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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. SBR 234473, SBR 234474
SBR 234476, SBR 234477

WILLIAM COWMAN,

Applicant,

vs.

**THE HARTZ GROUP; CONSTITUTION
STATE SERVICE COMPANY,**

Defendant(s).

**ORDER DENYING
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate, we will deny reconsideration.

We are, moreover, extending to the WCJ's finding on credibility the great weight to which it is entitled. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

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For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

J. W. [Signature]

I CONCUR,

[Signature]

Arlene M. Heath



DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

DEC 11 1995

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS.

pwp

Diane Douglas

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 0234473

WILLIAM COWMAN,

Applicant

vs.

HARTZ MOUNTAIN;
CNA INSURANCE COMPANY;
PERMISSIBLY SELF-INSURED,
c/o CONSTITUTION STATE SERVICES,

Defendants.

FINDINGS AND AWARD
AND ORDER

An Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE DENNIS ZIMMERMAN, WORKERS' COMPENSATION JUDGE, makes his findings and award and order as follows:

FINDINGS OF FACT

1. William Cowman, born December 23, 1931, while employed during the period February 19, 1992 to February 19, 1993, as a service merchandiser, at Riverside County, California, by the Hartz Mountain, then insured for workers' compensation liability by CNA Insurance Company up until July 17, 1992 and thereafter Permissibly Self-Insured, and adjusted by Constitution State Services Company, did not sustain injury arising out of and occurring in the course of employment to his back, both knees, both shoulders, both upper extremities, internal organs and psyche.

2. Defendant CNA Insurance Company, is ordered to adjust medical-legal costs with jurisdiction reserved in the Board with the issue of contribution from Constitution State Services reserved.

3. All other issues have been rendered moot.

AWARD

AWARD IS MADE in favor of WILLIAM COWMAN against HARTZ MOUNTAIN; CNA INSURANCE COMPANY; HARTZ MOUNTAIN, PERMISSIBLY SELF-INSURED, adjusted by CONSTITUTION STATE SERVICES COMPANY, of: a) Medical-legal costs as provided in Finding No. 2 herein.

WILLIAM COWMAN

SBR 0234473

ORDER

IT IS FURTHER ORDERED that applicant take nothing by reason of his Application filed herein.

SAN BERNARDINO, CALIFORNIA
Filed and Served by mail on: 7-18-55
On all parties on the
Official Address Record.
By: *B. Cooley*
B. Cooley


DENNIS ZIMMERMAN
WORKERS' COMPENSATION JUDGE

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 0234474

WILLIAM COWMAN,

Applicant

vs.

HARTZ MOUNTAIN;
CNA INSURANCE COMPANY;
PERMISSIBLY SELF-INSURED,
c/o CONSTITUTION STATE SERVICES,

Defendants.

FINDINGS AND ORDER

An Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE DENNIS ZIMMERMAN, WORKERS' COMPENSATION JUDGE, makes his findings and order as follows:

FINDINGS OF FACT

1. William Cowman, born December 23, 1931, while employed during the period March 31, 1992 to March 31, 1993; as a service merchandiser, at Riverside County, California, by the Hartz Mountain, then insured for workers' compensation liability by CNA Insurance Company up until July 17, 1992 and thereafter Permissibly Self-Insured, and adjusted by Constitution State Services Company, did not sustain injury arising out of and occurring in the course of employment to his back, both knees, both shoulders, both upper extremities, internal organs and psyche.

2. All other issues have been rendered moot or resolved in case SBR 0234473.

ORDER

IT IS FURTHER ORDERED that applicant take nothing by reason of his Application filed herein.

SAN BERNARDINO, CALIFORNIA

Filed and Served by mail on: 9-18-91

On all parties on the
Official Address Record.

By: *B. Cooley*
B. Cooley


DENNIS ZIMMERMAN
WORKERS' COMPENSATION JUDGE

CASE NOS: SBR 0234473, 0234474, 0234476, 0234477

WILLIAM COWMAN

VS. HARTZ MOUNTAIN;
CNA CASUALTY OF CA;
CONSTITUTION STATE
SERVICES

JUDGE: DENNIS ZIMMERMAN
DATED: SEPTEMBER 15, 1994

JOINT OPINION ON DECISION

Applicant has filed four separate cumulative trauma claims alleging injury to his back, both knees, both shoulders, both upper extremities, internal organs and psyche. The claimed injury dates are February 19, 1992 to February 19, 1993 (SBR 0234473), March 31, 1992 to March 31, 1993 (SBR 0234474), 1988 to March 31, 1993 (SBR 0234476), and January 1991 to March 31, 1993 (SBR 0234477).

In addition to applicant's claimed industrial injuries, he also claimed a non-industrial injury to his shoulders and left knee as a result of a slip and fall at Ralph's Grocery Store on June 20, 1992. In applicant's deposition taken on January 6, 1994 with respect to his lawsuit against Ralph's, applicant testified that prior to the slip and fall he did not have any problems with his left knee or shoulders (page 10, lines 25 thru page 12, line 7).

Dr. Hulse, in a March 3, 1993 report, takes a history of the slip and fall at Ralph's and opines that 60 percent of applicant's symptoms and disability were caused by the fall and 40 percent is due to pre-existing degenerative arthritic changes. In Dr. Hulse's notes dated February 3, 1993 he takes a history of the slip and fall and notes no previous problems with the left knee, left shoulder or upper back. Dr. Cunningham performed surgery on applicant's right knee on March 2, 1992 and in a report to E.D.D. indicates that the surgery was not occasioned by industrial injury. At trial, applicant testified did indicate in his May 7, 1993 deposition that his wrist problems were non-industrial, that he doesn't know why he marked down on a State Disability form dated December 9, 1988 that his problems were non-industrial. With respect to the January 6, 1994 deposition, applicant testified that he does not recall testifying that he did not have problems with his left knee or shoulders. He further testified that he was under so much stress at the time that he doesn't recall what he said in his deposition. At a later date, applicant testified he told his attorney to make corrections in the deposition, but it was not done. Applicant further that

the history contained in Dr. Hulse's reporting is inaccurate. In applicant's testimony on May 18, 1995, he stated that he doesn't remember telling Dr. Ediss his wrist problems were not job related. In applicant's testimony of July 31, 1995 he testified that he did tell Dr. Ediss his problems were not job related, but he did this because he needed treatment and he could get that treatment through his Union health plan. Applicant also testified he was aware Dr. Alviso said his problems were not work related, but that Dr. Alviso was willing to testify that they were work related. With respect to Dr. Cunningham, he filled out the insurance forms incorrectly and later corrected them.

The surgeries he had were performed on a non-industrial basis because they were emergencies and he needed to go through his health insurance rather than await authorization from the workers' compensation carrier.

Finally applicant testified that he had no recollection of answering interrogatories in his lawsuit against Ralph's. He then identifies his signature on the interrogatories but states he has no recollection of stating in those interrogatories he had no prior left knee problems.

It appears from the evidence that applicant structures his testimony depending on the circumstances. The Judge must therefore conclude that applicant is less than candid in his testimony and the testimony cannot be relied upon.

Turning to the medical evidence, Dr. Steiger, reporting for applicant, on January 11, 1994 examined applicant's wrists only. Dr. Steiger concludes that applicant's problems are due to industrial cumulative trauma, but his opinion is based upon history supplied to him by the applicant.

Dr. Jackson, in his April 13, 1994 report, finds that applicant has suffered an industrial injury to his psyche, but this is also based on history supplied by applicant.

Dr. Cunningham, in his December 21, 1993 report, states: "It is my opinion that Mr. William Cowman's work experience contributed significantly to the development of osteoarthritis of both his knees. His work involved frequent squatting and kneeling." This report is conclusionary and does not comply with Rule 10606 and is therefore not substantial evidence. Also, this report relies on applicant's history. Drs. Steiger, Jackson and Cunningham all rely on histories given by applicant and as indicated above, the Judge has concerns about applicant's forthrightness.

Dr. Fleming examined applicant's wrists and opined in his report on February 28, 1994 that his problems were not industrial. Dr. Savodnik, reporting on October 1, 1993, indicated that applicant did not suffer an industrial injury to his psyche.

Dr. Julian, reporting on April 19, 1993 in the field of orthopaedics, states on page 3 of his report that he noted Dr. Hulse's report and found it most interesting that applicant did not volunteer any information about the slip and fall at Ralph's. Dr. Julian, in his discussion of causation on page 7 thru page 9, points out the inconsistencies in applicant's history and the medical record and concludes that applicant's knee problems are not industrial.

Dr. Levister, reporting on July 9, 1993, concludes that applicant's gastrointestinal problems are related to anti-inflammatories taken for treatment for the knees, therefore, if the knees are not industrial, applicant's gastrointestinal problems are not industrial. There is no other reporting with respect to internal organs.

In reviewing Dr. Wall's July 27, 1993 report, it is noted that applicant did not tell Dr. Wall about his slip and fall at Ralph's. Applicant stated in Dr. Wall's history that he could not remember any specific injury to his right or left knee. However, Dr. Wall did review Dr. Hulse's report which did discuss the slip and fall. Dr. Wall opined that applicant's left and right knee problems were not the result of his work. Dr. Wall stated on page 9 of his report that with respect to applicant's left knee, 75 percent of applicant's difficulties were due to pre-existing degenerative changes and 25 percent due to the injury at Ralph's. In regard to the right knee, 95 percent of applicant's difficulties were due to non-industrial factors and 5 percent were due to aggravation due to the fall at Ralph's.

The medical reporting of Drs. Wall, Levister, Julian, Savodnik and Fleming are complete and persuasive, and based on that report it will be found that applicant did not suffer industrial injury in case numbers SBR 0234473, 0234474, 0234476, or 0234477.

WILLIAM COWMAN

SBR 0234473, ET AL

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Industrial injury having not been found, all other issues are moot except the issue of medical-legal costs. The Board file does not indicate that the medical-legal providers were noticed and therefore, defendants will be ordered to adjust medical-legal costs with jurisdiction reserved in the Board.



DENNIS ZIMMERMAN
WORKERS' COMPENSATION JUDGE

DZ:bc