

WORKERS' COMPENSATION APPEALS BOARD

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STATE OF CALIFORNIA

FRANGIS FORD,

Case No. VNO 475074  
VNG 462706

*Applicant*

vs.

ROBINSON'S MAY, SELF-INSURED,

OPINION ON DECISION  
AND  
FINDINGS AND AWARD AND ORDER

*Defendants.*

Roland, Pennington & Trodden by Gregg A. Pennington,  
Attorneys for applicant

Kegel, Tobin & Truce by Stephen W. Cooper,  
Attorneys for defendants

OPINION ON DECISION

Applicant in this case seeks Award on account of several alleged industrial injuries, each of which must, because of the nature of things, be treated separately. She has claimed industrial continuous trauma injury, by an application filed December 17, 2002, to have occurred over the period of November 1, 1997 to November 7, 2002 to both arms, neck, back, both knees, and in the nature of fibromyalgia. In addition, a specific injury is claimed to the right knee to have occurred on September 5, 2000.

The least controversial issue is of the specific right knee injury, which appears not to have been seriously treated by either party. However, based upon Applicant's uncontradicted testimony at trial it should be found that she did, indeed, suffer a rather minor right knee industrial injury on September 5, 2000, the effect of which having been altogether overlooked by both parties, which resulted in neither temporary disability nor permanent disability. There is no medical support for the necessity of future medical care. Such findings should be made. Consideration of the other alleged industrial injuries, however, require considerably more analysis.

On the whole, it must be said that I formed the impression that this applicant made every effort to minimize the effects of prior injuries, many to the same parts of body as were raised in these proceedings, and to maximize the effects of the injuries on which these proceedings were based. In this regard, it is notable that in 1991, she maintained a workers' compensation case in which injuries were alleged to her neck and upper back, for which she had medical care for

1 approximately one and one-half years, though she said that once the case was resolved she was in  
2 perfect health by the time she went to work for this defendant in November 1997.

3 Thereafter, in July, 1999, she was injured as a result of a public bus accident in which she  
4 was a passenger, again for which she received medical care, including physical therapy, from  
5 approximately one week thereafter until at least October, 1999, principally directed to a hand, her  
6 neck, and low back. The physical therapist reported providing treatment to the neck, the entire  
7 back area and the shoulders. Her treating physician for that incident, Dr. M. Heikali, assessed  
8 Applicant's condition to include multiple soft tissue injuries, neck sprain, shoulder sprain,  
9 bilateral carpal tunnel syndrome, mid-back sprain, and among other things not pertinent here,  
10 symptoms affecting her right thigh. Splints for carpal tunnel syndrome were advised. It is of  
11 considerable significance to note that Dr. Heikali, according to testimony, diagnosed carpal  
12 tunnel syndrome in either August or October, 1999 (though Defendant's Exhibit "D" indicates  
13 the diagnoses having been made in August, 1999), and opined that condition had nothing to do  
14 with the bus incident but was caused repetitive activities, for which Dr. Heikali recommended a  
15 change of work duties.

16 Therefore, it would appear that the injuries Applicant now claims to have occurred  
17 industrially to her neck, shoulders, and both upper and lower back in fact occurred as a result of  
18 the public bus accident, the affects of which were reported by Dr. Heikali in his "final  
19 assessment" of August 25, 1999. Accordingly, it should be found that injuries to this applicant's  
20 neck, shoulders, and entire back were not of industrial origin.

21 Finally, there are the matters of the claims of fibromyalgia and carpal tunnel syndrome.  
22 Regarding the first, a review of the medical evidence leads, I think, to the conclusion that this  
23 applicant, presumably by virtue her lengthy life experience, developed an arthritis condition  
24 throughout the years, but that the medical opinion as to the existence of fibromyalgia seems to be  
25 based more likely on the absence of specific clinical or other diagnostic findings and the fact of a  
26 plethora of complaints. Nor does the medical evidence submitted make the causal connection  
27 between work activities and the development of fibromyalgia. It should therefore be found that  
28 fibromyalgia, if it exists in this applicant, was not a result of work activities.

29 Then there is the matter of carpal tunnel syndrome, in the consideration of which  
30 substantial legal argument rests upon only a few, though substantial, facts. *Labor Code § 5405*,  
31 in pertinent part, terminates the right to institute a proceeding for the collection of compensation  
32 one year from the date of (alleged) injury. *Labor Code § 5412* describes the date of a cumulative  
33 trauma injury to be the date on which the applicant first suffered disability (need for medical  
34 care, temporary disability, or loss or reduction of earning capacity) coincident with either  
35 knowing, or in the exercise of reasonable diligence to should have known, that the disability was  
36 caused by employment activity. Application in this case alleging continuous trauma injury in the  
37 nature of carpal tunnel syndrome was filed on December 17, 2002.

38 However, according to the medical evidence at hand, Dr. Heikali, in his final assessment  
39 of August 25, 1999, incident to the public bus incident, diagnosed carpal tunnel syndrome and  
40 recommended the use of wrist splints. Applicant's testimony on the point was to the effect that  
41 Dr. Heikali told her in either August or October, 1999, that the wrist condition had nothing to do  
42 with the bus incident but was caused by repetitive activities, and Dr. Heikali, apparently at that  
43 time, recommended that Applicant change her work duties so as to avoid the necessity of

1 repetitive activity with her hands. While she later contradicted that testimony, I think the greater  
2 probability of truth, by reason of the agreement of the Dr. Heikali medical comments of August,  
3 1999 and the testimony of his advice to Applicant in 1999, is that Applicant was aware that she  
4 maintained a hand and wrist disability in August 1999, that it was not occasioned by the bus  
5 incident, that it was occasioned by repetitive work activities, and that treatment (wrist splints)  
6 was at that time accorded. Further, I think it can reasonably concluded that Applicant was aware  
7 of workers' compensation rights as may arise from work-incurred injuries since she had  
8 maintained such a proceeding in 1991.

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10 Were one to consider the first coincidence of disability and knowledge to have been in  
11 August 1999, it is clear that three years and some four or five months expired before filing. If  
12 one uses the October, 1999 date, it is equally clear that three years and some two or three months  
13 had expired by the date of filing. It is not in evidence that any benefits were paid to this applicant  
14 on account of the claimed injuries. Accordingly, it must be found that prosecution of the  
15 proceeding to collection compensation on account of industrially caused carpal tunnel syndrome  
16 is barred. On that account, Applicant should, therefore, take nothing.

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18 Considering the foregoing, the issues of temporary disability, permanent disability,  
19 apportionment, and reimbursement self-procured medical care costs are moot, as is the  
20 presumption of compensability. Treatment liens without industrial injuries to treat should be  
21 disallowed.

22  
23 Applicant has, however, incurred medical-legal expense in her effort to prove a contested  
24 claim, which cost should be reimbursed in amounts to be adjusted between parties or determined  
25 in further proceedings.

26  
27 There is no fund from which to pay attorney fees.

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29 Let Award and Order issue accordingly.

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31 The above-entitled matter having been heard by and submitted for decision to the  
32 Honorable SAMUEL L. SOSNA, JR., Presiding Judge, decision is made as follows:

#### 33 34 FINDINGS OF FACT

35  
36 1. Francis Ford, born January 5, 1945, while employed as a Manager/Salesperson, on  
37 September 5, 2000, sustained injury to her right knee, though during the period November 1,  
38 1997 to November 7, 2002, at Los Angeles, California, by Robinson's May, not to her neck,  
39 shoulders and entire back, in the nature of fibromyalgia or carpal tunnel syndrome, arising out of  
40 and occurring in the course of employment.

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2. At the time of injury, the employer was self-insured.

4. The injury caused neither temporary disability indemnity nor permanent disability to the right knee.

5. The issues of temporary disability, permanent disability, apportionment, and reimbursement self-procured medical care costs relative to other alleged injuries are moot.

6. Reimbursement of self-procured medical treatment costs should be disallowed.

7. Further medical treatment is not required to cure or relieve from the effects of the injury to her right knee.

8. Applicant reasonably, actually and necessarily incurred expense to prove a contested claim, payable in amounts to be adjusted by the parties or determined in further proceedings.

9. There is no fund from which to pay attorney's fees.

A W A R D

AWARD IS MADE in favor of FRANGIS FORD against ROBINSON'S MAY as follows:

(a) Reimbursement of medical-legal expenses as set forth in Finding 8 above.

O R D E R

IT IS ORDERED that Applicant that nothing further.

DATED: *Aida Diaz*  
Service by mail on parties  
as shown on the Official Address  
Record.  
BY: *Aida Diaz*

*Samuel L. Sosna, Jr.*  
SAMUEL L. SOSNA, JR.  
PRESIDING JUDGE, WCAB NOV 30 2004

A PETITION FOR RECONSIDERATION FROM THIS DECISION SHALL BE FILED ONLY AT THE VAN NUYS DISTRICT OFFICE 4 OF THE WORKERS' COMPENSATION APPEALS BOARD.