

JW

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

JUAN ACOSTA,

Applicant

vs.

EL TORITO RESTAURANTS, INC.;
TRAVELERS INSURANCE CO.,

Case No. 91 VNO 236766

FINDINGS AND ORDER

Epstein & Harvey, by Jerome
Harvey, Attorneys for applicant
Kegel, Tobin & Truce, by Jeffrey
E. Weiss, Attorneys for defendants

The above-entitled matter having been heard and regularly submitted, the Honorable HARVEY STARK, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Applicant was not an employee of Defendant El Torito Restaurants, Inc..
2. The Workers' Compensation Appeals Board has no jurisdiction.

ORDER

For the foregoing reasons, it is hereby ordered that applicant and all lien claimants take nothing from Defendant herein.



HARVEY STARK

WORKERS' COMPENSATION JUDGE

A PETITION FOR RECONSIDERATION FROM THIS DECISION SHALL BE FILED ONLY AT THE VAN NUYS DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.

Served March 8, 1991

By R. H. Saproni

JUAN ACOSTA

- vs. -

EL TORITO RESTAURANTS, INC.;
TRAVELERS INSURANCE

DATE: March 4, 1994

JUDGE: STANLEY S. FEINSTEIN

OPINION ON DECISION

For all its employees defendant took payroll deductions, provided insurance and vacation benefits. None of these things were done for applicant. This indicates the intent of the parties that applicant be treated as an independent contractor.

Initially, applicant and Defendant entered into an agreement for applicant to provide a trio to play music during the dinner hours at a cost of \$180.00 per day. This also indicates that applicant was an independent contractor providing incidental services to Defendant which is primarily in the restaurant and not music business.

Further, it appears from applicant's testimony that the usual custom and practice in his profession is to treat the relationship as one of an independent contractor. Applicant testified that when he worked at other restaurants, deductions were not usually taken from his earnings.

For the above reasons I find applicant was an independent contractor and that the Workers' Compensation Appeals Board has no jurisdiction.

/pgs



HARVEY STARK
WORKERS' COMPENSATION JUDGE

Filed and Served by mail

On March 8, 1994

By A. S. Saperstein