

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

MAY 19 1995

Case No. 94 SBA 75430

JOHN JACKSON,

Applicant

vs.

CUTTER MOTORS; FIREMAN'S FUND
INSURANCE COMPANY,

Defendants.

FINDINGS AND AWARD

The Honorable Robert A. Ebenstein, Workers' Compensation Judge, makes his Findings and Award as follows:

FINDINGS OF FACT

1. Facts admitted as recorded in Minutes of Hearing of March 14 and May 16, 1995 are incorporated herein as findings of fact.
2. Applicant did not sustain industrial injury to his back between June and September 1993.
3. Applicant reasonably incurred medical-legal costs in a sum to be adjusted by the parties, if any are outstanding.
4. All other issues are moot.

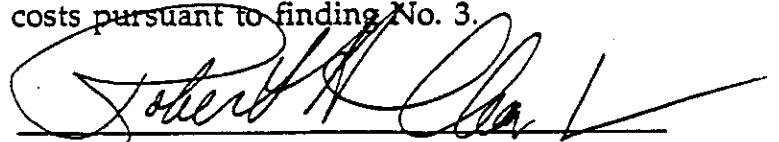
AWARD

AWARD IS MADE in favor JOHN JACKSON and against FIREMAN'S FUND INSURANCE COMPANY as follows:

Reimbursement for medical-legal costs pursuant to finding No. 3.

Dated: May 16, 1995
Service by mail on parties as shown
on official address record effected
above date.

By: Stella Woillum



Robert A Ebenstein
Workers' Compensation Judge

E. CHARLES MAKI

JOHN JACKSON

vs.

CUTTER MOTORS; FIRE-
MAN'S FUND INSURANCE
COMPANY,

OPINION ON DECISION

The facts are as set forth in the Minutes of Hearing and Summary of Evidence dated March 14, and May 16, 1995.

Based on the lack of credibility of the applicant in his testimony of March 14 and May 16, 1995 and the reports of Dr. Strait, he is found not to have sustained an industrial injury to his back between June and September 1993.

Specifically this Court finds that applicant's testimony was not credible in that he denied employment after his industrial injury at both his deposition and at the time of trial. He did not tell any of the doctors about his employment. His explanation for his repeated lack of candor were to say the least unconvincing. Since this is a cumulative trauma claim the credibility of the applicant concerning the timing of his complaints are crucial. His lack of candor renders Dr. Reynolds opinion concerning injury to be less credible than that of Dr. Strait.

Moreover, the credibility of Dr. Strait is enhanced by the fact that he found this injury compensable in his report of July 6, 1994 until he received medical records indicating that applicant's pain had increased for non industrial reasons during the period in question. Dr. Reynolds did not have the advantage of these records and thus his opinion is not based on substantial evidence. This Court has no doubt that applicant's back pain has increased since 1992. However, applicant has not proved that this increase was a result of his employment by the preponderance of evidence as required by Labor Code Section 3202.5.

Applicant reasonably and necessarily incurred expense for examinations and reports to prove a contested case payable in a sum to be adjusted between the parties, if any are outstanding.

All other issues are moot.


Dated: May 16, 1995

Served attorneys of record:

Allan Ghitlerman

→ Kegel, Tobin & Truce

By: Stella Woollum


Robert A Ebenstein
Workers' Compensation Judge

*NOTE: A Petition for Reconsideration from this decision shall be filed only at the Santa Barbara district office of the Workers' Compensation Appeals Board.