

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

TCH

<p>JERRY MISTRIEL</p> <p><i>Applicant,</i></p> <p>vs.</p> <p>PRECISION FINISHING; REPUBLIC INDEMNITY COMPANY OF AMERICA,</p> <p><i>Defendants.</i></p>
--

Case No. VNO 301-433

FINDINGS AND AWARD

WJT/LBO

*Martin Siegel, attorney for applicant.
Kegel, Tobin & Truce, attorneys for defendant*

The above-entitled matter having been heard and regularly submitted, the HONORABLE MARK FELDMAN, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. JERRY MISTRIEL, born July 10, 1963, while employed on November 2, 1994, as a driver at Northridge, California, by Precision Finishing, whose workers' compensation carrier was Republic Indemnity Company of America, did not sustain injury arising out of and occurring in the course of employment to his back.
2. Defendant is ordered to adjust the medical-legal lien per the Opinion on Decision.
3. Applicant's attorney is awarded Labor Code §5710 fees of \$158.80.
4. All other issues have been rendered moot.

LIENS:

Based on a review of the entire record, defendant is ordered to adjust the medical-legal portion of the lien of Dr. I. Schmidt pursuant to the Medical Legal Fee Schedule. The WCAB file contains no objection to this lien.

The medical treatment portion of D Schmidt's lien is denied as is the medical treatment lien of the Northridge Diagnostic Center based on the finding of no injury arising out of and occurring in the course of employment.

LABOR CODE §5710 FEES:

Applicant's attorney has requested a Labor Code §5710 deposition fee of \$516.30. Defendant made no payment pursuant to the *Mitchell* decision. The WCJ has found the applicant's testimony to be less than credible and the case without merit, and as such will deny all but \$158.80 of the fee demand. Applicant's attorney is awarded \$150.00 for his travel time undertaken for the convenience of defendant as well as \$8.80 for parking fees.

LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT:

Based on the finding on temporary disability, the Employment Development Department is not entitled to recovery and their entire lien is disallowed.

PENALTIES:

As no injury arising out of and occurring in the course of employment was found, no penalties are awarded.

Dated: November 22, 1995

By: P. Lawrence
P. Lawrence

Mark Feldman
MARK FELDMAN
WORKERS' COMPENSATION JUDGE

CASE NO. VNO 301-433

JERRY MISTRIEL

vs.

PRECISION FINISHING;
REPUBLIC INDEMNITY
COMPANY OF AMERICA,

WORKERS' COMPENSATION JUDGE:

MARK FELDMAN

DATE OF INJURY:

NOVEMBER 2, 1994

OPINION ON DECISION**INJURY AOE/COE:**

Based upon defense witness's testimony and a review of the entire medical record, as well as applicant's less than credible testimony, it is found that applicant did not sustain injury to his back arising out of and occurring in the course of employment on November 2, 1994.

OCCUPATION:

The issue of occupation is moot.

EARNINGS:

The issue is moot.

TEMPORARY DISABILITY:

In light of the finding of no injury arising out of and occurring in the course of employment, no temporary disability is awarded.

PERMANENT DISABILITY:

In light of the finding of no injury arising out of and occurring in the course of employment, no permanent disability is awarded.

APPORTIONMENT:

The issue is moot.

NEED FOR FURTHER MEDICAL TREATMENT:

In light of the finding of no injury arising out of and occurring in the course of employment, no medical treatment is awarded.

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD


AWARD

AWARD IS MADE in favor of JERRY MISTRIEL, against REPUBLIC INDEMNITY COMPANY OF AMERICA of medical-legal expense as set forth in Findings No. 2; together with attorney expenses as set forth in Findings No. 3.

Dated: November 22, 1995

Filed and served by mail
on all parties listed on the
Official Address Record.

By: P. Lawrence
P. Lawrence



MARK FELDMAN
WORKERS' COMPENSATION JUDGE

JERRY MISTRIEL
VNO 301-433
PAGE TWO