant earned \$11.34 per hour based upon a 40 hour week which equals \$453.60 per week.

**TEMPORARY DISABILITY:**

The employee claims temporary disability from 5/31/00 to 12/14/01. The testimony of Morad Elsayed confirms that applicant retired because of longevity. The record establishes that the applicant's 65<sup>th</sup> birthday occurred on April 19, 2000, just after the retirement letter written by the applicant and identified as defendant's "Exhibit A".

In applicant deposition of 05/28/02, at page 11, the applicant admits she retired on 05/31/00 because she was 65 years old in April. During the deposition applicant's counsel requested a conference with applicant and applicant returned and testified that she retired because she could not take the pain anymore.

Applicant began drawing Social Security Retirement. Dr. Auerbach indicated in reports contemporaneous to these events that the applicant could continue to perform her usual and customary occupation. There is no evidence medical or otherwise that applicant left work because of a disability to her upper extremities.

Therefore, applicant's temporary disability earnings are zero because she retired due to longevity. Labor Code Section 3600.10.

In this case it is clear applicant intended to retire. She told Mr. Elsayed she intended to take her settlement money and retire in the Philippines. The applicant did not present any evidence that she had any intention of returning ~~to the labor force in any capacity. Therefore, applicant takes nothing for~~ purposes of temporary disability.

**FURTHER MEDICAL TREATMENT:**

The issue of medical care was resolved in the previous Stipulation with Request for Award in the Van Nuys Case. With regards to the Monica case, Dr. Auerbach found no further medical care is necessary.

**CONCLUSION:**

Applicant takes nothing by way of her application. There is no evidence of new and further disability for the Van Nuys case. There is no admissible evidence of permanent disability in the Santa Monica Case. Dr. Auerbach has the presumption of correctness as the primary treating physician and the Court must rely on this report as the only admissible evaluation of permanent disability.

Regarding temporary disability, applicant retired due to length of service and has made no attempt to re-enter the labor force. Therefore, there is no earning capacity for purposes of temporary disability and her TD rate is zero.

Dated: 8/7/03

**MARILYN KAY WARD**  
Workers' Compensation  
Administrative Law Judge