

WJF

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. VNO 467406

MICHELLE JOHNSON,

Applicant

vs.

FINDINGS AND AWARD
AND ORDER

CITY OF LOS ANGELES, PERMISSIBLY
SELF-INSURED,

Defendants.

Lewis, Marenstein, Wicke & Sherwin
By Robert J. Sherwin, attorneys for applicant

Kegel, Tobin & Truce by Theodore C. Hanf,
Attorneys for defendants

OPINION ON DECISION

The first matter for determination is, of course, whether an industrial injury to the neck was sustained by this applicant. Discussion of the issue is based on but a few facts, which I think are not disputed, viz., that (1) Applicant sustained an industrial injury to her low back in 1992 which was the subject of a Stipulated Award, that (2) she thereafter underwent considerable treatment, including surgery, to her low back, that (3) she at a later date returned to work in an administrative, perhaps clerical, capacity, and (4) in the course of continuing treatment thereafter noticed neck symptoms early in the year 2000 which she considered either to have been sequellae of the low back condition or caused by the chiropractic care she was receiving for the low back condition. Clearly, it appears the neck symptoms did not arise until well after Applicant left work in late 1993.

Reviewing the medical evidence, Dr. Kornblum, reporting for Defendant, opined the neck condition was not industrially related, basing that opinion, generally, on the fact that symptoms did not arise until many years after the occurrence of the low back injury and after much treatment therefore, assigning a degenerative condition as being the principal cause.

5/25/04

1 On the other hand, Dr. Arthur Harris, reporting for Applicant, was less definite
2 in his opinion of causation. It is noted that in his of September 9, 2002, he considered
3 there is no relationship between the neck condition and the early (April 30, 1992) low
4 back injury. However, just short of a year later, he, on the same subject, opined that the
5 neck problem developed as a result of the ongoing problems of the low back and that its
6 occurrence should be considered to have been a result not only of that earlier injury but
7 also of a continuous trauma occurring over a period beginning much previous to the
8 low back injury and continuing to the conclusion of employment.

9 In considering the divergence of the medical opinion, because not only of the
10 considerable lack of time between Applicant's last working for Defendant and the onset
11 of neck symptoms, the undisputed information that certainly some of the neck
12 condition was attributable to degenerative (and thus non-industrial) causes, and the
13 internal conflict in the various opinions of Dr. Harris (which certainly does not breed
14 confidence, for if the medical expert is unsure how can the Court be?), I think it cannot
15 be reasonably concluded on the basis of substantial evidence that this applicant's neck
16 condition was occasioned by industrial factors. Such a finding should be made.

17 Considering the foregoing, the issues of nature and extent of permanent
18 disability, apportionment, need for further medical care, and reimbursement of the cost
19 of self-procured medical care are moot and there is no funds from which to pay
20 attorney's fees.

21 The forgoing notwithstanding, litigation expense was incurred in the attempt to
22 prove a contested claim, and such medical-legal expenses should be reimbursed in
23 amounts subject to adjustment between the parties or to be determined in further
24 proceedings.

25 Let award and order issue accordingly.

26 *** **

27 The above-entitled matter having been heard by and submitted for decision to
28 the Honorable SAMUEL L. SOSNA, JR., Presiding Judge, decision is made as follows:

FINDINGS OF FACT

1. Michelle Johnson, born December 2, 1959, while employed as a police
officer, during the period December 1, 1982 to September 7, 1993, at Los Angeles,
California, by the City of Los Angeles, did not sustain injury to her neck arising out of
and occurring in the course of the employment.

