

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

JUAN MEDINA,

Applicant

vs.

ALLIED SIGNAL AEROSPACE
COMPANY; TRAVELERS INSURANCE
COMPANY,

Defendants.

Case No. MON 166504

FINDINGS & AWARD
AND
ORDER

STOLL, NUSSBAUM & POLAKOV
By: Reuben J. Flestiner
Attorneys for Applicant

KEGEL, TOBIN & TRUCE
By: D'Arcy T. Swartz
Attorneys for Defendant

EMPLOYMENT DEVELOPMENT
DEPARTMENT
By: Gary Cooper

NEUROLOGIC ORTHOPEDIC
ASSOCIATES
By: Betty Pelka

The above-entitled matter having been heard and regularly submitted, the Honorable KEIGO OBATA, Workers' Compensation Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. The stipulations filed by the parties are true and are adopted by reference as though fully set forth here.
2. The preponderance of the evidence as required by Labor Code Section 3202.5 does not support a finding that applicant sustained industrial to his back as alleged.
3. Applicant, pursuant to Labor Code Section 4620 et seq, as interpreted in Del Rio, 58 CCC 147, did not reasonably and necessarily procure medical legal services from Neurologic Orthopedic Associates; the lien claim for medical legal services of Neurologic Orthopedic Associates is accordingly disallowed.
4. All other issues are moot.

AWARD

Applicant shall take nothing on this claim.

ORDER

GOOD CAUSE APPEARING, it is ordered that the lien claim of NEUROLOGIC ORTHOPEDIC ASSOCIATES be, and it hereby is, disallowed.

Filed and Served by mail on: JUN 1 1995
On all parties on the
Official Address Record.
By: Jane Renko
Jane Renko

Keigo Obata
KEIGO OBATA
WORKERS' COMPENSATION JUDGE

1 CASE NO.: MON 166504

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3 Juan Medina VS Allied Signal Aerospace;
4 Travelers Insurance Company

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6 Workers' Compensation Judge: INJURY: 8/1/91-92
7 Keigo Obata

8
9 OPINION ON DECISION

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11
12 The trial in this matter was conducted by Judge Irene Rosenthal.
13 The parties have mutually waived decision by Judge Rosenthal and
14 have stipulated to submission of the case for decision on the
15 existing documentary record for decision by WCJ Keigo Obata.
16 The Stipulations and Issues are as indicated in the Minutes of
17 Hearing of 4/12/95.

18
19 The parties were granted 20 days to file Points and Authorities and
20 have done so.

21
22
23 **MON 166505: Injury AOE/COE to Back**

24
25 The record indicates that applicant received chiropractic care from
26 Deborah Beech, DC, and/or Kurt Hegetschweiler, D.C., of Pacific
27 Coast Chiropractic from 8/5/92 for a "lumbrosacral sprain/strain"
28 and was placed on disability. Dr. Hegetschweiler issued a Return To
29 Work Order with "no restrictions" on 9/9/92; the date of injury is
30 indicated as 8/6/92. There is no reference of any kind in the reports
31 of Pacific Coast Chiropractic to an industrial injury to the back.
32 (See Applicant's Exhibit 1).

33
34 On 11/11/92 applicant was terminated from employment for excess
35 tardiness.

36
37 The report of Dr. Hubbard of 11/16/92 solicited by applicant after
38 termination is the first medical reference to an industrial back
39 injury. That report indicates at page 2 that applicant attended a two
40 day job related class and began experiencing pain in the low back the

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2 JUAN MEDINA
3 MON 166504
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Page 2

8 *second* day, that applicant reported the low back problem to his
9 supervisor, and that applicant sought treatment at South Bay Medical
10 Clinic.
11

12 According to Jeffrey Berman, M.D., however, "...applicant described
13 another history of back injury, alleging an injury to his lower back
14 approximately one month prior to the thumb incident (when) he was
15 lifting heavy weights and injured his lower back". (Berman, J.,M.D.,
16 11/18/93, page 2, parag. 7; part of Def.'s Exh. A).
17

18 The testimony of applicant indicates that his back felt like it was
19 frozen at the end of the *first* day of eight hours of the two day
20 seminar, that he stayed home the next day, and that he went to the
21 chiropractor the following day. (Trial Transcript, 4/12/94, page 8-
22 line 23 to page 9-line 26).
23

24 No records of South Bay Medical Clinic are in evidence to corroborate
25 treatment there. With respect to reporting the injury, under direct
26 examination, applicant testified that "...I did call my supervisor at
27 that time to tell him what I was -- that was the reason why I was
28 absent". (Trial Transcript, 4/12/94, page 10, lines 2-6). Upon cross
29 examination, however, applicant testified that "...I don't remember
30 reporting it to my supervisor but...went to Dr. Hegetschweiler...a
31 chiropractor at Pacific Coast Chiropractic...." (Trial Transcript,
32 11/1/94, page 3, lines 3-13).
33

34 Applicant further testified that he does not recall whether he told
35 Dr. Hegtschweiler that he hurt his back sitting in a chair, nor
36 whether Dr. Hegetschweiler asked if he hurt his back sitting in a
37 chair. (Trial Transcript, 11/1/94, page 3, lines 13-24, in pertinent
38 part).
39

40 Applicant was referred to orthopedist Stuart Gold, M.D., for his
41 industrial thumb injury on 10/13/92, approximately two months and
42 twelve days after the alleged back injury. There is no mention in Dr.
43 Gold's report of any back injury. Applicant's testimony upon cross

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2 JUAN MEDINA
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Page 3

8 examination about this was that he was not having back problems
9 that he remembers on 10/13/92 when examined by Dr. Gold. (See
10 Trial Transcript, 11/1/94, page 6-line1 to page 7-line1).
11

12 On direct examination, however, applicant testified that the
13 chiropractor took him off work for about one month following his
14 9/1/92 back injury and that when he returned to work, his back was
15 still sore and the work affected his back a lot in activities of lifting
16 and pushing. (Trial Transcript, 4/12/94, page 10-line10 to page 11-
17 line 6).
18

19 As noted above applicant was terminated from employment on
20 11/11/92 for cause for excess tardiness. He had an industrial left
21 thumb injury on 9/2/92 which he reported to his employer and for
22 which he received benefits. His claim for back injury, however, was
23 not filed until some five days after he was terminated, after seeing
24 a TV "hotline" commercial, even though it had occurred, according to
25 applicant, on 8/1/92, a month and twenty days before his thumb
26 injury.
27

28 It is difficult on this record to determine whether or not applicant
29 sustained a specific injury to his back at work as alleged. The law
30 under Labor Code Section 3202.5 since its enactment has required the
31 moving party to prove the issue by the "preponderance of the
32 evidence". That evidentiary burden with respect to applicant's claim
33 of back injury has not been fulfilled.
34

35 The Minutes of Hearing for case MON 16604 indicates that the claim
36 is for a back injury during the period 8/1/91-8/1/92. The medical
37 record does not contain evidence supporting an industrial cumulative
38 trauma injury to the back.
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40 The issues of TD, PD, further medical treatment, and self-procured
41 treatment costs are moot in view of the finding of no industrial
42 injury.
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JUAN MEDINA
MON 166504

Lien Claimant refers in its 4/3/95 Points and Authorities to treatment notes of Chiropractor D. D. Beech stating "In seminar Lumbar Sacral Pain increased". (Points and Authorities, Lien Claimant, 3/3/95, page 3, lines 7-9). Suffice it to say that there are no such treatment notes of Chiropractor Beech admitted in the evidentiary record.

It goes without saying that Points and Authorities are permitted after trial to permit parties to refer to particular parts of the evidentiary record, to make legal deductions from them, and to provide case law and or statutory authority for those deductions. Points and Authorities are not permitted after trial to permit parties to supplement an already closed evidentiary record.

MEDICAL LEGAL COSTS AND APPLICABILITY OF DEL RIO

The evidentiary record indicates that the 11/16/92 medical legal report of Neurologic Orthopedic Associates is dated the same date as the injury claim form for the back. Defendant acknowledges receipt of this claim form on 11/25/92.

Even if it is assumed that defendant received the injury claim form for the back injury on the day it is dated, i.e., 11/16/92, applicant would not have met the notice requirements sufficient to invoke the liability of defendant for medical legal costs required by LC 4620 as enunciated in Del Rio, 58 CCC 147.

Dated: JUN 1 1995

Served by mail on parties listed on the Official Address Sheet

By: [Signature]

[Signature]
KEIGO OBATA
Workers' Compensation Judge

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

JUAN MEDINA,

Applicant

vs.

ALLIED SIGNAL AEROSPACE
COMPANY; TRAVELERS INSURANCE
COMPANY,

Defendants.

Case No. MON 166489

FINDINGS
AND
AWARD

STOLL, NUSSBAUM & POLAKOV
By: Reuben J. Felstiner
Attorneys for Applicant

KEGEL, TOBIN & TRUCE
By: D'Arcy T. Swartz
Attorneys for Defendant

EMPLOYMENT DEVELOPMENT
DEPARTMENT
By: Gary Cooper

NEUROLOGIC ORTHOPEDIC
ASSOCIATES
By: Betty Pelka

The above-entitled matter having been heard and regularly submitted, the Honorable KEIGO OBATA, Workers' Compensation Judge, now finds and awards as follows:

FINDINGS OF FACT

1. The stipulations filed by the parties are true and are adopted by reference as though fully set forth here.
3. Applicant sustained permanent disability as a result of this injury of 2:0%, the equivalent of 6 weeks at \$140.00 per week, payable forthwith, less credit for sums paid on account.
4. There is no legal basis to apportion permanent disability to non-industrial factors.
5. Applicant is not in need of further medical treatment to cure or relieve from the effects of this injury.

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6. Applicant reasonably and necessarily procured treatment from Dr. Hubbard to cure or relieve from the effects of this injury; the lien of Dr. Hubbard for medical treatment for the thumb is allowed in full against defendant pursuant to Labor Code Section §4600, et seq.

7. Applicant reasonably procured medical-legal services from Dr. Hubbard to prove a contested claim; applicant is awarded the costs of one medical-legal examination and report pursuant to Labor Code Section 4620 et seq.

8. The reasonable value of the services of applicant's attorney is 15% of the permanent disability award.

AWARD

AWARD IS MADE in favor of Juan Medina against Allied Signal Aerospace., whose carrier is Traveler's Insurance, of the following:

- [a] Permanent disability indemnity as in Finding 3 above, less attorneys as in Finding 9 above.
- [c] Liens as in Findings 6 and 7 above plus interest at the legal rate from date of billing.

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Official Address Record.
By: Jane Renko
Jane Renko

Keigo Obata
KEIGO OBATA
WORKERS' COMPENSATION JUDGE

1 CASE NO.: MON 166489

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Juan Medina

VS

Allied Signal Aerospace;
Travelers Insurance
Company

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Workers' Compensation Judge

INJURY: 9/12/92

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Keigo Obata

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OPINION ON DECISION

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16

The trial in this matter was conducted by Judge Irene Rosenthal.

17

The parties have mutually waived decision by Judge Rosenthal and

18

have stipulated to submission of the case for decision on the

19

existing documentary record for decision by WCJ Keigo Obata.

20

The Stipulations and Issues are as indicated in the Minutes of

21

Hearing of 4/12/95.

22

23

The parties were granted 20 days to file Points and Authorities and

24

have done so.

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MON 166489: Left Thumb injury 9/21/92 admitted

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Permanent Disability/Apportionment

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Applicant testified at trial that he has no pain in his left thumb

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except when he pushes something, such as the button when you open

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the old style car door; this pain is sharp and goes away upon

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releasing the pressure. (Trial Transcripts, 4/12/94, p. 7, line 1 to

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page 8, line 1; 11/1/94, p. 22, lines 5-11).

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2 MON 166489

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10 The subjective complaints do not appear to warrant any work
11 restrictions. Dr. Hubbard characterizes the pain as intermittent
12 slight to moderate, Dr. Berman as minimal. There is no evidence of
13 rateable grip loss or any motion loss. Applicant's testimony
14 supports the opinion of Dr. Hubbard.

15
16 The Recommended Rating which is adopted as a finding of fact is as
17 follows: 13.1 1% 25H 2 2:0.

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19

20 **APPORTIONMENT**

21

22 There is no evidence to support apportionment to other than this
23 injury.

24

25 **NEED FOR FURTHER MEDICAL TREATMENT**

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27 Based on applicant's testimony and the medical record, there is no
28 evidence of need for further medical treatment to cure or relieve
29 from the effects of this injury.

30

31

32 **SELF-PROCURED MEDICAL TREATMENT AND MEDICAL-LEGAL
33 COSTS**

34

35 The parties apparently selected their own QMEs, defendant using
36 Dr. Berman, applicant using Dr. Hubbard.

37

38 During the period of treatment by Dr. Gold, the treating physician,
39 there was no contested claim requiring a medical legal evaluation.

40

41 The last report of Dr. Gold is dated 10/29/92; this report indicates
42 that a further appointment was set for 11/12/92, that PT was
43 helping , and that applicant was released to modified work during
the period 10/29/92-11/12/92.

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JUAN MEDINA
MON 166489

Applicant was terminated from employment on 11/11/92 and apparently began treating with Dr. Hubbard on 11/16/92 and never again returned to see Dr. Gold. There is no evidence to show that defendant accepted or denied Dr. Hubbard as applicant's choice as a treating doctor. Inasmuch as Dr. Gold's 10/29/92 report indicated that further treatment was necessary, Dr. Hubbard will be awarded the reasonable costs of treatment he provided to cure or relieve from the effects of the left thumb injury.

With respect to medical legal services, applicant is entitled to a QME evaluation from a doctor of his choice. Accordingly, the costs of one medical legal evaluation from Dr. Hubbard will be awarded to applicant pursuant to LC 4620 et seq.

Attorneys Fees

The reasonable value of the services of applicant's attorney is 15% of the permanent disability award.

Applicability of Del Rio, etc.

There is no issue of Del Rio in this case because the defendant had actual notice of the injury. Diagnostic tests shall be paid at the rates specified LC 4626. A violation of any specific subsection of LC 4628 has not been shown.

MON 166505: Injury to back 8/1/91-8/1/92

Injury AOE/COE to Back

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9 The record indicates that applicant received chiropractic care from
10 Deborah Beech, D.C., and/or Kurt Hegetschweiler, D.C., of Pacific
11 Coast Chiropractic from 8/5/92 for a "lumbrosacral sprain/strain"
12 and was placed on disability. Dr. Hegetschweiler issued a Return To
13 Work Order with "no restrictions" on 9/9/92; the date of injury is
14 indicated as 8/6/92. There is no reference of any kind in the reports
15 of Pacific Coast Chiropractic to an industrial injury to the back.
16 (See Applicant's Exhibit 1).
17

18 On 11/11/92 applicant was terminated from employment for excess
19 tardiness.
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21 The report of Dr. Hubbard of 11/16/92 solicited by applicant after
22 termination is the first medical reference to an industrial back
23 injury. That report indicates at page 2 that applicant attended a two
24 day job related class and began experiencing pain in the low back the
25 *second* day, that applicant reported the low back problem to his
26 supervisor, and that applicant sought treatment at South Bay Medical
27 Clinic.
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29 According to Jeffrey Berman, M.D., however, "...applicant described
30 another history of back injury, alleging an injury to his lower back
31 approximately one month prior to the thumb incident (when) he was
32 lifting heavy weights and injured his lower back". (Berman, J., M.D.,
33 11/18/93, page 2, parag. 7; part of Def.'s Exh. A).
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35 The testimony of applicant indicates that his back felt like it was
36 frozen at the end of the *first* day of eight hours of the two day
37 seminar, that he stayed home the next day, and that he went to the
38 chiropractor the following day. (Trial Transcript, 4/12/94, page 8-
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13 chiropractor at Pacific Coast Chiropractic...." (Trial Transcript,
14 11/1/94, page 3, lines 3-13).

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16 Applicant further testified that he does not recall whether he told
17 Dr. Hegtschweiler that he hurt his back sitting in a chair, nor
18 whether Dr. Hegetschweiler asked if he hurt his back sitting in a
19 chair. (Trial Transcript, 11/1/94, page 3, lines 13-24, in pertinent
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23 industrial thumb injury on 10/13/92, approximately two months and
24 twelve days after the alleged back injury. There is no mention in Dr.
25 Gold's report of any back injury. Applicant's testimony upon cross
26 examination about this was that he was not having back problems
27 that he remembers on 10/13/92 when examined by Dr. Gold. (See
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34 and pushing. (Trial Transcript, 4/12/94, page 10-line10 to page 11-
35 line 6).

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37 As noted above applicant was terminated from employment on
38 11/11/92 for cause for excess tardiness. He had an industrial left
39 thumb injury on 9/2/92 which he reported to his employer and for
40 which he received benefits. His claim for back injury, however, was
41 not filed until some five days after he was terminated, after seeing
42 a TV "hotline" commercial, even though it had occurred, according to
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12 injured his back at work as alleged. The law under Labor Code
13 Section 3202.5 since its enactment has required the moving party to
14 prove the issue by the "preponderance of the evidence". That
15 evidentiary burden with respect to applicant's claim of back injury
16 has not been fulfilled.

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19 The issues of TD, PD, further medical treatment, and self-procured
20 treatment costs are moot in view of the finding of no industrial
21 injury.

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23 Lien Claimant refers in its 4/3/95 Points and Authorities to
24 treatment notes of Chiropractor D. D. Beech stating "In seminar
25 Lumbar Sacral Pain increased". (Points and Authorities, Lien
26 Claimant, 3/3/95, page 3, lines 7-9). Suffice it to say that there
27 are no such treatment notes of Chiropractor Beech admitted in the
28 evidentiary record.

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31 after trial to permit parties to refer to particular parts of the
32 evidentiary record, to make legal deductions from them, and to
33 provide case law and or statutory authority for those deductions.
34 Points and Authorities *are not* permitted after trial to permit
35 parties to supplement an already closed evidentiary record.

36
37 **MEDICAL LEGAL COSTS AND APPLICABILITY OF DEL RIO**


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39 The evidentiary record indicates that the 11/16/92 medical legal
40 report of Neurologic Orthopedic Associates is dated the same date
41 as the injury claim form for the back. Defendant acknowledges
42 receipt of this claim form on 11/25/92.
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JUAN MEDINA
MON 166489

Even if it is assumed that defendant received the injury claim form for the back injury on the day it is dated, i.e., 11/16/92, applicant would not have met the notice requirements sufficient to invoke the liability of defendant for medical legal costs required by LC 4620 as enunciated in Del Rio, 58 CCC 147.


Keigo Obata
Workers' Compensation Judge

SERVED on: JUN 1 1995 1995
On all parties on the official address sheet.
By: 
Janie Renko