

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. LBO 301030

JOHN HUTCHENS,

Applicant

vs.

ALLIED SIGNAL AEROSPACE,
CONSTITUTION STATE SERVICE,
Defendants.

FINDINGS AND ORDER

THOMAS MARTIN, Attorney for Applicant

KEGEL, TOBIN & TRUCE, Attorneys for Defendants

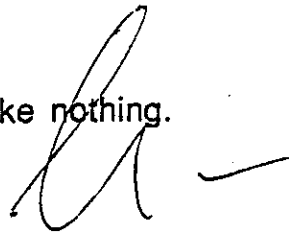
An Application having been filed herein, all parties having appeared, and the matter having been regularly submitted for decision, the Honorable CHARLES J. WILLIAMS, Workers' Compensation Administrative Law Judge, makes his Findings and Order as follows:

FINDINGS OF FACT

1. Applicant did not sustain an injury arising out of and occurring in the course of his employment as alleged herein.
2. All other issues are moot.

ORDER

IT IS ORDERED that Applicant take nothing.



Charles J. Williams

Workers' Compensation Administrative Law Judge

Served by mail on the parties listed on the
Official Address Record

JUL 25 2001

Liz Masuno

DTS

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DIVISION OF WORKERS' COMPENSATION

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vs.

ALLIED SIGNAL AEROSPACE;
CONSTITUTION STATE SERVICE

Date of Injury: 8/27/90 thru 7/93

OPINION ON DECISION

INJURY:

Applicant alleges that he has sustained a continuous trauma injury to his back during the period of October 27, 1990 through July 1993. Per his testimony, he ceased working for Defendant when Defendant's plant closed. Applicant did not file a claim until March 11, 1998. Per his testimony, until he consulted with an attorney and was advised of what a continuous trauma injury was, he was unaware of his right to file this claim.

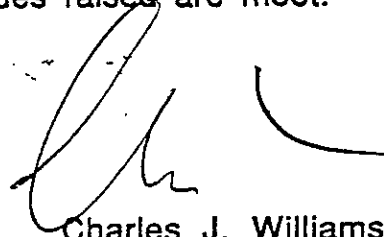
Defendant has raised Labor Code Section 5405 (Statute of Limitations) as a defense. In light of Applicant's testimony, he did not have sufficient knowledge to be held to the legal requirements of Labor Code Section 5405.

Applicant had sustained a prior injury to his back on February 21, 1990 which was resolved by Stipulations and Award on March 23, 1992. It should be noted that Applicant was unrepresented on this injury. Included in the award was entitlement to future medical care. Applicant, per defense Exhibit B obtained medical care for this injury until approximately October 6, 1997 in accordance with the award.

Per Applicant's testimony, his job duties were strenuous after he returned to work following the February 21, 1990 injury and this caused the continuous trauma injury. Per Applicant's testimony, he convinced the treating doctor to give him releases which were not restrictive so that he could continue at the work place. Unfortunately, Defendant has been prejudiced in not being able to present evidence of events during the period of the claimed continuous trauma injury as the plant closed and employees who might have been able to provide testimony as to Applicant's job duties and ability to perform same are unavailable.

The records of Dr. Fein, who Applicant treated with from at least May 14, 1990 until October 6, 1997 fail to support Applicant's claim of difficulty during the relative period. I believe under the circumstances, it is fair to expect some evidence to support the claim of injury other than self-serving statements which due to prejudice, relating to the time of knowledge of the claimed injury, prevents Defendant from rebutting. For this reason, injury is not found.

As injury has not been found, all other issues raised are moot.



Charles J. Williams
Workers' Compensation Administrative Law Judge

CJW/lm