

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
ANAHEIM, CALIFORNIA

Case No. AHM 016687

FRANCISCO OROZCO,

Applicant,

vs.

STONE COLLECTIO, INC.;
TRANSAMERICA INSURANCE COMPANY,

Defendants.

FINDINGS AND ORDER

Hearing having been held herein and the matter having been duly submitted for decision, the Honorable Janet M. Coulter, Workers' Compensation Judge, Finds and Order as follows :

FINDINGS OF FACT

1. Francisco Orozco, born June 4, 1965, while employed as a laborer/painter, at Los Angeles, California by Stone-Collection, insured by Transamerica Insurance Company did not sustain an injury arising out of and in the course of said employment to his back, shoulder, neck, chest, head, psyche, and internal organs.
2. All other issues are moot with the exception of the lien claims and deposition fees.
3. The lien of Employment Development Department is denied.
4. The lien of Miguel A. Arriola & Associates dated February 11, 1994 is allowed at the rate of \$112.10 per half-day in the total sum of \$ 224.20.

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5. All treatment liens of Lake Arrowhead Health Center, Inc. are denied.
6. With regard to the liens of Lake Arrowhead Health Center for purported medical-legal expenses: payment for the initial chiropractic medical-legal examination and report is denied; the final chiropractic med-legal evaluation will be allowed as a comprehensive re-exam of an established patient with an RVS Code of 90080 and a charge of \$ 79.95; the \$300.00 report fee will be allowed as billed; the comprehensive initial psychiatric evaluation will be allowed in the amount of \$ 1,279.00; all charges for psychological testing are denied.
7. The liens of Delgado Translation, for charges incurred on 7/23/92 and 12/14/92 are denied as related to treatment; the charge incurred on 4/27/92 is denied as payment for the underlying examination has been denied as having been procured prior to the existence of a contested claim; the charge for 3/1/93 is denied. The interpreting charges for the 8/6/92 initial psychological examination are allowed in the amount of \$85.00.
8. The lien of Trenwith Medical is ordered off calendar.
9. The lien of Charles Cole, M.D. is ordered off calendar.
10. Labor Code § 5710 fee is allowed in the total amount of \$ 393.75.

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ORDER


IT IS HEREBY ORDERED that applicant take nothing from the Defendant.
IT IS FURTHER ORDERED that the following lien claims are allowed:
Miguel Arriola & Associates as set forth in Finding of Fact #4; Lake
Arrowhead Center as set forth in Finding of Fact #6; Delgado Translation
as set forth in Finding of Fact #7; and Labor Code §5710 fee as set forth in
Finding of Fact #10.



Janet M. Coulter
Workers' Compensation Judge

Served by mail on persons shown
on the Official Address Record:

Date: MAY 13 1994

By: 
Rebecca Soliman

NOTE:

"A Petition for Reconsideration from this decision shall be filed only
at the Anaheim district office of the Workers' Compensation Appeals
Board."

FRANCISCO OROZCO

vs. STONE COLLECTION, INC.;
TRANSAMERICA INSURANCE COMPANY

Workers' Compensation Judge:
Janet M. Coulter
Date: May 13, 1994

Law Offices of Grant A. Lynd
By: GRANT A. LYND, ESQ.,
Attorneys for Applicant

Law Offices of Kegel, Tobin & Truce
By: BEVERLY NEWMAN, ESQ.,
Attorneys for Defendant

OPINION ON DECISION

INJURY AOE/COE.

Applicant has failed to sustain the burden of proof necessary to establish that an industrial injury occurred. Evidence has not been presented which would prove by a preponderance of the evidence that applicant sustained injury arising out of and occurring in the course of his employment. The trier of fact having observed the applicant's demeanor finds that the applicant appeared confused and his testimony was not credible.

Applicant never complained to the employer or to others of any problems while working at Stone Collection. It was not until applicant was laid off for lack of work on May 22, 1992 that he decided seek assistance. By way of an ad on the radio, applicant procured legal and medical assistance.

Defense witness seemed to be far more credible than applicant. He confirms the fact that applicant never reported an industrial injury nor did he seem to have had any physical problems prior to the lay off.

The trier of fact has concluded that the applicant's testimony was so unreliable that it does not rise to the level of a preponderance of evidence on the issue of injury. Therefore, it will be found that applicant did not sustain an industrial injury.

~~As a consequence of the finding of no industrial injury, all other issues are moot with the exception of the lien claims and deposition fees.~~

LIENS:

As there has been no finding of injury, the lien of the Employment Development Department is denied.

The lien of Miguel A. Arriola & Associates dated February

11, 1994 for interpreting services at the trials set for January 6, 1994 and February 11, 1994 are allowed at the rate of \$112.10 per half-day. Therefore, the total amount allowed to this lien claimant is \$224.20.

As there has been a finding of no injury, all treatment liens of Lake Arrowhead Health Center, Inc. are denied.

With regard to the liens of Lake Arrowhead Health Center, Inc. for purported medical-legal expenses, it is noted that the claim form is dated June 8, 1992. The initial chiropractic medical-legal examination took place on May 27, 1992 only seven (7) days after the lay-off and twelve (12) days before the claim form was completed. There was no evidence presented which would indicate when the employer actually received the claim form. As the defendant, in any event, had not received notice of the injury prior to the examination on May 27, 1992, a contested claim for which a medical-legal examination was necessary could not possibly have existed. Pursuant to the case of Jose Del Rio v. Cannon Equipment West, Inc. , as well as Labor Code section 4620, a contested claim did not exist. Therefore, no liability for payment pursuant to Labor Code section 4622 exists and payment for the initial chiropractic medical-legal examination and report is denied.

The final chiropractic Med-Legal Evaluation will be allowed a comprehensive re-exam of an established patient with an RVS Code of 90080 and a charge of \$79.95. In addition, the \$300.00 report fee will be allowed as billed as there is no RVS code, that amount is not inherently unreasonable, and there has been no rebuttal evidence presented.

The comprehensive initial psychiatric evaluation will be allowed at 80th percentile in the amount of \$1,279.00. All charges for psychological testing are denied as there is no justification in the report for the elaborate tests which were performed.

As the liens of Delgado Translation flowed from the examinations at Lake Arrowhead Health Center, Inc., the charges for 7/23/92 and 12/14/92 are denied as related to treatment. The charge for 4/27/92 is denied as payment for the underlying examination has been denied as having been procured prior to the existence of a contested claim. As there is no indication in the file as to the purpose of the 3/1/93 charge, that charge is denied as well. The interpreting charges for the 8/6/92 initial psychological examination are allowed in the amount of \$85.00 as being within the range of the prevailing rate. The amount billed is an unreasonable charge for the services performed.

The purported lien of Trenwith Medical is ordered off calendar as there is no lien or itemized statement of such medical group contained in the board file. As the lien amount alleged is \$6,081.03 exactly the same as the chiropractic lien of Lake Arrowhead Health Center, Inc., it will be presumed that any mention of Trenwith Medical in the file is in error and is ordered off calendar at this time.

As there is no lien in the file for Charles Cole, M.D., the issue of that lien is ordered off calendar.

LABOR CODE SECTION 5710 FEES:

As the deposition of August 17, 1992 was attended by a non-attorney, Labor Code section 5710 fees will be allowed at the rate of \$75.00 per hour in the total amount of \$393.75.



Janet M. Coulter

Workers' Compensation Judge

Service by Mail on
parties checked on the
Official Address Record:

Date: May 13, 1994

By: 
Rebecca R. Soliman