

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. PAS 18879

ROY KOONS (DEC);
GAIL KOONS, (APP),
Applicant

vs.

CITY OF ARCADIA, Permissibly
Self-Insured,
Defendants.

FINDINGS AND AWARD
AND
ORDER

Shelley & Graff, by Cindy W. Graff
Attorneys for Applicant

Kegel, Tobin & Truce,
By Sandra Grajeda, Attorneys for Defendants

* * *

Application having been filed herein; all parties having appeared and the matter having been regularly submitted, the Honorable NORMA CRANE, Workers' Compensation Judge, finds, awards and orders as follows:

FINDINGS OF FACT

1. Roy Koons did not sustain injury arising out of and occurring in the course of his employment from 1984 to June 19, 1991.
2. Applicant may have reasonably, actually and necessarily incurred expense for medical reports to prove a contested case payable in amounts to be adjusted parties, jurisdiction reserved to Workers Compensation Appeals Board.
3. All liens other than those reflecting medical-legal costs are disallowed.
4. There are no funds from which to award attorneys' fees.
5. Injury arising out of and in the course of employment not having been found, all other issues are rendered moot.

A W A R D

AWARD IS MADE in favor of ROY KOONS (DEC'D); GAIL KOONS, (APP) against CITY OF ARCADIA, Permissibly Self-Insured of reimbursement for medical-legal costs as set forth above.

O R D E R S

IT IS ORDERED that applicant take nothing further.

IT IS FURTHER ORDERED that all liens other than those reflecting medical-legal costs be and the same are hereby disallowed.

Filed and Served by mail on: JAN - 5 1995
On all parties on the
Official Address Record.
By: Connie Alvizo
Connie Alvizo

Norma Crane
NORMA CRANE
WORKERS' COMPENSATION JUDGE

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ROY KOONS (DEC'D); GAIL KOONS (APP)

CASE NO. PAS 18879

ROY KOONS (DECEASED); Vs. CITY OF ARCADIA,
GAIL KOONS (APPLICANT) Permissibly Self-Insured

Workers' Compensation Judge: NORMA CRANE

Date of Injury: 1984 to 6/19/91

Opinion Dated: 1/5/95

OPINION ON DECISION

INJURY AOE/COE:

In this tragic death case the Court does not find a nexus between applicant's employment and his fatal heart attack that supports the proposition that his death arose out of his employment.

The decedent, Roy Koons, was stricken with a fatal heart attack while he was on vacation in Utah three days after his last day of work. He had driven from Southern California to Lake Powell in Utah where he had a houseboat. Shortly before his fatal heart attack he had water skied and had consumed an alcoholic beverage.

There was a great deal of conflicting testimony concerning whether or not the applicant suffered stress on his job. The Court was particularly impressed with the forthright and forthcoming testimony of applicant's crew member, Mr. LaCroix, who contradicted most of the widow's and daughter's testimony with respect to alleged job stressors. The Court found LaCroix's testimony was very credible. He denied that the work was heavy. He stated that the pace of their work was very easy, and said the applicant had never complained to him about being switched from his regular job to other duties. The applicant had never complained to him that he was under pressure to get his work done. LaCroix testified that in fact their work was so light that a couple of times a week they would go to wrecking yards or auto part stores during work hours in order to pick up parts for the applicant's hobby. Further, LaCroix denied that Ron Carle had ever punished the applicant by assigning him to the asphalt crew. He contradicted testimony that Ron Carle had warned applicant if he

didn't finish his job, Carle would deny him his vacation. LaCroix's testimony was that on applicant's last day of work, June 19, 1991, the applicant left work early in order to start the long drive from Southern California to Utah for his vacation.

The Court also found the testimony of Ron Carle to be credible. Ron Carle denied that he had ever punished the applicant by assigning him to the asphalt crew. Mr. Carle, as well as LaCroix, explained that people in the public works department were cross-trained and had to fill in and work on different crews when the other crews were short staffed. Applicant was cross-trained and was assigned to varying crews as were others. LaCroix also denied that the daily logs were ever required to be shown to reflect an inaccurate time in order to show that the supervisor, Ron Carle, hadn't permitted overtime. In fact, the totality of the record shows that sometimes people worked a little over their eight hours, but then at other times they were permitted to leave early on a rather informal comp time basis to make up for it.

The Court found very credible that LaCroix's and Ron Carle's testimony showed that they had a very good relationship with the applicant. The Court was impressed with the performance evaluation prepared by Ron Carle in March 1991 in which he writes about the applicant "Roy, you are a dedicated employee, your cooperation in carrying out the duties assigned to you makes my job easier. At this time I would like to thank you for a job well done." This note was written merely three months before applicant's heart attack.

The Court did consider the notations on the daily logs that were submitted by the applicant to show that the applicant worked in various work jobs that were not formally within his paint and safety department. There were approximately 129 daily logs. The Court estimates there were 260 working days and that about half of the daily logs were missing. The Court did not find that the fact that the applicant sometimes was assigned to some tasks that were not strictly within the paint and safety department to be unusual or stressful. The Court is well aware of the fact that municipalities have suffered budgetary constraints and cutbacks and it is simply common sense that people are required to perform work for which they are cross-trained.

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In addition, the Court found that the applicant's witness, Curtis Clark, was subject to bias. Mr. Clark testified that Ron Carle had mistreated the applicant. The Court did not find this credible. Mr. Clark retired early before he had planned to because when the City didn't have enough money, Ron Carle reassigned him to a crew outside of the carpentry shop where he was accustomed to work. Mr. Clark went immediately to find out at the personnel department whether this was legal, found out that it was legal and retired early as a result.

In summary, the Court sympathizes with the family of this relatively young man. However, the causal relationship necessary to show industrial injury is lacking. The Court found the defendant's medical report of Dr. Bruce Gillis dated January 24, 1992 to be persuasive.

MEDICAL-LEGAL COSTS:

Applicant may have incurred reasonable and necessary medical-legal expenses. Pursuant to Labor Code Section 4601.5, medical-legal expenses incurred by applicant are payable by defendants in amounts to be adjusted by the parties, jurisdiction reserved to the Workers' Compensation Appeals Board.

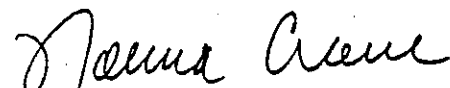
All liens other than those reflecting medical-legal costs are to be disallowed.

ATTORNEYS' FEES:

An industrial injury not having been found, there are no funds from which to award attorneys' fees.

ALL OTHER ISSUES:

AOE/COE not having been found, all other issues are rendered moot.


NORMA CRANE
Workers' Compensation Judge

NC:ca

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