

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

LAURA MCCAFFERTY,

Applicant

vs.

ERIC AND CARRIE CATHERINE;
INTERINSURANCE EXCHANGE
adjusted by SO. CA. RISK MGMT.
ASSOC., INC.,

Defendants.

Case No. ANA 0308820

FINDINGS AND ORDER

JOSEPH R. LANSPA, attorneys for applicant.

Kegel, Tobin & Truce by SANDRA L. ADAMS, attorneys for defendants.

Application having been filed herein; all parties having appeared and the above the matter having been regularly submitted, the Honorable **JOANNE COANE, WORKERS' COMPENSATION JUDGE**, now finds and orders as follows:

FINDINGS OF FACT

1. The applicant did not sustain injury AOE/COE on 8-29-96.
2. Trial issues 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16 and 17 are moot.
3. There are no funds from which an attorney fee can be awarded. Therefore, no attorney fee is awarded.
4. The applicant is entitled to recover reasonable and necessary medical-legal expenses.
5. Determination of the compensability of the lien claims is deferred.

4/18/01
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O R D E R

IT IS, THEREFORE, ORDERED that applicant take nothing herein, except reimbursement for reasonable and necessary medical-legal expenses.

1/10/01

Dated at Santa Ana, California



JOANNE COANE
WORKERS' COMPENSATION JUDGE

Served by mail on parties checked on the
Official Address Record effective on above date.

BY: 

**A PETITION FOR RECONSIDERATION FROM THIS DECISION SHALL BE
FILED ONLY AT THE SANTA ANA DISTRICT OFFICE OF THE
WORKERS' COMPENSATION APPEALS BOARD.**

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. ANA 0308820

LAURA MCCAFFERTY

v.

ERIC AND CARRIE CATHERINE;
INTERINSURANCE EXCHANGE;
adjusted by SO. CA. RISK MGMT.
ASSOC. INC.

WORKERS' COMPENSATION JUDGE:
JOANNE COANE

DATED: 1/10/02

INJ: 8-29-96

OPINION ON DECISION

AOE/COE:

The applicant, a 57 year old nanny, claims to have sustained injury AOE/COE to her head, face, teeth, mouth, lips, both lower extremities and elbow on 8-29-96. According to the applicant's trial testimony, her husband dropped her off for work at the Catherine's residence on 8-29-96. The applicant then tripped on a step leading up to the house and fell, sustaining the injuries itemized above. (See 12-28-00 Minutes of Hearing and Summary of Evidence, page 2, lines 3-5; page 4, lines 15-18.) On cross-examination, the applicant testified that the step she tripped on was 7 to 10 feet from the Catherine's front door. (Id., page 6, lines 12-13.)

According to the employer Ms. Catherine, the applicant told her that she had tripped on the curb and fell on the sidewalk, injuring herself. Ms. Catherine further testified that after learning of the accident, she and her brother went outside of the house to observe the premises outside her home. They both saw pieces of the applicant's tooth on the public sidewalk. (Id., page 8, lines 1-8.)

At trial proceedings, the defendant introduced photographs of the accident scene. Ms. Catherine showed a photograph and made a circle around the area where she

observed the applicant's broken tooth was found near the curb, on the public sidewalk outside of the boundaries of the Catherine property. (Id.)

The applicant agreed in the trial testimony that she likewise observed her broken tooth on the public sidewalk. (Id., page 4, lines 21-22.)

Based upon the testimonial evidence of both the applicant and the employer, and based upon the pretrial evidence demonstrated in the photographs of the Catherine residence, Defense Exhibit 2-G, the court finds that it is more likely than not that the applicant actually fell on the public sidewalk, outside of the Catherine's residence, sustaining the injuries alleged herein. It does not seem at all plausible that the applicant could have fallen approximately seven (7) feet from the Catherine's front door, and have a broken piece of her tooth end up several feet behind this point, on the public sidewalk, near the curb.

In sum, although it is clear that the applicant did fall and sustain injuries, it cannot be demonstrated by a preponderance of the credible evidence that the applicant fell on the Catherine's premises. Therefore, injury AOE/COE cannot be demonstrated.

TRIAL ISSUES 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16 AND 17:

Trial issues 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, and 17 are moot, inasmuch as there is no finding of injury AOE/COE.

ATTORNEY'S FEE:

There are no funds from which an attorney's fee can be awarded. Therefore no fee is awarded.

MEDICAL LEGAL EXPENSES:

Pursuant to Labor Code §4620, even though there is no finding of injury AOE/COE, the applicant is entitled to recover all reasonable and necessary medical-legal expenses.

LIEN CLAIMS:

The compensability of the lien claims is deferred, until the court can determine whether the lien claims are treatment or medical-legal liens.



JOANNE COANE
WORKERS' COMPENSATION JUDGE

JC:gm