

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. LA 690306 (MF) & LA 690307

ROBERTO GOMEZ,

Applicant

vs.

LOBER INDUSTRIES,
Permissibly Self-Insured,

Defendants.

**JOINT
FINDINGS AND ORDER**

Rusty Morrison, attorney for applicant.
Kegel, Tobin & Truce, by Jeffrey E. Weiss, attorneys for defendants.

The above entitled matter having been heard and regularly submitted, the HONORABLE JOHN D. YOUNG, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Roberto Gomez, born November 18, 1966, while employed on September 16, 1992 and during the period of February 1992 through November 1992, as a color mixer, Group 1, at Gardena, California, by Lober Industries, permissibly self-insured, did not sustain an injury arising out of and occurring in the course of employment to his back and right clavicle (LA 690306) or psyche (including headaches and sleeping problems)(LA 690307).
2. Any and all self-procured medical treatment is disallowed in its entirety.
3. Medical-legal costs are ordered paid, adjusted or litigated by defendant.
4. The Workers' Compensation Appeals Board retains jurisdiction over all liens.
5. All other issues are moot.

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STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

ORDER

IT IS ORDERED that the applicant take nothing by reason of the claim asserted herein.


IT IS FURTHER ORDERED that the issue of self-procured medical treatment be and it hereby is disallowed.

IT IS FURTHER ORDERED that defendants pay, adjust or litigate medical-legal costs.

Dated: April 21, 1995

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

By: Angie Gonzalez Date: 4/25/95
Angie Gonzalez



JOHN D. YOUNG
WORKERS' COMPENSATION JUDGE

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ROBERTO GOMEZ

vs. LOBER INDUSTRIES,
PERMISSIBLY SELF-INSURED

DATE OF INJURY:

9/16/92; 2/92-11/92

WCAB JUDGE:

HON. JOHN D. YOUNG

OPINION ON DECISION

INJURY AOE/COE:

The burden of proof to show industrial injury is on the applicant. Labor Code section 3202.5. The applicant has not met that burden. The court does not find the applicant credible.

At trial the applicant said he reported the September 16, 1992 specific injury to his immediate supervisor, Elias Quintanilla. However, the applicant told Dr. Ezra, the defense psychiatrist, that he never reported the specific injury to the (general) supervisor, Mr. Estrada, "nor to anyone else at the company." (Dr. Ezra, March 9, 1993, page 10.)

At trial, the applicant said there were no witnesses to the specific incident. However, the applicant told Dr. Silver, the defense orthopedist, that the incident was witnessed by his supervisor Mr. Quintanilla. (Dr. Silver, March 8, 1993, page 2.)

At trial, the applicant said that he moved 400 to 500 pound barrels of paint always by himself, for about one hundred times during his employment. However, the applicant told his initial chiropractor, Dr. Ghodousi, that he usually had someone to help him move the 400 to 450 pound paint containers. (Dr. Ghodousi, December 2, 1992, page 1.)

Dr. Ghodousi indicated that the applicant reported the specific injury to his supervisor (Mr. Quintanilla, the court infers) "who in turn reported it to the manager" (Mr. Estrada, the court infers). This chiropractor also said that the applicant quit his job because he was "in a lot of pain." However, at trial, the applicant testified that Mr. Quintanilla refused to report the injury to Mr. Estrada. Moreover, nothing was said at trial about the

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applicant quitting his job because of pain. Instead, the applicant told Dr. Ezra that he quit his job because he felt "pressured" by Mr. Estrada and because he was "fed up". (Dr. Ezra, March 9, 1993, page 3.) Dr. Silver was told by the applicant that the applicant quit "because of problems he was having with his supervisor." (March 8, 1992, page 3.) Also, the "personnel action form" of the applicant's personnel file indicates that the applicant quit on November 6, 1992 because he was "unhappy with his supervisor and decided to resign." A "notice of change in employee status" form dated December 10, 1992 and signed by the applicant also makes reference to his being "unhappy" with his supervisor. There is no mention of any work related injury in the applicant's personnel file.

Incidentally, the applicant testified at trial that he did not have any access to forklifts or pallet jacks to move the barrels. He said he had to move the barrels by hand. Mr. Estrada, the general supervisor, testified that there was equipment to move the barrels onto the pallets and forklifts were used to move the barrels already on the pallets.

There are too many inconsistent statements made by the applicant for the court to accord any credibility to him. The court finds that the applicant did not sustain any specific industrial injury to his back and right clavicle on September 16, 1992 and did not sustain any cumulative trauma from February 1992 through November 1992 to his psyche (including headaches and sleeping problems).

TEMPORARY DISABILITY; PERMANENT DISABILITY:

Even if the applicant did sustain any kind of injuries as alleged, the court finds that there are no periods of temporary disability and that there is no permanent disability. The court finds that the March 9, 1993 psychiatric report of Dr. Ezra and the March 8, 1993 report of Dr. Silver to be much better reasoned and much more credible than any of applicant's medical exhibits.

APPORTIONMENT:

There is no basis for apportionment.

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FUTURE MEDICAL TREATMENT:

There is no future medical care needed on an industrial basis, as per Dr. Ezra and Dr. Silver.

SELF-PROCURED MEDICAL TREATMENT; MEDICAL-LEGAL COSTS; LIENS:

Any self-procured treatment is hereby disallowed.

Defendants are to adjust or litigate medical-legal liens with all defenses reserved.

The Workers' Compensation Appeals Board retains jurisdiction over all liens.

ATTORNEY FEES:

There are no attorney fees payable.

Dated: April 20, 1995



JOHN D. YOUNG
Workers' Compensation Judge
Workers' Compensation Appeals Board

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Official Address Record.

By:  Date: 4/25/95
Angie Gonzalez