

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

PGS

**JILL GUENTHER,**

*Applicant,*

vs.

**NESTLE U.S.A./CARNATION COMPANY,  
CONTINENTAL INSURANCE, CO.,**

*Defendants.*

Case Nos. **VNO 0344324 (MF)**  
**VNO 0344345**  
**VNO 0344346**  
**VNO 0344474**

**DECISION,  
FINDINGS & ORDERS**

LAW OFFICES OF JACOB B. BORENSTEIN

By: **Jacob B. Borenstein, Esquire**  
Attorney for Applicant

LAW OFFICES OF KEGEL,  
TOBIN & TRUCE

By: **Preeti G. Shah, Esquire**  
Attorneys for Defendant

EMPLOYMENT DEVELOPMENT DEPARTMENT

By: **Laura Michaelson, Hearing Representative**  
Lien Claimant for E.D.D.

\* \* \* \* \*

**OPINION ON DECISION**

**AOE-COE:**

Based on a review of the entire record, the credible testimony of Robert Mason and Paulette Powell, and the better reasoned and more persuasive medical reports of the Glaser Forensic Group and Dr. Miller, no injury arising out of and in the course of employment is found with regard to the four injury allegations.

Although it is believed that Mason was unhappy with applicant's work performance, as described in his testimony, applicant's perception that he was interested in getting her fired or that he held some particular animosity towards her is not born out by the credible testimony or evidence. In fact, he authorized an earthquake repair loan for applicant, agreed to have ~~her transferred to another job within the company after it became apparent~~ that they could not work together, agreed to an extension of her leave of absence when failure to agree would have resulted in her termination, and sent her two friendly notes when she was out ill. Labor Code § 3208.3 (b) (1) is applicable to the psychiatric claim in regard to both the actual events of employment portion and also as to the portion regarding preponderance of the evidence (see reports from the Glaser Forensic Group).

Applicant's internal medical injury allegation is not found to be industrial based on the history of preexisting disability as described in the record and the reports of Dr. Miller. Applicant's various disabilities were in existence prior to her alleged work stress and are found not to have been lighted up or aggravated by work stress.

**Labor Code § 5401 and Labor Code § 5402:**

No presumption of injury is found as applicant's testimony is not determined to be credible and her reports of work stress were not accompanied by reports of injury. In fact Powell testified that applicant denied industrial injury when questioned about her desire to file a workers' compensation claim.

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**Labor Code § 3600 (a) (10) and Labor Code § 3208.3 (e):**

These termination defenses are found to be inapplicable as there are exceptions to both under Labor Code § 3600 (a) (10) (B) and Labor Code § 3208.3 (e) (3) respectively.

**Credit or Estoppel:**

Defendant submitted no evidence on this issue and, therefore, no first party credit or estoppel is found.

**Liens:**

Based on a review of the entire record, applicant is awarded her medical legal liens to be adjusted by defendant for payment.

Based on the finding of no injury arising out of and in the course of employment, the medical treatment liens and the Employment Development Department lien are denied.

**Other Issues:**

All other issues are **moot**.

**FINDINGS**

1. No injury arising out of and in the course of employment is found.
2. Defendant is found liable for the adjustment of medical legal expenses with jurisdiction reserved to the Workers' Compensation Appeals Board.

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ORDERS

1. **IT IS ORDERED** that applicant take **NOTHING**.
2. **IT IS ORDERED** that defendant adjust for payment the medical legal expenses.



MARK S. FELDMAN

Workers' Compensation Administrative Law Judge

Service by mail on August 30, 1999,  
on all parties as shown on the  
Official Address Record.

By: Antonio Magtal  
Antonio Magtal

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