

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

DAVID DELUCA,

Case No. LA 573091

Applicant,

vs.

FINDINGS AND ORDER

SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT, permissibly self-
insured, c/o ASSOCIATED RISK
SERVICES,

Defendants.

Martin Weinberger, attorney for applicant.

Kegel, et al., by Joseph A. Truce, attorneys for defendant.

The above-entitled matter having been heard and regularly submitted, the HONORABLE RICHARD J. REYNA, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. David Deluca, born June 7, 1945, while employed as an assistant inspector general, at Los Angeles, California, during the period January 4, 1984 to and including January 13, 1988, by Southern California Rapid Transit District, permissibly self-insured, c/o Associated Risk Services, did not sustain continuous trauma injury arising out of and occurring in the course of employment to his psyche and internal systems including hypertension as herein alleged; and that Labor Code section 3600, subdivision (8) precludes compensation when injury is caused by the commission of a felonious act for which applicant has been convicted.

2. The issues of self-procured medical treatment and medical-legal costs will be taken off calendar with jurisdiction reserved by the Board.

3. All other issues have been rendered moot.

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STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

ORDER

IT IS ORDERED that the issues of self-procured medical treatment and medical-legal costs are hereby taken off calendar.

IT IS FURTHER ORDERED that applicant take nothing further by reason of the Application for Adjudication of Claim filed herein on January 22, 1988.

DATED: OCTOBER 1, 1992

Filed and Served by mail
on all parties on the
Official Address Record

By: 

Faye Bolgs


RICHARD J. REYNA
Workers' Compensation Judge

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CASE NO.: LA 573091

DAVID DELUCA vs. SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT,
permissibly self-insured, c/o Associated Risk Services

WORKERS' COMPENSATION JUDGE: HONORABLE RICHARD J. REYNA

DATED: SEPTEMBER 23, 1992

OPINION ON DECISION

INJURY ARISING OUT OF AND OCCURRING IN THE COURSE OF
EMPLOYMENT:

Applicant alleges to have sustained a cumulative trauma injury to his psyche and internal systems including hypertension while employed from January 4, 1984 to January 13, 1988 by defendant. Defendant contends that applicant's injuries, if any, resulted from a criminal investigation that resulted in a felony conviction, and that Labor Code section 3600, subdivision (8), mandates that an injury caused by the commission of a felonious act is not compensable. Additionally, defendant contends that applicant's claim of injury is merely an after-the-fact rationalization, post-termination.

Labor Code section 3600, subdivision (8), states in pertinent part that liability for compensation shall exist against an employer for any injury sustained by his or her employment arising out of and in the course of employment where the injury is not caused by the commission of a felonious act by the injured employee, for which he or she has been convicted. The record established that on April 26, 1990, the applicant, David Bruce Deluca, was convicted of a violation of Penal Code section 487.1, felony grand theft. The evidence clearly established that applicant was terminated on January 14, 1988, from his position as assistant inspector general with defendant, as a result of the ongoing criminal investigation which ultimately resulted in the guilty plea and conviction for grand theft.

It must be said that applicant's felony conviction (and termination from employment with Southern California Rapid Transit District) was based on applicant's theft of large sums of money that was raised on behalf of charitable organizations, a crime of moral turpitude. Needless to say, applicant's credibility

is very much in issue. For the reasons discussed below, the Court finds that applicant is not a credible witness worthy of belief.

Applicant was examined by Dr. David S. David on April 21, 1988. In his report of June 9, 1988, Dr. David states that his review of applicant's medical records from Dr. Robert Kerr for the period July 11, 1980 to February 18, 1988, show that applicant's blood pressure readings were normal until January 13, 1988. (See report, p. 8, ¶ 6; p. 9, ¶ 3.) Dr. David states that applicant's blood pressure reading on January 13, 1988 was 170/110, and on January 20, 1988, applicant's blood pressure reading was 150/94, and normal with medication thereafter. In his report Dr. David states that applicant told him that a messenger came to deliver a short letter stating that applicant's services were no longer needed and that he was fired as of the end of the workday of January 13, 1988. (See report, p. 6, ¶ 9; p. 7, ¶ 1.) Conspicuously absent from Dr. David's report is mention of the district attorney's investigation of applicant's criminal activity and the district attorney's search pursuant to warrant of applicant's home on January 7, 1988.

Dr. Perry Maloff states in his report of May 23, 1988, that applicant informed him that his termination of January 13, 1988 was without cause. (See report, p. 1, ¶ 2.) Further in the report applicant states that he asked for the rationale behind his termination but had been given none to date. (See report, p. 10, ¶ 2.) Further along in the report applicant states that Southern California Rapid Transit District railroaded him on trumped-up charges. (See report, p. 12, ¶¶ 1-2.) Again, there is no mention of the district attorney's investigation of applicant's criminal activity in Dr. Maloff's report of May 23, 1988, and no mention of applicant's conviction for grand theft and his six months in jail, in Dr. Maloff's report of December 14, 1991.

It is apparent from the medical record that applicant intentionally misled his treating physicians by failing to inform them of the district attorney's investigation of his criminal activity and the subsequent conviction and sentence imposed. An expert medical opinion that rests on an erroneous medical history is not substantial evidence. (See *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358].)

The Court is persuaded by the report of Dr. Raymond Friedman, dated February 6, 1992. Dr. Friedman having all the facts and having examined applicant thoroughly, concludes that applicant did not suffer injury or disability from a

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mental or emotional perspective secondary to his employment with Southern California Rapid Transit District, and that applicant's allegations against the work place can best be understood as a retrospective re-creation of job stress, when none existed, in order to retaliate against the department for his termination.


Based on the lack of credible medical evidence of injury prior to January 1988; the misinformation and lack of candor by the applicant to his treating physicians; applicant's demeanor and lack of credibility at trial; the Court agrees with Dr. Friedman and finds that applicant did not sustain cumulative trauma injury as he has alleged, and that Labor Code section 3600, subdivision (8), mandates that an injury is not compensable when it is caused by the commission of a felonious act by the insured employee, for which he or she has been convicted.

MEDICAL-LEGAL COSTS AND SELF-PROCURED MEDICAL TREATMENT:

Lien claimants were not present at trial and were not served with notice of intent to submit this matter for decision, therefore, the medical-legal costs and treatment liens are ordered off calendar pending the filing of defendant's motion to disallow liens and the lien claimants' response thereto.

ATTORNEY FEE:

Applicant shall take nothing therefore no lien for attorney fee is allowed.


RICHARD J. REYNA
Workers' Compensation Judge

RJR:fb