

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Billie Ray Looney (Dec)
Celestine Looney (wid)

Applicant.

vs.

Allied Signal Aerospace;
Travelers Insurance

Defendants.

Case No. LB 173733

FINDINGS AND AWARD

LISA T. HERVATIN, Workers' Compensation Judge, finds, awards, and orders as follows:

FINDINGS OF FACT

- (1) Billie Ray Looney, born 10-10-42, while employed as preplanner, at Torrance, California, by Allied Signal Aerospace Company, insured by Travelers Insurance, did not sustain injury arising out of and in the course of said employment from 1972 to 12-9-86.
- (2) Applicant reasonably incurred medical-legal expense as follows: Defendant is to pay liens of Harvey Alpern MD (\$850.00) and Sak Photocopy Service (\$402.57).
- (3) There are no funds with which to award attorney fees.

AWARD

AWARD IS MADE in favor of Billie Ray Looney (dec) and Celestine Looney (wid) and against DEFENDANT as follows:

- (a) Reimbursement, medical-legal expense, in accordance with Finding 2 only.

Filed and Served by mail on: 5-13-92
On all parties on the WCI
Official Address Record.
By: *L.H.*


LISA T. HERVATIN
WORKERS' COMPENSATION JUDGE

State of California
WORKERS COMPENSATION APPEALS BOARD

Billie Ray Looney(Dec)
Celestine Looney (wid)

v. Allied Signal Aerospace;

Travelers Insurance
Case No. LB 173733
LISA HERVATIN
DOD: 12-27-86

WCAB JUDGE

GOLDSCHMID, SILVER SPINDEL

BY: Irving Halpern, Attorney

for applicant;

KEGEL, TOBIN & TRUCE

By: W. Jos. Truce Esq.;

Attorney for defendant

OPINION ON DECISION

**INJURY ARISING OUT OF AND OCCURRING IN THE COURSE OF
EMPLOYMENT/PROXIMATE CAUSE OF DEATH:**

IT IS FOUND that applicant did not sustain an injury arising out of and in the course of employment to his heart from 1972 to 12-9-86 resulting in death on December 27, 1986.

At the hearing the parties stipulated the widow's deposition would be used in lieu of trial testimony, however, Celestine Looney (widow) was called in rebuttal to testify after the testimony of the defense witnesses was presented.

A summary of the widow's testimony regarding her husband's job activities is as follows:

Q. This is one of these questions where I want you to search your recollection because I know we are going back to the beginning of Mr. Looney's employment at the Garrett corporation. But to the best of your recollection,

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what did Mr. Looney tell you about his actual job activities?

A. He never really told me anything. It was his friend that came to the house and was telling me about things that was happening on the job.

Q: what was the friend's name?

A Bill.

Q Do you know Bill's last name.

A I can't remember right now. Billy was going to school and they started harassing him when he would be studying on breaks and lunch hours and the supervisor started harassing him.

Q Harassing Bill?

A Yes, Billy.

Q Did Mr. Looney, though, ever mention anything to you at all about what was happening to him on the job?

A No. At the time Bill was trying to tell me some of the things that was going on on the job. He told him, "Don't involve my wife in my job. Don't ever say anything to her; and if you do, don't ever come back to my house again."

Now that was his attitude and behavior.

Q Well, we will get to the meeting with Bill in a minute, but I'm still on Mr. Looney. In other words, Mr. Looney never told you anything at all about what was happening on the job; Is that correct?

A He would tell me things that was happening on the job but not involving management and stress factors.

Q So he never complained to you at all about stress?

A He complained later on about his head hurting and stuff like that.

Q. What did he say about that?

A This is close to the time of his death.

Q What did he say about --

A His head was hurting him. This is once he got transferred to Torrance and he complained of this

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headache for about a couple of weeks and the pain was so severe sometimes he would just say, "Honey, sit down and hold my head." And I'd hold his head in my lap.

Q Now, Mr. Looney told Bill to never -- That he did not want to let you know about anything about what was happening on the job?

A No.

Q Mr. Looney never told you about what was going on at the job?

A Nothing that would upset me.

Q So Mr. Looney then never told you anything about the job that was upsetting him?

A No not really.

Q Well, it's either yes or no because if he told you anything I want to know what he told you.

A If he had a rough day he would say something to the effect like I had a rough day, like things was bitching today.

Q During the whole time that Mr. Looney worked for Garrett, which is now know as Allied Signal, but during the whole period he worked for Garrett, did he ever make any complaints to you all other than from time to time saying things were bitching today.

A None that I can put any emphasis on.

Q How about anything, even those things you can't put emphasis on?

A Sometimes he had to run a lot and he would make mention of that, that he had to go from plant to plant and things weren't really going that great. but as far as any details were concerned, he just never gave me any details.

Q So the only thing that you can recall is from time to time he would come home and say, "Things were bitching today?"

A Things weren't that great or -- but when he got quiet, real quiet, I knew something was wrong.

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At the hearing, defendant called applicant's supervisors to testify. George Albert Gant and Chester Obbards testified substantially that applicant was friendly, talkative, and outgoing. When they had to discipline Mr. Looney it went well. Mr. Looney never complained that his job was stressful or that management was hounding or yelling at him. Witness Chester Oblands testified that he had to admonish Mr. Looney three times related to complaints about taking long lunches and spending too much time in the shop. He stated that Mr. Looney took the criticism well and he had no further problems with Mr. Looney regarding those problems. Both testified that Mr. Looney got along well with other employees and co-workers.

Applicant's co-workers James Carter and John Ryan III testified that they were Mr. Looney's friends. They described him as friendly and talkative. He never complained to them that the job caused him stress and he never said anybody was harassing him. They liked Mr. Looney and joked with him. John Ryan testified that he and Mr. Looney were transferred to a new location on Western Avenue shortly before Mr. Looney's death. They moved to a new location in October 1986 and Mr. Looney passed away December 1986. The witness described this location as a "country club" atmosphere. They didn't have a supervisor there or anybody to report to. Once in a while a manager would come around. The witness stated that he and Mr. Looney enjoyed the and had a lot of fun. There was no boss and they began work when they wanted to. Mr. Ryan went to visit Mr. Looney in the hospital. He denied telling Mrs. Looney in the hospital that her husband's job was stressful.

All of the defense witnesses appeared credible to this Trier of Fact. Defendant's medical consult Dr. Sanford Miller in his report dated October 16, 1991 states:

To indict "stress" in the production of a cerebrovascular accident, one would expect to find sustained elevations in blood pressure. This did not occur to any significant account in Mr. Looney's records (As described by Dr. Alpern). Additionally, the patient appeared genuinely happy with his work

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environment. He received basically nothing but complimentary reports. He received continuous promotions. There were no documented events of correction of punishment at the workplace. Therefore, the allegation of "Work stress" is spurious.

What then caused Mr. Looney's cerebrovascular accident? I think the answers are evident. The man had prolonged history of hypertension, predating 1973. He also had a long history of diabetes mellitus (at least predating 1981). There is also mention of obesity. Additionally, there is a family history of arteriosclerosis (Mother died, age 54 of a myocardial infarction). This is an extremely early age for a myocardial infarction in a female. His father was hypertensive. The only risk factor that Mr. Looney did not have for arteriosclerosis was a smoking history. This man died of a heart attack. The heart attack was brought about by the following causes:

- 1. Long history of hypertension.*
- 2. Long history of diabetes mellitus.*
- 3. Obesity.*
- 4. Extremely strong family history of atherosclerosis and coronary artery disease.*

Dr. Miller reviewed Mrs. Looney's deposition.

In finding that applicant's death did not arise out of and in the course of employment, this Trier of Fact relies upon the medical opinion of Dr. Miller which is corroborated by the Trial testimony in this case.

The Trial testimony of the widow in this case is that her husband never told her anything about the job that was upsetting to him. He would tell her things that were happening on the job but not about management and stress.

The defense witnesses all summarily stated that applicant did not make any complaints about his job being stressful, and he got along well

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with everybody. He was described as being friendly and talkative.

Dr. Miller concluded that the allegation of "work stress" is spurious. Based upon the trial testimony in this case this Trier of Fact agrees with Dr. Miller's contention.

Applicant's medical consult Dr. Alpern on page 2 of his report states that it is his understanding from communication with Mr. Silver, applicant's counsel that other co-workers did indicate there was stress at work. He was requested to work overtime and not be paid for it and he could not make mistakes.

There was no testimony offered at Trial that supported this contention. The witnesses who testified at Trial refuted these contentions. Dr. Alpern's report is based on false facts and double hearsay. This report is not corroborated by the actual facts and is deemed unpersuasive to this Trier of Fact.

Expert medical opinion predicated on an incorrect legal theory, or devoid of relevant factual basis does not constitute substantial evidence. National Convenience Stores v. WCAB, 46 CCC 781, INSURANCE COMPANY OF NORTH AMERICA V. WCAB 46 CCC 913. A medical opinion based upon false factual premissis cannot be relied upon.

A competent opinion of a single physician is sufficient evidence to support a finding of industrial injury. US Auto Stores v. Workmen's Compensation Appeals Board 4 Cal3d 469 Le Vesque v. Workmen's Comp. Appeals Board 1 Cal 3d 627; Smith v. Workmen's Compensation Appeals Board 71 Cal 2d 588. A Salesman did not sustain an industrial injury to his cardiovascular system where his testimony about his job-related stress was not corroborated and the medical evidence showed that his chronic stress did not contribute to the progression of his arteriosclerosis. Taylor v. Workers Compensation Appeals Board 48 CCC 760.

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Applicant has not met her burden of proof pursuant to Labor Code Section 3202.5

Based upon the persuasive medical opinion of Dr. Sanford Miller and the lack of lay testimony supporting industrial causation it is found that applicant, Billie Ray Looney did not sustain an injury arising out of and in the course of employment resulting in death on December 27, 1986.

All other issues are moot.

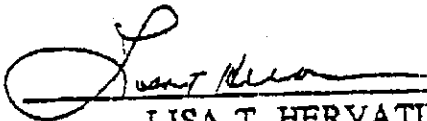
MEDICAL-LEGAL COSTS:

Applicant reasonably incurred medical-legal costs; Defendant is ordered to pay the following liens; \$850.00 to Harvey Alpern MD; \$402.57 to Sak Photocopy Service.

ATTORNEY FEES:

There are no funds from which to award attorney fees.

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By: *P. G. [unclear]*



LISA T. HERVATIN
WORKERS' COMPENSATION JUDGE