

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case Nos. POM 0193-438;
POM 0201-259; 60

GREGORY G. BROWN,

Applicant

vs.

RALPH'S GROCERY COMPANY; self-
insured,

Defendants.

JOINT
FINDINGS AND ORDER

Law Office of Mitchell K. Jayson, by Lee Siekerman, attorney for applicant.
Kegel, Tobin & Truce, by Sandra Grajeda, attorney for defendant.

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE, Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. Gregory G. Brown, born February 12, 1959, was employed at Los Angeles, California, beginning on November 16, 1990 through November 16, 1991 (POM 0201-259), on or about September, 1991 (POM 0201-260), and on May 16, 1991 (POM 0193-438), to his chest, head, spine and psyche, as an Order Selector, by Ralph's Grocery, then self-insured, did not sustain injury arising out of and occurring in the course of said employment as alleged herein.

2. Applicant is not entitled to reimbursement of medical-legal costs for the lien of Pomona Plaza Civic Medical Group.

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WORKERS' COMPENSATION
JUDGE: FRANCIS G. BURKE

DATE: JAN 27 1995

Law Office of Mitchell K. Jayson, by Lee Siekerman, attorney for applicant.

Kegel, Tobin & Truce, by Sandra Grajeda, attorney for defendant.

OPINION ON DECISION

INJURY AOE/COE:

It is found that applicant did not sustain an injury arising out of and occurring in the course of his employment beginning on November 16, 1990 through November 16, 1991 (POM 0201-259), on or about September, 1991 (POM 0201-260), and on May 16, 1991 (POM 0193-438), to his chest, head, spine and psyche.

The ultimate conclusion by the judge was based on the fact that applicant's testimony lacked credibility and thus substantiality which undermines not only a finding favorable to him but also the medical evidence submitted in his behalf. Applicant has testified that on May 16, 1991 he felt pain in his lower back while lifting a fifty pound onion sack. (Summary of Evidence, July 11, 1994, page 4). He reported the episode to his supervisor, Scott Bowers and he believes he was referred to a physician. (Ibid). In contrast to this testimony is the testimony of Terry Stevens who was employed as a warehouse supervisor at the time applicant claimed to have injured himself. The witness testified that there was no report of injury in May, 1991 nor did applicant complain of any back pain. (Summary of Evidence, August 4, 1994, page 3).

Likewise there is no medical evidence that applicant was in fact referred for medical attention following this "episode."

Applicant has also testified that he "... probably injured his back in September, 1991." (Summary of Evidence, July 11, 1994, page 6). This is rather vague and apparently a history was given that this injury was due to lifting a sack of onions. (Ibid, page 5).

Finally, applicant testified that he experienced harassment with a resulting stress which in turn produced chest pain, headaches, nervousness and upper and lower back pain. (See Summary of Evidence, July 11, 1994).

The judge is satisfied that there was no such pressure or harassment imposed upon applicant. Terry Stevens testified that he neither yelled at or used profanity

with applicant that he was not aware of any racial remarks made toward applicant of an offensive nature and applicant never complained of any emotional or physical problems while employed by Ralph's Grocery Company. (Ibid). It was Mark Munoz who initiated the action that ultimately resulted in applicant's termination of employment. Applicant refused to load a trailer after having been directed to do so by Mr. Munoz. Thereafter Mr. Stevens was called and he too instructed the applicant to load the trailer which applicant again refused to do. (Ibid, page 4). Mr. Stevens did not yell at the applicant, in fact, according to Mr. Munoz, "Mr. Stevens was very calm and used no profanity. Applicant seemed agitated an angry. His voice was elevated. He used an angry tone." (Ibid).

Applicant also has a parallel history that tends to undermine his credibility and the way he afforded his testimony. For example, according to his treating chiropractor, Victor Ambrosini, D.C., applicant was involved in automobile accident on August 24, 1988 sustaining injuries to his neck and shoulders with headaches. (See Defendant's Exhibit "E"). On July 1, 1991 applicant sustained an injury to his low back while at home. Dr. Ambrosini prepared a report dated July 2, 1991 reflecting this. (Ibid). Dr. Ambrosini prepared yet another report dated August 28, 1993 pertaining to an automobile accident of June 16, 1992 wherein applicant complains of stiff neck, low back. Interestingly, Dr. Ambrosini provides the following history in that same report:

"The patient [applicant] was involved in an automobile accident on 8/24/88. He was treated at this office for a period of fifteen weeks. He recovered with no permanent impairment whatsoever."

There is no history contained herein of any work related injury as asserted by applicant herein.

Dr. Larry Phillip Nims, Ph.D. reporting April 13, 1992 submits a report with no history of a thumb laceration or low back injury occurring at home.

Further, applicant was involved in concurrent employment with Gladstone Adult Residents apparently beginning in November, 1991. This employment also had its problems. Applicant was regularly written up for various deficiencies and eventually for failing to report in or show up for work. He was terminated from this position as well. (See Defendant's Exhibit "B").

The records of Olsten Staffing Services provide the further insight. Apparently applicant was employed on a temporary basis by Kraft but then in August 25, 1992 was involved in an altercation provoked by another employee ostensibly by referring to applicant in derogatory terms.

The judge is not persuaded that applicant has adequately demonstrated a causal relationship between Ralph's Grocery Company and the onset of his perceived medical problems. The judge is persuaded that this perception is simply an after-the-fact perception generated, perhaps, by some other concern. In light of this the judge is not persuaded that there has been a demonstration of any compensable events.

MEDICAL-LEGAL COSTS:

The judge is not persuaded that applicant has reasonably nor necessarily incurred expenses in an attempt to prove a contested claim and consequently, the lien of Pomona Plaza Civic Medical Group is disallowed.

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MEDICAL-LEGAL COSTS:

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As indicated above, the judge is not persuaded that applicant's perception is a credible or honest one but that his claims herein are generated by a post-termination dissatisfaction and not because of any truly perceived injurious episodes. In light of this the costs incurred by applicant were neither reasonable nor necessary and the above-identified lien claim must be disallowed.

In light of the finding that there has been no compensable event, the lien of the Employment Development Department is likewise disallowed.

In light of the above findings, the balance of the issues raised herein are deemed moot.



FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

FGB:mcc

cc: Law Office of Mitchell K. Jayson
Kegel, Tobin & Truce