

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 0264376

FELICIANO REYES,

Applicant,

vs.

SMITH ENGINEERING, and FIREMAN'S
FUND INSURANCE COMPANY,

Defendants.

FINDINGS & ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable David Bjelland, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. FELICIANO REYES, born 6/9/51, while employed on 4/23/92, as an Insulator, at Stockton, California, by SMITH ENGINEERING, then insured as to workers' compensation liability by FIREMAN'S FUND INSURANCE COMPANY, did NOT sustain injury arising out of and occurring in the course of his employment, as alleged in this case.
2. The court hereby expressly finds and determines that it has been proven by a preponderance of the evidence, that the applicant, Feliciano Reyes, has deceitfully and fraudulently attempted to collect workers' compensation benefits in this case from the defendants by lying to them about having suffered a work-related injury on 4/23/92.
3. On the basis of the above finding of bad faith by the applicant, the court hereby denies the request by applicant's attorney for an award of Labor Code § 5710 deposition attorney fees. *Mitchell vs. Golden Eagle Ins. Co; Marmolejo vs. Neptune Foods*, 60 CCC 205 (BEB 1995).
4. The court hereby finds that a contested claim did not exist on 3/19/93 (the date when the initial medical/legal services were rendered by Neurologic Orthopedic Associates Medical Group - hereinafter NOAMG). The \$1,240.00 in medical/legal charges for services rendered by NOAMG on 3/19/93 are hereby disallowed, for the reason that they were provided in violation of Labor Code § 4620 and *Del Rio vs. Republic Indemnity*, 58 CCC 147, 21 CWCR 105 (BEB 1993).
5. The 3/19/93 \$10.00 Mineral Ice charge from NOAMG is hereby disallowed on the basis of the above finding of no injury AOE/COE.
6. The court defers any ruling on the 6/21/93 charges from NOAMG, for the reason that prior to the date of trial, NOAMG was not afforded sufficient notice of the fraud allegations being asserted as a defense to liability for their charges.

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7. Bristol Diagnostics has been listed in the Stipulations and Issues as a Lien Claimant in an unspecified amount, however, nothing has been offered by their representative in support of any such lien claim, and for that reason, the lien claim from Bristol Diagnostics is hereby denied, for failure to prosecute.
8. Finally, the court also defers ruling on: (1) the lien claim from the Employment Development Department; and (2) the lien claim from Rivera Translations; for the reason that the defendants have not demonstrated sufficient proof of compliance with the notice requirements of Policy & Procedure Manual Index Number 6.8.1.1 (Uniform Lien Procedures).
9. There are no funds from which to award attorney fees, so none can be awarded.
10. All other issues have been rendered moot.

ORDER

IT IS ORDERED that Applicant take nothing.

IT IS FURTHER ORDERED that the \$1,240.00 in medical/legal charges for services rendered by Neurologic Orthopedic Associates Medical Group on 3/19/93, be and they are hereby disallowed.

IT IS FURTHER ORDERED that the 3/19/93 \$10.00 Mineral Ice charge from Neurologic Orthopedic Associates Medical Group be and it is hereby disallowed.

IT IS FURTHER ORDERED that the issue of the liability of the Defendants regarding the 6/21/93 charges from Neurologic Orthopedic Associates Medical Group, is off calendar with the Court to retain jurisdiction.

IT IS FURTHER ORDERED that the lien claim from Bristol Diagnostics be and it is hereby denied.

IT IS FURTHER ORDERED that the issue of the liability of the Defendants regarding the outstanding lien claims from the Employment Development Department and from Rivera Translations is off calendar with the Court to retain jurisdiction.

DATED: 5-16-96
Filed and Served by mail on all parties and
lien claimants on the Official Address Record.



DAVID BJELLAND
WORKERS' COMPENSATION JUDGE

Date: MAY 17 1996

By: 

FELICIANO REYES VS. SMITH ENGINEERING, and FIREMAN'S
FUND INSURANCE CO.

SBR 0264376

JUDGE : David Bjelland
DATE : May 16, 1996

OPINION OF WCJ ON DECISION

Injury AOE/COE

On the basis of: (1) the trial testimony of Gregory Ponce Alvarez, Rene Borbon and Jon Airlie; (2) the applicant's trial testimony during cross-examination; and (3) the numerous defense exhibits documenting post-injury representations by the applicant, which are materially inconsistent with his claim of injury; the court hereby finds and determines that the applicant, Feliciano Reyes, did NOT sustain an injury arising out of and occurring in the course of his employment for Smith Engineering, as he has alleged in this case.

Labor Code § 5710 Deposition Attorney Fees

The Points & Authorities submitted by applicant's attorney on the issue of Labor Code § 5710 deposition attorney fees, advocate findings that during the three years following the applicant's alleged work injury, he repeatedly made false representations about his work injury and his physical condition to third parties (*i.e.*, the Employment Development Department and a number of subsequent employers), but that these false representations were collateral in nature, and were not made for the purpose of fraudulently collecting workers' compensation benefits from the defendants.

The court hereby refuses to adopt the findings being advocated by applicant's attorney, and hereby alternatively finds that it is more probable than not, that the applicant actually told the truth to his subsequent employers and their doctors, but lied to the defendants about having suffered a work injury on 4/23/92. The court hereby expressly finds and determines that it has been proven by a preponderance of the evidence, that the applicant, Feliciano Reyes, has deceitfully and fraudulently attempted to

collect workers' compensation benefits in this case from the defendants by lying to them about having suffered a work-related injury on 4/23/92.

On the basis of the above finding of bad faith by the applicant, the court hereby denies the request by applicant's attorney for an award of Labor Code § 5710 deposition attorney fees. *Mitchell vs. Golden Eagle Ins. Co; Marmolejo vs. Neptune Foods*, 60 CCC 205 (BEB 1995).

Lien Claims

In the instant case, the DWC Form 1 is dated 3/19/93, and was not served on the employer until sometime in April of 1993. The court hereby expressly finds that a contested claim did not exist on 3/19/93 (the date when the initial medical/legal services were rendered by Neurologic Orthopedic Associates Medical Group - hereinafter NOAMG). The \$1,240.00 in medical/legal charges for services rendered by NOAMG on 3/19/93 are hereby disallowed, for the reason that they were provided in violation of Labor Code § 4620 and *Del Rio vs. Republic Indemnity*, 58 CCC 147, 21 CWCR 105 (BEB 1993).

The 3/19/93 \$10.00 Mineral Ice charge from NOAMG is hereby disallowed on the basis of the above finding of no injury AOE/COE.

The court defers any ruling on the 6/21/93 charges from NOAMG, for the reason that prior to the date of trial, NOAMG was not afforded sufficient notice of the fraud allegations being asserted as a defense to liability for their charges.

Bristol Diagnostics has been listed in the Stipulations and Issues as a Lien Claimant in an unspecified amount, however, nothing has been offered by their representative in support of any such lien claim, and for that reason, the lien claim from Bristol Diagnostics is hereby denied, for failure to prosecute.

Finally, the court also defers ruling on: (1) the lien claim from the Employment Development Department; and (2) the lien claim from Rivera Translations; for the reason that the defendants have not demonstrated sufficient proof of compliance with the notice requirements of Policy & Procedure Manual Index Number 6.8.1.1 (Uniform Lien Procedures).

Attorney Fees

There are no funds from which to award attorney fees, so none can be awarded.

All other issues have been rendered moot.

DATED: 5-16-96

David Bjelland
David Bjelland
Workers' Compensation Judge

Service made on all parties and lien claimants,
as listed on the Official Address record.

Date: MAY 17 1996

By: Debra Dreggi

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

WORKERS' COMPENSATION APPEALS BOARD

FELICIANO REYES,

Applicant

vs.

SMITH ENGINEERING;
FIREMAN'S FUND INSURANCE COMPANY,

Defendants

CASE NO. SBR 264376

MINUTES OF HEARING
(AND)
SUMMARY OF EVIDENCE

Place and Time: San Bernardino, California - March 26, 1996 - 8:30 p.m.

Referee: The Honorable DAVID BJELLAND

Reporter: Glenna Atkinson

Appearances: Feliciano Reyes, Applicant

Moga & Hurley
BY: Norma A. Koch
Attorneys for Applicant

Kegel, Tobin & Truce
BY: Timothy Sanford-Wachtel
Attorneys for Defendant

Graciela Real, Interpreter

Witnesses: Feliciano Reyes
Gregory Ponce Alvarez
Rene Borbon
John Airlie

Disposition: The Court will prepare Minutes of Hearing and a Summary of Evidence which will be served upon both parties. Both parties will be afforded 30 days from this date within which to serve Points and Authorities regarding the issue of an award of Labor Code Section 5710 fees. If necessary, rating instructions will be propounded and sent to the Disability Evaluation Unit; any such formal rating will be served upon both parties and they will have seven days thereafter within which to request further cross-examination of the Rating Specialist, and after that has transpired, the matter will stand submitted.

40 pps. tm.
(4/4/96)

DIA WCAS FORM 60 (REV. 11-74)

San Bernardino, California. Served parties per Official Address Record this 17th day of May, 1996.

Order: Defendants are ORDERED to pay Graciela Real for interpreting services the total sum of \$224 in full satisfaction of the lien claim representing interpreting services provided at the time of the Mandatory Settlement Conference and for purposes of the trial today.

Exhibits Ordered Admitted Into Evidence:

Exhibits: APPLICANT'S 1 - Consists of three medical reports together with the cover sheet listing those documents, which has been signed by the attorney for the applicant and is dated December 5, 1995.

LIEN CLAIMANT'S 2 - Consists of various medical reports and records and other documents together with the cover sheet listing those documents which has been signed by the representative for Neurologic Orthopedics Medical Group and Bristol Diagnostics.

DEFENDANT'S A - Consists of various medical records and reports and other documents together with the cover sheet listing those documents which has been signed by the attorney for the defendant and is dated December 5, 1995.

Record: Defendants object to the admissibility of the March 22, 1993 medical report from Dr. Reynolds MacKay on the ground that it was obtained before there was a contested claim, and in violation of Labor Code Section 4620 and the Del Rio Case.

The Court further notes for the record the defendants object to the admissibility of the June 23, 1993 medical report from Dr. Reynolds MacKay on the alternative grounds that it contains a materially false history and should be excluded on the basis of the Penny and Guerrero Cases and, furthermore, that the applicant will testify that he was not examined by a doctor on the date indicated by Dr. MacKay.

Record:
(continued)

The Court, in light of the fact that the defendant will need an opportunity to lay a foundation for those objections, will defer ruling on those objections until after all the testimony has been prepared and the case has been submitted for a decision.

The Court also notes that the defendants are raising the same objections for lien claimant's exhibit as for Applicant's Exhibit 1 and the Court defers making a ruling under the same circumstances.

Record:

The Court further notes for the record, that the lien claimant's representative was initially present just prior to the commencement of the trial and requested permission to be excused from attending the trial, and requested that the lien claims from Neurologic-Orthopedic and Bristol Diagnostics be submitted for a determination without the necessity of his presence, and the Court indicated that would be acceptable.

Admitted Facts:

IT IS STIPULATED BY AND BETWEEN THE PARTIES:

1. Feliciano Reyes, born June 9, 1951, while employed on April 23, 1992 as an insulator at Stockton, California by Smith Engineering claims to have sustained injury arising out of and occurring during the course of his employment to his left shoulder.
2. At the time of injury the employer's workers' compensation carrier was Fireman's Fund Insurance company.
3. At the time of injury the worker's earnings were \$327.68 per week warranting indemnity rates \$218.46 per week for temporary disability and \$140 per week for permanent disability.

- Admitted Facts: (Continued)
4. The defendants have paid no compensation.
 5. The defendants have furnished no medical treatment.
 6. No attorneys' fees have been paid and no attorney fee agreements have been made.

Issues: THE ISSUES ARE AS FOLLOWS:

1. Injury arising out of and occurring during the course of employment.
2. Temporary Disability: The worker is claiming May 5, 1992 through June 23, 1993.
3. Permanent and Stationary Date: Worker is claiming June 23, 1993.
4. Permanent disability.
5. Apportionment.
6. Occupation: Worker is claiming Group 31. The defendants are claiming Group 2.
7. Need of further medical treatment.
8. Liability for self-procured medical treatment.
9. Liability for medical-legal expense.
10. Lien Claims:
 - a) Neurologic Orthopedics Associates Medical group in the total amount of \$1550.
 - b) Bristol Diagnostics.
 - c) Rivera translations in the amount of \$95.

Issues:
(Continued)

Lien Claims: (Continued)

- d) Employment Development Department
in the amount of \$10,982.
- 11. Attorneys' fees, including Labor Code
Section 5710 attorneys' fees claimed
in the amount of \$660.