

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. AHM0008214

GABRIEL MONTANO

vs.

ANAHEIM FOUNDRY;
COMCO INSURANCENANCY M. GORDON
WORKERS' COMPENSATION JUDGE

DATE: June 28, 1996

OPINION ON DECISION**INJURY AOE/COE**

There is only one (1) claim form in this file. It reveals that the applicant made a claim of injury to his lung, back, both shoulders, both arms and hands, hearing, low back, neck and both legs while employed at the Anaheim Foundry for the period 1985 to June of 1990. The parties stipulated that the claims for internal hearing and seizure, ischemic brain disorder are non-industrial. The parties have only placed in issue a claim of injury in the course and scope of employment to the applicant's back. Only one (1) orthopedic report is offered on behalf of each party, although several of the medical-legal reports generated for the acknowledged non-industrial claims are admitted so as to review them for lien issues.

The applicant testified that in addition to pain in his entire back, he also currently suffers from problems in his knees, arms, cranium, ears and feet. The applicant testified that he had work duties that included picking up pieces of metal. He also claimed metal pieces which were of different sizes. This cleaning was done with broom. The applicant could not give an estimate as to the largest weighted items that he lifted. It was obvious that the applicant had difficulty in answering the questions that were put to him by the attorneys. Most of the evidence concerning the applicant's job duties and work history at Anaheim Foundry had to be elicited from defense witnesses. No impression was given that the applicant was in any way trying to misrepresent his condition, but rather that due to his medical condition including partial deafness, the applicant had difficulty in presenting his case as a witness. The applicant had begun to work at Anaheim Foundry in 1985 and worked in the grinding department unloading fittings. Plant manager, Michael Braziano, testified that fittings could be as large as 13 inches and weigh 15 to 20

GABRIEL MONTANO**W.C.A.B. CASE NO.: AHM0008214**

pounds. They also had 4 inch fittings. The applicant's position then changed in June, 1990. Mr. Braziano testified that the applicant ceased to be employed in the grinding department because he was seen throwing fittings into a box which caused them to crack. It was estimated this would cost \$1,300.00 per week and a total cost of \$70,000.00 per year if it continued. The witness represented that he had talked to the applicant about this several times, but the applicant kept throwing the fittings. The applicant never told him why he was doing this. The witness assumed the applicant was not understanding the instructions.

Due to the applicant's years of service, it was elected that he be kept at the same rate of pay, but he was transferred to another department where he performed some janitorial services and the sweeping of driveways. There is no allegation that the applicant's employment caused any disability after he stopped working in the grinding department.

The overall impression of the applicant by the defense witnesses is of an individual who had difficulty communicating with his co-employees or superiors. They did not seem to understand the reason for some of the applicant's actions.

Raymond B. Booth, Jr., the applicant's direct supervisor as of June, 1990, testified that the applicant never complained of any back pain.

It is difficult in part, due to the applicant's medical condition. It is obvious in reading the reports that the applicant attributes all of his complaints to his employment with Anaheim Foundry. The records reveal that the applicant has complained that his cloudy vision and runny eyes are due to chemicals at Anaheim Foundry. Dr. Milton E. Legome, reporting on behalf of the defendants, refers to the applicant's complaints of being hard of hearing and that he feels disoriented all of the time. That would seem to be consistent with the applicant's demeanor at the time of this hearing.

Dr. David Ascher reporting on behalf of the applicant, finds tenderness of the applicant's back. Dr. Legome finds no tenderness. The MRI of the applicant's spine is essentially normal. The record of

GABRIEL MONTANO**W.C.A.B. CASE NO.: AHM0008214**

any objective findings concerning the applicant's back symptoms is meager at best. The Court finds that based on the medical evidence and the oral testimony that the applicant has not met his burden of proving that he suffered a back injury in the course and scope of his employment at Anaheim Foundry from 1985 to June of 1990.

LIENS

At the time of hearing, it was represented that the lien of Dr. Glorig has been paid. Since the date of trial, the defendants have written that they have also resolved the lien of Stat Med. It is noted that the parties have three (3) bills but no liens have been filed. These appear to be connected to the applicant's epileptic seizures. Since there are no liens of records, the Court has no jurisdiction to address them at this time.

The lien of Dr. Ascher remains outstanding. It is alleged that all the liens violate Labor Code Section 4628 and have a false history. As to Dr. Ascher, no specifics are given. It is true that he does not discuss the applicant's overall medical condition and only focuses on the back, but the Court will not find that to be a false history and so we will find that Dr. Ascher's services were reasonable and necessary to prove a contested claim. There is no objection as to the amount that Dr. Ascher has billed, and therefore, his lien will be awarded in its full value of \$1,072.75. In connection with the examination by Dr. Ascher, there is a lien from Christine Vaught, a Spanish Interpreter, who has a lien of \$80.00 in connection with Dr. Ascher's services. It is noted that the defendants do not doubt that she provided services, but questions whether those services were reasonably and necessarily incurred when the doctor makes reference to other Spanish speaking individuals in his office who assisted. The Court finds the defendants have not met their burden of proving that this interpreter who appear for and provided services at Dr. Ascher's evaluation was unreasonable and unnecessary. The amount that is at issue which is \$80.00 is reasonable and the lien of Christine Vaught is therefore ordered to be paid in full.

There is an objection letter to the lien of Westwood lien services for an MRI of the brain. The

GABRIEL MONTANO**W.C.A.B. CASE NO.: AHM0008214**

objection alleges that there was no contested claim at the time of the alleged medical-legal expense. No evidence was offered to support this allegation. Clearly, the lien is excessive, but having offered no evidence to support this allegation, the Court cannot disallow the lien. The Court will note that the Minutes of Hearing were served both on Westwood Lien Services and its client, Magnetic Imaging Medical Group at the address they represent in Sherman Oaks, California. It appears that both entities have moved and chosen not to provide a forwarding address. Due to the fact that as a matter of law, we must serve parties and lien claimants at their last known address, this decision will be served once again on the Sherman Oaks address of Westwood Lien Services. There will be no service on Magnetic Imaging Medical Group.

Dr. David A. Rosenberg has also moved and given no forwarding address. It is noted that a representative appeared at the hearing. The Court is unaware of any new address since the doctor has chosen not to supply it to the Court. His Minutes of Hearing were also returned. The Court notes that the report gives a Long Beach address, but since it pre-dates the date on the lien, the Torrance address is the most current address represented to the Court. Although not fully developed on the record, it would appear that Dr. Rosenberg did provide reasonable and necessary medical-legal services in connection with the neurological complaints alleged by the applicant that have since been withdrawn. There is also an objection to the lien of Dr. James F. Lineback which alleges that it was conducted when there was a lack of crucial information. The objection also makes reference to the applicant possibly having a smoking history. This was never developed on the record, and therefore, the Court has no basis to deny the lien on that ground.

There is also a lien from Legal Reproductive Services in the amount of \$171.91. There is no objection to that lien, and therefore, it is awarded in full.

The Court will assume that Nunes and Barrera have been paid for their services at the date of trial on April 10, 1996. Of course, this lien is reasonable and properly billed at \$118.00 and is therefore to be awarded.

GABRIEL MONTANO

W.C.A.B. CASE NO.: AHM0008214

The real problem with the liens is with Canon Transtech. The defendants are objecting to payment over \$80.00 per services at a doctor's office. Reg. 9795.3 did not become operative until January 28, 1994. Most of the charges for the lien claimant precede that date. It is noted that the lien claimant has billed for services at the office of Dr. Glorig on September 29, 1994 in the sum of \$118.00. Of course, this is incorrect. With no further information, the Court will only allow \$80.00 for that appearance. As to what was reasonable before January of 1994, neither the lien claimant nor the defendants have offered any evidence. Due to the fact that it appears that the lien claimant is misbilling for their services at doctor's offices, the Court will allow the parties to negotiate the value of the lien, and if necessary, take testimony on this issue at a later date. The billings of \$118.00 each for appearances at the WCAB are, of course, appropriate.

Since there is no finding of any industrial injury, any liens for treatment by any of the lien claimants must be disallowed as there has been no finding of a compensable industrial injury.

In view of the above findings, the balance of the issues raised are deemed moot.



NANCY M. GORDON,
WORKERS' COMPENSATION JUDGE

NMG:cts