

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD



Case No. LAO 0709767

NORMA HICKS

Applicant

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT
(PERMISSIBLY SELF-INSURED)

Defendants.

FINDINGS AND ORDER

Lawrence Drasin & Associates, by Edward Singer,
attorneys for applicant

Kegel, Tobin & Truce, by Paul M. Ryan, Jr.
attorneys for defendant

Application having been filed herein; all parties having appeared and the matter having been regularly submitted, the Honorable Richard J. Reyna, Workers Compensation Judge, finds and orders as follows:

FINDINGS OF FACT

1. Norma Hicks, born April 22, 1942, while employed during the period 1979 to and including February 26, 1994, as a clerk/typist, Group 40, at Los Angeles, California, by the Los Angeles Unified School District, did not sustain internal injury arising out of and in the course of her employment.

2. Applicant did not sustain an internal industrial injury, therefore, liens for self-procured medical treatment incurred by the applicant herein are disallowed.

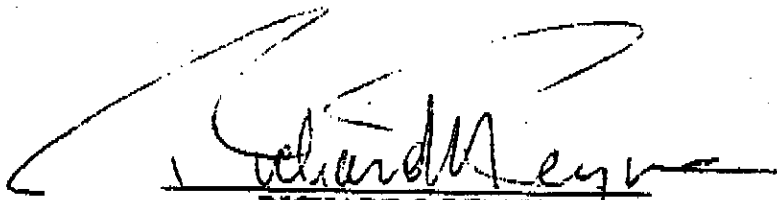
3. Applicant incurred necessary expenses to prove a contested claim and the parties are directed to adjusted Dr. Burstein's medical-legal lien. The medical-legal expense is ordered off calendar with jurisdiction reserved, pending the filing of a petition and supporting documentation.

4. Applicant's Petition for Increased Benefits under Labor Section 132a, was bifurcated and ordered off calendar pending a final disposition of the case in chief.

5. There is no fund from which to Order attorney fees. Therefore, no attorney fee is allowed.

ORDER

IT IS HEREBY ORDERD that applicant take nothing.



RICHARD J. REYNA
WORKERS' COMPENSATION JUDGE

Dated: May 9th, 1996

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

By Lorance Cleary

LAO 0709767

LAO 709 767

NORMA HICKS vs. LOS ANGELES UNIFIED SCHOOL DISTRICT (permissibly
self-insured)

WORKERS' COMPENSATION JUDGE: HON. RICHARD J. REYNA

DATE: May 1, 1996

OPINION ON DECISION

INJURY ARISING & OCCURRING IN THE COURSE OF EMPLOYMENT:

The applicant alleges that she developed hypertension as a result of harassment at work while employed by the defendant as a clerk/ typist, from 1979, to February 26, 1994. The defendant contends that the applicant's hypertension is non-industrial; that the claim is barred by the statute of limitations, or alternatively, that any disability is subsumed in the applicant's disability award of October 25, 1993.

On direct examination the applicant testified to a series of incidents, involving her co-workers and the administrators at the Raymond Avenue School, that she described as harassment. (See the summary of the applicant's testimony January 9, and March 15, 1996.) She testified that the above internal injury claim is predicated on the same facts and circumstances as her previous psyche injury claim. (The Stipulation with Request for Award, wherein the parties stipulated that the applicant sustained injury to her psyche and permanent disability of 24.5 percent, is in evidence as Applicant's Exhibit 2.) On direct examination she testified that she was diagnosed as having hypertension in 1992, and that due to job harassment she did not work from October 1993, to February 1994. She returned to work for two days in February 1994, and then stopped working again. She was terminated in June 1994, and reinstated in February 1995. On cross-examination she testified that she was first diagnosed as having hypertension in 1987, and that her mother and father have hypertension and her grandmother died from congestive heart failure.

Norma Hicks
LAO 709 767
page two

Dr. Darrell Burstein, evaluated the applicant and reported on March 29, and October 25, 1995, that, "Ms. Hicks has worked under conditions of severe emotional stress and tension in the course of her employment with the LA Unified School District as described in the body of this report which aggravated and accelerated her hypertension". He concludes that the applicant should work in an atmosphere as free as possible from stress, and that she perform no heavy lifting. In his report of October 25, 1995, he states that although the applicant had a genetic predisposition to develop hypertension he finds no basis for apportionment of her disability.

Dr. Sanford L. Miller, evaluated the applicant and reported on September 8, 1995, and January 16, 1996. He reports that he found significant contradictions in her account of her family medical history. The applicant told him that her father is 72 years old and in good health, and that her mother is 71 years old and in good health, with mild hypertension that has never been treated. He reports that when he questioned her about the family history she gave Dr. Burstein, she told him that her grandparents were hypertensive, and she did not know the medical condition of her biological parents. (See Dr. Miller's report of September 8, 1995, page 23, paragraph 4.) He reports that her blood pressure readings were highest after she was away from work for over a year, therefore, it is medically probable that her hypertension is essential and not in any way occupationally related. He states that she would have developed hypertension even without occupational stressors because she is from a family of hypertensives and she is obese. (See Dr. Miller's report, supra, page 24, last paragraph.)

Norma Hicks
LAO 709 767
page three

DISCUSSION OF THE EVIDENCE

The record established that the applicant was diagnosed as having hypertension in 1987, and that she began taking medication in 1992. It was admitted that her instant claim is based on the same facts and circumstances as her psyche claim settled on September 20, 1993. The applicant has been represented by counsel since 1987. She claims she missed work due to job stress from July to November 1992, and from October 1993 to February 22, 1994, and from February 23, 1994 to May 1995. She was interviewed and examined by a number of medical evaluators for her psyche and orthopedic claims, yet she did not mention that her hypertensive condition was affected by job stress until September 30, 1994.

Although the applicant did not raise the matter of her hypertension timely. The trier of fact finds substantively that the applicant's testimony was inconsistent and unpersuasive. The trier of fact is persuaded that she has mischaracterized occupational problems as harassment. For example, on direct examination the applicant testified that Linda Hicks would constantly harass her, and that in February 1994, Linda kicked her (implying that she was intentionally assaulted by Linda). On cross-examination the applicant admitted that the "kick" may have been accidental. Moreover, the applicant's testimony was inconsistent with a number of statements attributed to her. For example, her testimony that both her mother and father have hypertension and her grandmother died from heart failure, are in conflict with what Dr. Miller reports she told him. And, Dr. Miller states in his report of September 8, 1995, that she missed work from October 23, 1993 to February 22, 1994, due to wrist pain.
(at page 5, paragraph two.)

Norma Hicks
LAO 709 767
page four

It is evident that Dr. Burstein took applicant's account of her job stress and harassment without question. For the facts and reasons stated above, Dr. Burstein's opinion regarding industrial causation is not persuasive.

The trier of fact finds the reports of Dr. Sanford L. Miller are well reasoned and consistent with the record as a whole. Pursuant to Dr. Miller's reasoning, and the lack of credible evidence of industrial causation, the trier of fact finds that the applicant's hypertension was not aggravated or accelerated by her employment.

LIENS; L.C. 132A; ATTORNEY FEE:

The applicant's hypertension is found to be non-industrial, therefore any lien for self-procured medical treatment incurred by the applicant is disallowed. The applicant did incur necessary expense to prove a contested claim, and the parties are directed to adjust Dr. Burstein's medical-legal lien in light of the undersigned's Opinion, Findings and Order. The medical-legal expense is ordered off calendar with jurisdiction reserved, pending the filing of a petition and supporting documentation.

The applicant's petition for increased benefits under Labor Code Section 132a, was bifurcated and ordered off calendar pending a final disposition of the case in chief. Applicant shall take nothing, therefore, no attorney fee is allowed.


RICHARD J. REYNA
Workers' Compensation Judge