

WJT

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. 89 BGN 0140412, BGN 0140413

FERNANDO GONZALEZ

Applicant,

vs.

ALLIED SIGNAL CORP./AUTO. DIV.,
TRAVELERS INSUR. CO.
Defendants.

FINDINGS & ORDER

The matter having been heard and regularly submitted for decision, the Honorable Jules Greenberg, Workers' Compensation Judge, Finds, Awards and Orders as follows:

FINDINGS AND ORDER

Appeal from Decision and Order of the Rehabilitation Unit.

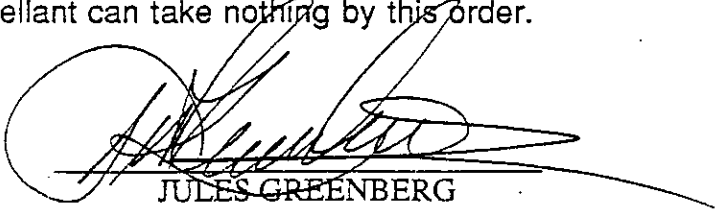
FINDINGS OF FACT

1. An Order and Decision of the Rehabilitation Unit issued on 6-22-94, that the injured worker was not entitled to additional services.
2. Appellant, injured worker, was not a credible witness.
3. Appellant, failed to prove by preponderance of the evidence why the Decision and Order of the Rehabilitation Unit should be overturned.

ORDER

The Decision and Order of the Rehabilitation Unit was proper and based on these Findings and Opinion herein, appellant can take nothing by this order.

Dated: 1- -96
Filed and Served by mail
On parties as shown on
Official Address Record.
By: ug



JULES GREENBERG
WORKERS' COMPENSATION JUDGE

Served By: *[Handwritten Signature]*
Date: JAN 22 1996

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. 89 BGN 0140412, BGN 0140413

FERNANDO GONZALEZ

Applicant,

vs.

ALLIED SIGNAL CORP./AUTO. DIV.,
TRAVELERS INSUR. CO.

Defendants.

FINDINGS & ORDER
132(a)

The matter having been heard and regularly submitted for decision, the Honorable Jules Greenberg, Workers' Compensation Judge, Finds, Awards and Orders as follows:


FINDINGS OF FACT


1. The applicant did prove that there was a prima facie act of discriminatory firing.
2. The employer did rebut the Finding #1, by a business realities defense.

ORDER

Based on Finding #2 and the opinion on decision herein, applicant be and hereby is ordered to take nothing.

Dated: 1- -96
Filed and Served by mail
On parties as shown on
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By: ug


JULES GREENBERG
WORKERS' COMPENSATION JUDGE

DATE Served : JAN 22 1996
By: 

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CASE NO. 89 BGN 0140412, 0140413

FERNANDO GONZALEZ

v. ALLIED SIGNAL CORP. AUTO. DIV.,
TRAVELERS INSUR. CO.

DATE OF INJURY:

5-2-89 to 5-3-90

WORKERS' COMPENSATION JUDGE

JULES GREENBERG

OPINION ON DECISION (Rehab. Appeal)

The matter was consolidated to be heard on all issues presented including the appeal from the Rehabilitation Unit, the 132(a) petition and the period of temporary and total disability alleged to extend from 5-2-89 to 5-3-90. I address the appeal from the Order of Rehabilitation Unit first. For the sake of this formal opinion I shall put forth the burdens placed upon the parties. As you are aware, the administrative agency's decision and order, are to be accorded great weight. Therefore, the burden is placed upon applicant as appellant, to show why it should be set aside.

In fairness to the appellant the board denied defendant's motion (see page 3 line 8 of the MOH/SOE) that testimony had failed to present a prima facie case. However, in considering all of the testimony including that from the appellant and his former Rehabilitation Counselor, Mr. Stuart Glazer, this picture emerged: The appellant was not a credible witness on his own behalf. Mr. Glazer, however, was credible and able to accurately depict the events that took place during the evaluation phase, rehabilitation plan phase and the placement phase of the services offered.

The job market was not very good in the area chosen by appellant. He did do competently in the testing for this area (jewelry repair) for instance in the manual dexterity tests. The appellant had one and only one goal in mind. He had one mindset and was motivated towards accomplishing only one plan of vocational training, which was jewelry repair. It was

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Glazer's professional opinion that had he tried to channel appellant into any other form of training, appellant would have consciously or unconsciously destroyed the plan. Appellant insisted he wanted his cousin to provide the training. Initially both the defendant and Glazer were against this plan, preferring formal schooling over the training by a family member. Since the cost savings could be as high as one third, the defendant and counselor, conceded the point. Glazer did counsel appellant that he could only hope to earn starting salaries in the \$6.00 to \$9.00 range, and that finding those would not be easy. The appellant insisted that his "cousin" Manuel Padilla, who would train him would get his a full time position after training. Upon completion of the training Padilla offered appellant a job as promised but at minimum wage. Appellant balked stating he could and should earn \$8-\$10 per hour. The defendant intervened and offered additional compensation plus \$100/month for parking expenses. The offer was rejected by appellant. He was offered additional help by Glazer, but the market (as shown by the market survey and Glazer's testimony) was extremely poor that Spring and Summer of 1992.

Appellant's testimony is not credible and was impeached with respect to the following material issues. He was not informed by Glazer of starting salaries in the \$6 - \$9 range. A labor market survey was prepared by Glazer which showed this to be the correct figure. On 5-8-92, the day the survey was prepared and sent to the defendant, Glazer visited appellant in his home, to discuss the survey and the starting salary ranges indicated. Appellant's testimony is that defendant did not offer him additional money to augment his starting salary with Padilla, nor did they offer him \$100/month for 2-3 months to help him get started and pay for parking. The testimony of Glazer is that on 1-6-93, after the training had ended and appellant was balking at accepting Padilla's offer to work at minimum wage, defendant made an offer to "sweeten the pot" by additional funds for compensation/parking.

The appellant, even with assistance of Respondent was never able to secure employment in the jewelry repair business. The expression used in medicine is: "The operation was a success, but the patient died!" It is indeed an unfortunate set of circumstances for all involved, especially the appellant. After training was started according to Glazer, The market for beginning jewelry repair persons took an even further plunge. Appellant's story is a perfect example to bolster another old adage that: "A bird in hand is worth two in the bush".

I cannot find grounds based on the above to disturb the Decision and Order of the Rehabilitation Unit and the Rehabilitation Consultant. The appellant's petition is denied.

TEMPORARY & TOTAL DISABILITY - On 5-3-91, the parties at this time of trial with respect to the case-in-chief, listed an issue as "Nature and extent and duration of disability including a claim for temporary disability as follows: For the period of time 5-3-89 to 5-2-90, earnings were stipulated to as \$337.60. The E.D.D. had provided benefits of \$10,244.00 covering that same period of time at the rate of \$197.00 per week. It is defendant's contention by petition for reconsideration that payment of total and temporary disability for this period is not born out by the existing record beyond November of 1989. The medical evidence was again received. The applicant's physician Dr. Latteri did in fact find him P & S on 6-26-89.

The applicant testified that he last worked on 5-3-89 and began receiving State Disability Benefits thereafter. The claim for this entire period until 5-2-90, was made in case No. 89 BGN 0140413. The question is, what medical evidence is there of total and temporary disability beyond Dr. Latteri's report of 6-26-89, case No. 89 BGN 0140412. The only possible report that would support benefits to that point or longer would be the defendant's own Dr. Mark Mandel. E.D.D.'s certification reports, show only an initial one on 5-2-89 from Dr. Latteri and nothing thereafter. Dr. Mandel opined in a lengthy report that applicant was permanent and stationary "now". Then in another section of the report he stated, on page 6:

"It is felt that the patient became permanent and stationary approximately six months after he stopped working for Allied Signal Corp. namely in approximately November 1989".

As defendant pointed out, this is the last date by any physician in reference to the injury in case BGN 0140412 which could support a finding of temporary and total disability.

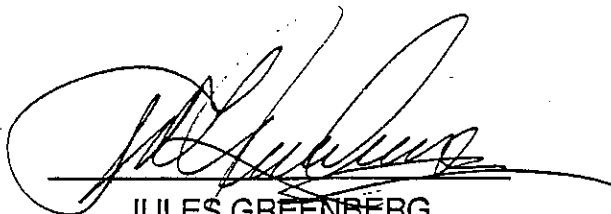
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The WCJ already recommended to the board after review amendment of Finding of Fact #5 in case BGN 0140413. The board, however, did rescind the F & A rather than making the amendment although they incorporated the recommendation by reference into their opinion. Because of the above, new Findings and Awards had to be made.

The new Findings and Award for 89 BGN 0140413 was made on 7-28-94. The other F & A was to issue after the Findings and Opinion on the 132(a) action. That 132(a) opinion issued also on 7-28-94, but for reasons unknown, did not include the Findings and Order. The opinion was not in appellant's favor, but an order should have issued.

Now that the rehabilitation case has been decided, the entire matter can be served on the parties covering all cases (case- in-chief, 132(a) action and appeal from Rehabilitation Unit).

1- -96
JG/ug


JULES GREENBERG
WORKERS' COMPENSATION JUDGE

DATE SERVED : JAN 22 1996
By: *[Handwritten Signature]*