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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

EMILIO COBEY,

*Applicant;*

BEVERLY HILTON HOTEL; CNA;  
ARGONAUT INSURANCE CO.,

*Defendants.*

Case No. MON 222626; 222627;  
238025 and 238026

**JOINT  
FINDINGS & ORDER**

STANLEY ODA  
Attorney for Applicant

KEGEL, TOBIN & TRUCE  
By: W. Joseph Truce  
Attorneys for Defendant (ARGONAUT)

STOCKWELL, HARRIS, WIDOM & WOOLVERTON  
By: Lawrence S. Mendelsohn  
Attorney for Defendant (RSKCO)

An application having been filed herein; all parties having appeared and the matter having been regularly submitted, the **HONORABLE FREDERICK I. GOLDSTEIN**, Workers' Compensation Administrative Law Judge, finds, and orders as follows:

**FINDINGS OF FACT**

1. Applicant, EMILIO COBEY, born, 6/21/28, while employed during the

period 8/1/96 to present as a banquet captain, Occupational Group 35, at Beverly Hills, California, by Beverly Hilton Hotel, claims to have sustained injury arising out and in the course of employment to his heart and psyche.

2. Applicant has failed to prove by a preponderance of the evidence that he sustained injury to his heart and psyche arising out of and in the course of his employment at the Beverly Hilton Hotel in Beverly Hills, California.

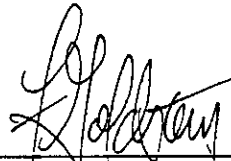
3. The medical-legal expense in regard to Dr. Gromis is disallowed since his report failed to provide an adequate history as described under Labor Code 4628.

4. Applicant incurred reasonable and necessary medical expenses payable by defendant in amounts to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents.

5. The balance of the issues are rendered moot by the finding of no injury of an industrial basis.

### ORDER

IT IS ORDERED that Applicant takes nothing from this filing.



**FREDERICK I. GOLDSTEIN**

**Workers' Compensation Administrative Law Judge**

Dated 12/23/99

Service by mail on parties as shown on  
Official Address Record:

By joe libre

8 12/23/99

MON 222626, 222627, 238025, 238026

EMILIO COBEY vs. BEVERLY HILTON HOTEL; CNA;  
ARGONAUT INSURANCE

JUDGE: HON. FREDERICK I. GOLDSTEIN

DATES OF INJURY: 9/91 TO 3/27/96; 8/1/96 to present

### OPINION ON DECISION

#### INJURY AOE/COE AND PARTS OF BODY INJURED

Applicant's claims that his heart attack which occurred on 3/27/96 was industrially caused. He found that the most stressful relationship was with his prior supervisor and Banquet Manager, Eliberio De Leon. However, this allegedly most severe stressor occurred during a period which ended in 1993 which is over three years prior to the applicant's coronary event. This is found to have been too remote in time.

Secondly, applicant's account of his relationship to Mr. De Leon is colored by hyperbole. Mr. Cobey claims that he was forced to do all of Mr. De Leon's paperwork since Mr. De Leon was totally illiterate. However, Mr. De Leon displayed in Court that he was fully capable of reading randomly selected passage from the prior summary of evidence. This cast doubt both on stress put on the applicant when he worked under Mr. De Leon as well as the applicant's credibility.

Applicant led his physicians to believe that his job duties on the date of his heart attack were particularly difficult. Dr. Gromis states in his January 12, 1998 report at page 2, "The patient states that on March 27, 1996, he had excessive stress at work." Despite telling Dr. Gromis that he worked two luncheons that day, cross-examination revealed that applicant only worked one light luncheon on the day of his heart attack and left at 3:00 p.m.. He had not worked the prior three days. Thus he was under conditions of minimal immediate job stress.

Dr. Gromis's report cannot be considered substantial evidence pursuant to Labor Code Section 4628. His history of the applicant's alleged job stress is cursory and conclusionary. Such report does not meet the standards to support a claim for an industrially caused heart attack.

Dr. Edward O'Neill has written a far more thorough report. However, his report also emphasizes the role of Mr. De Leon in the applicant's distress. The Court finds this interaction which was over three years prior to the heart attack too remote in time to be such a causative factor. The medical reports of Drs. Reynolds and Gillis which find the applicant's condition non-industrial are considered more persuasive. Dr. Gillis stated in his May 14, 1998 report at page 3, "Dr. O'Neill failed to address Mr. Cobey's hypercholesterolemia. Obviously, but for Mr. Cobey's hypercholesterolemia, he couldn't have had his atherosclerotic coronary artery cardiovascular disease. And except for that atherosclerotic coronary artery cardiovascular disease, there couldn't have been a heart attack."

Applicant has failed to prove by a preponderance of the evidence that he sustained a psychiatric injury which was predominantly caused by events in the workplace. The April 15, 1997 report of Dr. Jerome Franklin was relied upon by the Court and found more convincing than the psychiatric report of Thomas Curtis, M.D., dated April 13, 1998.

### MEDICAL-LEGAL EXPENSES & LIENS

The medical-legal expense in regard to lien of Dr. Gromis is disallowed since his report failed to provide an adequate history as described under Labor Code 4628. In regard to the balance of the medical-legal expenses, applicant incurred reasonable and necessary medical-legal expenses payable by defendant in amounts to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents.

### BALANCE OF THE ISSUES

The balance of the issues are rendered moot by the finding of no injury of an industrial basis.



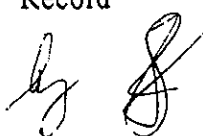
FREDERICK I. GOLDSTEIN

Workers' Compensation Administrative Law Judge

Dated: 12/23/99

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