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**STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD**

MARCOS GOMEZ,

Applicant

vs.

EL TORITO RESTAURANT;
TRAVELER'S INSURANCE COMPANY,

Defendants.

Case No. MON 147279

FINDINGS & ORDER

An application having been filed herein and all parties having appeared, resulting in the matter being regularly submitted for decision, the Honorable William J. Ordas, Workers' Compensation Judge finds and orders as follows:

FINDINGS OF FACT

1. Applicant sustained injury to his left hand by cutting his long finger with a knife. He was in the course and scope of his employment when injured even though he had clocked out of work as he was cutting lettuce for the employers benefit. However, applicant did not sustain any injury to his neck and back, or any other part of his body, as a result of a specific injury on 6/20/91, the alleged injury in April 1991, or by reason of cumulative trauma to any part of his body.

2. Applicant did not incur reasonable and necessary self procured medical treatment or medical legal expense with any physician associated with Alvarado Pain Control Center, Psychological Health Center, Western Translation Services, or Dr. Kenneth Gordon.

3. Where defendant has paid a portion of alleged medical legal expense to Alvarado Pain Control Center and where such medical legal expense is disallowed Labor Code Section 4622(a) applies and the court is required to order reimbursement. The sums involved are set forth in the order below.

ORDER

The liens of Alvarado Pain Control Center, Psychological Health Center, Western Translation Services, Dr. Kenneth Gordon, are denied.

Under Labor Code Section 4622(a) Alvarado Pain Control Center is ordered to reimburse Travelers Insurance Company the sum of \$2,101.25. The transmission of this money shall be made in care of Steven M. Green, Esq. at the law firm of Kegel, Tobin & Truce and marked with the name of the applicant, the name of the defendant and insurance company, for monitoring of proper payment.

DATED: 3-11-94



WILLIAM J. ORDAS
Workers' Compensation Judge

Service by mail on parties as shown on Official Address Record effected on above date.

By 
D. THRASH

MARCOS GOMEZ
MON 147279

CASE NUMBER: MON 147279

MARCOS GOMEZ

VS.

EL TORITO;
TRAVELERS INSURANCE CO.

JUDGE:

WILLIAM J. ORDAS

DATE OF INJURY:

6/20/91

OPINION ON DECISION

Applicant did sustain a cut to his finger while working for El Torito Restaurant on 6/20/91 and for which he was entitled to, at the very most, two weeks off from work because of his cut finger. The report of Dr. Siebold as well as the records from Tarzana Hospital are substantial evidence to support this opinion.

There never was any specific injury in April 1991 or any cumulative trauma injury of any type.

In looking at the reports from Alvarado Pain Control Center there really was no treatment for the finger cut and it only receives brief passing mention in the reports. It is the court's opinion that there was not even any need to take an x-ray of the finger one week after the cut. All of the initial medical legal reports claimed by Alvarado Pain Control Center and Psychological Health Center were performed before the employer had notice of a contested claim involving the neck, back, and psyche.

After the initial reports these same entities provided medical treatment and became treating physicians and their reports fall under the duties of a treating physician and are not medical legal expense. Therefore, since the initial reports do not qualify as medical legal expense and where there was no injury to the parts of the body actually treated Alvarado Pain Control Center and Psychological Health Center, as well as Western Translation Services, can not receive payment for any reason in this case.

Defendant's petition to recover monies paid to Alvarado Pain Control Center has merit under Labor Code Section 4622(a). Alvarado Pain Control Center shall reimburse defendant in the amount of \$2,101.25 as Alvarado has not objected to the amount.

As to Dr. Gordon, he allegedly performed medical legal evaluation for the eyes and then later provided treatment. Defendant had no notice of a claim to the eyes by reason of cumulative trauma. A general claim form just listing all parts of the body is not sufficient notice of a contested claim. Therefore, Dr. Gordon's initial report fails as medical legal expense. In the alternative, in the court's opinion, Dr. Gordon's reports are not substantial evidence of injury. Dr. Gordon's report speaks mainly of possibility and not medical probability. In addition, merely having a brief history of exposure as a dishwasher is insufficient. There is not even a real statement that the heat and steam from the dishwasher actually went into his eyes on a continual basis. Based upon my experience as a workers compensation judge having heard testimony in at least ten cases involving dishwashers not all dishwashers, even using steam equipment or hot water equipment, are exposed to substantial amounts of steam. Steam exposure depends upon the working conditions and not a just a blank statement by the injured worker. It is therefore found that there is no substantial evidence to support injury to the eyes in his case.

DATED: 3-11-94

W. J. Ordas
WILLIAM J. ORDAS
Workers' Compensation Judge

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

By: *D. Thrash*
D. THRASH

MARCOS GOMEZ
MON 147279

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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

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Case No. MON 147279

MARCOS GOMEZ,
Applicant,
 vs.
 EL TORITO RESTAURANT,
 TRAVELERS INSURANCE COMPANY.
Defendants,

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.

For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration be, and it hereby is, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

Diana Marshall

I CONCUR,

[Signature]
Enhad D. Garcia

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

MAY 25 1994

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

vsr *Diana Douglas*



4-1-94
SMG