

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

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Case No. POM 0203-543

ROBERT HOSKINS,

*Applicant*

vs.

FINDINGS AND ORDER

BOB'S BIG BOY RESTAURANT  
ENTERPRISE GROUP; THE  
TRAVELERS INSURANCE COMPANY,

*Defendants.*

Moga & Hurley, by Michael J. Hurley, Attorney for Applicant;  
Kegel, Tobin & Truce, by Charles H. Paul, Attorney for Defendant;  
PLC & Associates, by Randy Thomas, Representative for Lien Claimant.

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Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE, Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. Robert Hoskins, born June 1, 1964, was employed at Pomona, California, November 2, 1993, as a Dishwasher (Group 2), by Bob's Big Boy, whose compensation insurance carrier was The Travelers Insurance Company did not sustain injury arising out of and occurring in the course of said employment to his back as alleged herein.
2. Applicant is entitled to reimbursement of medical-legal costs for the examinations and reports of Stephen W. Limburg, D.O. (\$594.60), MSB Radiology (unknown

ROBERT HOSKINS  
POM 0203-543

1 amount), and Med-Legal Photocopy (unknown amount). Defendant is allowed credit for sums  
2 paid on account.

3 3. All other issues are moot.

4 A W A R D

5 AWARD IS MADE in favor of Robert Hoskins against The Travelers  
6 Insurance Company of:


7 (a) Reimbursement for medical-legal costs as provided in Finding No. 2 above,  
8 less credit for sums paid, if any.

9 O R D E R

10 IT IS FURTHER ORDERED that applicant take nothing further herein.

11 DATED AT POMONA, CALIFORNIA

12 MAY 12 1995

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15 FRANCIS G. BURKE, JUDGE  
16 WORKERS' COMPENSATION APPEALS BOARD

17 SERVED BY MAIL ON PERSON SHOWN  
18 ON THE OFFICIAL ADDRESS RECORD  
19 By: *M. C. Cornejo*

STATE OF CALIFORNIA  
WORKER'S COMPENSATION APPEALS BOARD  
CASE No. POM 203-543

ROBERT HOSKINS

vs.

BOB'S BIG BOY RESTAURANT  
ENTERPRISE GROUP; THE  
TRAVELERS INSURANCE CO.

JUDGE: FRANCIS G. BURKE

DATE: MAY 11, 1995

Moga & Hurley by Michael J. Hurley, Attorneys for Applicant;  
Kegel, Tobin & Truce by Charles H. Paul, Attorneys for Defendants; and  
PLC & Associates by Randy Thomas, Representative for Lien Claimants.

\* \* \* \* \*

OPINION ON DECISION

INJURY AOE/COE:

It is concluded that applicant did not sustain an injury arising out of and occurring the course of employment on November 2, 1993, to his back.

In reaching this conclusion the judge is persuaded that there was no compensable event as alleged.

Applicant has testified that on the date in question or thereabouts, he sustained an injury to his back while lifting a heavy container of Coke syrup. (Summary of Evidence, Page 3). He testified that he reported the episode to his supervisor Nahid Shirani. (Ibid). He also testified he advised the manager of the store, George Smart of the episode of the injury as well. (Ibid).

The judge acknowledges that applicant has a developmental disability and in light of that the judge is persuaded that applicant is easily suggestible by events suggestions and others opinions. The judge is persuaded that this has somehow created in applicant's mind an industrial event.

The first medical treatment that applicant did receive subsequent to the alleged episode was on December 17, 1993 when he was seen in the emergency department of Pomona Valley Hospital. The admitting history reflects the following:

"This patient is a 29-year-old-male complaining of low back pain after lifting his bed while moving things in his room today. He states he had sudden pain and felt completely asleep and numb from his waist down to both toes. He had a little bit of pain, yesterday, at work, he stated, but this resolves. He has no history of stomach problems in the past and is able to ambulate."

Likewise in contrast to applicant's testimony is the testimony of Nahid Shirani who stated:

"At no time did applicant ever report a work injury. He did relate that he had hurt his back while climbing a cliff prior to his employment at Bob's Big Boy. This conversation occurred shortly after applicant started working for Bob's Big Boy." (Summary of Evidence, Page 11).

Ms. Shirani did indicate that at some point in time applicant did complain about his back hurting and did require the assistance of another employee. (Ibid). This was noted in a log which he maintained. (Ibid). Ms. Shirani also testified that with an entry in that same log of December 16, 1993 she noted that applicant had gone home because of back complaints although she did not inquire as to the reason for same. (Ibid).

Further, George Smart testified that there was awareness on his part that applicant hurt his back in November, 1993, but that applicant had advised him that "...he hurt himself while moving furniture." (Summary of Evidence, Page 9). Mr. Smart was not advised by applicant that applicant had hurt himself previously at work.

All of these elements persuade the judge that there was no compensable event at or about the time as alleged by applicant.

#### MEDICAL-LEGAL COSTS:

It is concluded that applicant has reasonably and necessarily incurred expenses in an attempt to prove a contested claim for the examinations and reports of Stephen W. Limburg, D.O. (\$594.60), MSB Radiology (unknown amount), and Med-Legal Photocopy (unknown amount).

The judge deems these costs as having been incurred in a reasonable and necessary fashion only because of applicant's vulnerability and the ostensible good faith belief in which the services were provided. The judge is not persuaded that once having adopted a suggested scenario, the applicant was able to differentiate reality from fiction. This reality in turn was communicated to each of these medical providers.

In light of the above finding, the balance of the issues raised herein are deemed moot.

  
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FRANCIS G. BURKE, JUDGE  
WORKERS' COMPENSATION APPEALS BOARD

FGB:lf

cc: Moga & Hurley  
Kegel, Tobin & Truce  
PLC & Associates