

MPM

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

~~545-14-3519~~

ISAAC HERNANDEZ,

Applicant,

vs.

ANAHEIM FOUNDRY;
COMCO MANAGEMENT,

Defendants.

Case No. AHM 011683; 687

FINDINGS AND ORDER

- Law Offices of Ramon Otero by George Chinchilla, Attorneys for Applicant
- Law Offices of Kegel, Tobin & Truce by Melissa Matovich, Attorneys of Defendants

Hearing having been held and all parties having appeared, the Honorable ELENA B. JACKSON, Workers' Compensation Judge, makes her findings and order as follows:

FINDINGS OF FACT

1. Applicant did not sustain injury arising out of and occurring in the course of employment on January 25, 1991, or during the period of February 18, 1991, through February 28, 1992, to her right leg, back, stress, psyche, headaches, right hip and right arm.
2. Medical treatment received by the applicant by reason of the claimed injuries shall be disallowed.
3. The lien of the Employment Development Department is disallowed.
4. The medical-legal liens are to be adjusted between the parties with jurisdiction reserved by the court.
5. All other issues are moot.

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ORDER

IT IS HEREBY ORDERED that applicant takes nothing from the defendant; medical/legal costs will be decided as set forth in Finding of Fact Number 4.

A Petition for Reconsideration from this Decision shall be filed only at the Anaheim District Office of the Workers' Compensation Appeals Board.



ELENA B. JACKSON
Workers' Compensation Judge

Date: 2/24/94
By: Nancy Gabriel

STATE OF CALIFORNIA
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CASE NO. AEM 0011683; 87

ISAAC HERNANDEZ

v.

ANAHEIM FOUNDRY;
COMCO MANAGEMENT

INJURY:

1/25/91 OR 2/18/91 THRU 2/28/92

WORKERS' COMPENSATION JUDGE:

ELENA B. JACKSON

OPINION ON DECISION

Based on applicant's testimony, with due consideration to her credibility and demeanor as a witness, a review of the entire medical record, the medical report of Dr. Robert Stephen Smith, Ph.D, dated June 26, 1992, and Dr. Paul D. Levitt, M.D. dated August 5, 1992, (Defendant's Exhibit A), which are found to be the better reasoned and more persuasive, the testimony of the witnesses presented, and a review of the entire court file, it is found that the applicant did not sustain injury to her right leg, back, stress, psyche, headaches, right hip, and right arm on January 25, 1991, or during the period February 18, 1991, through February 28, 1992.

The defendant's objected to the admissibility of the applicant's medical evidence based on the failure of applicant's counsel to file an MSC statement. Applicant's counsel presented information which justified the allowance of the court's discretionary powers in regards to this issue. The court therefore considered the Applicant's evidence in reaching its decision herein.

The Applicant's poor memory for recent and remote events is well documented by the medical reports of both parties as well as the applicant offered the argument throughout the proceedings that the applicant saw the doctor the day following the alleged industrial injury (or at least soon thereafter). The applicant testified that her son took her to the doctor. Yet, the applicant failed to present any verification of this doctor and/or emergency room treatment for an industrial

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injury on or about January 25, 1991. The applicant presented no witnesses to support her visit to the doctor. The evidence presented shows a claim form dated April 2, 1992, as being the first notice of an industrial claim and all medical treatment as being sought thereafter. Further, the testimonial evidence presented by defense witnesses as well as the applicant supports the finding that the applicant had a dispute with a co-employee over money, left angry, and never returned to work.

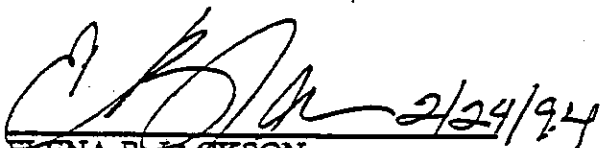
The Applicant failed to present evidence sufficient to sustain her required burden of proof in claiming an industrial injury.

It is found that the medical treatment received by the applicant by reason of the claimed injuries shall be disallowed.

The lien of the Employment Development Department is also disallowed. There has been no demonstration that the Applicant sustained to compensable injury giving rise to any periods of temporary disability.

There is insufficient evidence in the court file to decide the issue of medical-legal costs. The medical-legal liens are to be adjusted between the parties with jurisdiction reserved by the court.

All other issues are moot.


ELENA B. JACKSON
Workers' Compensation Judge

Dated: 2/24/94
EBJ/ng