

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. LBO 249305 & LBO 234207

ERNEST BUBIAS,

Applicant

v.

PACIFIC SCIENTIFIC;
THE TRAVELERS INSURANCE,

Defendants.

JOINT
Findings and Order

Law Offices of Ramon B. Pellicer Jr., attorney for applicant.
Law Offices of Kegel, Tobin, & Truce
by Terri L. Olsen, attorney for defendants.

An application having been filed herein; all parties having appeared, and the matter having been regularly submitted, the Honorable Cynthia A. Quiel, Workers' Compensation Judge, finds and orders as follows:

FINDINGS OF FACT

1. Ernest Bubias did not sustain injury to his left ankle arising out of and occurring in the course of his employment on February 20, 1991 (LBO 249305); nor did applicant sustain an injury to his right thumb arising out of and occurring in the course of his employment on January 28, 1991 (LBO 234207).
2. Defendant's appeal of the Decision & Order of the Rehabilitation Bureau, shall be granted.
3. The lien claim of Employment Development Department shall be disallowed.
4. The liens of Dr. DeJulio and First Western Medical Group have been settled and/or paid by defendants.
5. All other issues are moot.

ORDER

IT IS ORDERED that applicant take nothing by virtue of this claim.

IT IS FURTHER ORDERED that applicant is not entitled to any vocational rehabilitation services.

The lien of Employment Development Department is hereby disallowed.



CYNTHIA A. QUIEL
WORKERS' COMPENSATION JUDGE

Filed and Served by mail on: 10-25-94
On all parties on the
Official Address Record.
By: *Agatha Magaña*

CASE NOS. LBO 249305; 234207

ERNEST BUBIAS

v.

PACIFIC SCIENTIFIC; THE
TRAVELERS INSURANCE;

WORKERS' COMPENSATION
JUDGE: CYNTHIA A. QUIEL

INJURIES:
February 20, 1991
January 28, 1991

OPINION ON DECISION

INJURY AOE/COE:

It is found that applicant did not sustain an injury to his left ankle on February 20, 1991, as a result of his employment with Pacific Scientific. After observing the applicant's demeanor and listening to his testimony, I did not find the applicant credible or convincing. The applicant filed his claims after being laid off by the employer. He alleges an injury to his left ankle on February 20, 1991, which he claims occurred when he slipped on a wet floor. He claims he saw the doctor at Harriman-Jones, his private physician, the next day. He does not recall seeing a doctor before that time. He claims he lied to the doctor, because he was afraid he would lose his job.

The medical records of Harriman-Jones indicate, however, that applicant was first seen for an ankle problem on February 9, 1991. At that time he told the doctor that he injured his left ankle while getting out of bed a week prior to that date. He was seen again at Harriman-Jones for the same ankle problem on the day of his alleged injury, February 20, 1991. At that time the doctor specifically notes that the applicant denied any history of injury. He was diagnosed as having achilles tendonitis. He saw the doctor again on March 1, 1991, at which time the doctor noted that his condition was much improved and was resolving.

The applicant was terminated from his employment in March 1991. After his termination he sought counsel and was referred to Dr. Blasier at First Western Medical Clinic. Dr. Blasier notes that applicant denied having any previous on-the-job injuries. Applicant testified at trial on

cross examination that he had a prior work injury while working at Pacific Tubular. The applicant initially testified that that injury was only to his right leg and no other parts of body. After being confronted with the subpoenaed records, he admitted he also injured his back, neck and right knee at the time of his 1987 work injury. It is apparent from his reports that applicant told Dr. Blasier that he first saw a doctor for his left ankle problem after he was "injured" on February 20. It is apparent from reading the applicant's medical reports that the applicant gave a false history to all of the doctors that examined him. None of the applicant's examining doctors reviewed the Harriman-Jones records, none of them knew of his prior work injury, and none of them knew that he starting treating for his left ankle 11 days prior to the injury! None of the applicant's medical reports constitute substantial evidence.

I found the testimony of witness Elizabeth Roebuck to be credible and persuasive. The applicant told her that he hurt his ankle at home. He never complained about a work-related ankle injury or thumb injury. The applicant was laid off work along with 50 percent of the machine shop work force.

Applicant has failed to supply any medical evidence to support his claim of an injury to his right thumb on January 28, 1991. The only evidence is the flawed testimony of the applicant at trial wherein he stated that he hurt his right thumb on January 28, 1991, in the restroom. He didn't recall testifying at his deposition that he hurt the thumb at the time he fell on February 20. His memory was refreshed and then he recalled that testimony. He stated that he didn't report the thumb injury and didn't tell the doctors about it. Applicant was not a credible witness and there being no evidence other than applicant's own conflicting testimony, it shall be found that he did not sustain an injury to his right thumb on January 28, 1991.

APPEAL OF THE DECISION AND ORDER OF THE REHABILITATION UNIT:

The Rehabilitation Unit issued a Decision and Order on September 16, 1992, finding applicant to be a qualified injured worker entitled to vocational rehabilitation benefits. Defendants filed a timely appeal based on there being a good faith issue of injury AOE/COE. There being a finding that applicant did not sustain injury arising out of his employment, defendants' appeal is granted, and it is found that applicant is not entitled to any vocational rehabilitation services.

BUBIAS, Ernest
LBO 249305; 234207

LIEN CLAIMS:

There being no finding of injury, the lien of the Employment Development Department shall be disallowed.

The liens of Dr. DeJulio and First Western Medical Group have been previously settled and/or paid by defendants, and there are no other outstanding liens.

There being no finding of injury, all other issues are moot.



CYNTHIA A. QUIEL
Workers' Compensation Judge