

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

REGINA PENNER,

*Applicant*

vs.

MAY DEPARTMENT STORES  
COMPANY, Permissibly self-insured,

*Defendants.*

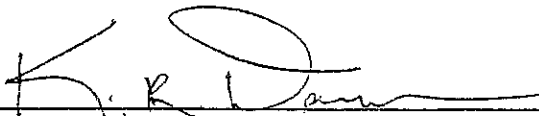
Case No. GOL 97401, 97402

FINDINGS OF FACT

The Honorable Kelley R. Davis, Workers' Compensation Administrative Law Judge, makes the following Findings of Fact:

FINDINGS OF FACT

1. Applicant did not sustain an injury aoe/coe.
2. The Presumption of Compensability does not apply under the current record, but if it did, it was overcome.
3. All other issues are moot.



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Kelley R. Davis  
Workers' Compensation Administrative Law Judge

*March 1*  
Dated: ~~February 28~~, 2006  
Service by mail on parties as  
shown on the official address record  
effected on the above date.

By: Terri Hourigan

E. CHARLES MAKI

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REGINA PENNER,

vs.

MAY DEPARTMENT  
STORES;

JUDGE: KELLEY R. DAVIS

OPINION OF JUDGE ON DECISION

**INJURY AOE/COE:**

Applicant alleges that on or about 2/17/03, while employed as a sales associate by defendant May Department Stores Company, she sustained an injury aoe/coe to her back. Part of applicant's duties was to carry articles of women's clothing from dressing rooms in her department and return them to the racks. She testified she always carried as much as possible. On the date of injury while so doing, she experienced a sharp pain on the low left side of her back. She reported this injury to her department manager, to the HR person, to the assistant store manager and to the store manager but no one gave her forms to fill out or offered her medical treatment.

She continued working despite being in excruciating constant pain until she saw Dr. Kay in June 2003, to whom she reported her industrial injury. She had gone to see him not because of her back, but because she had injured her face falling at the beach.

She denied a back injury in the beach fall. Dr. Kay's notes regarding the injury make no mention of an industrial injury to the back. His subsequent note of 7/24/03 does not mention back pain but again makes no mention of an industrial component.

Applicant introduced a prescription pad from Dr. Kay and testified that some time in one of her early visits he wrote "Work Comp Doctor" on it and gave it to her. She denies she received it when she saw Dr. Kay on 1/16/04; Dr. Kay writes "Now claiming hurt back 2/03 on job. . ."

It appears more logical that he wrote the prescription pad note in response to her 1/16/04 claim of injury at work than on some earlier occasion. Nor is it credible that the applicant would be injured in 2/03, be in excruciating constant pain, but

not seek any medical treatment until seeing a doctor for an unrelated accident some five months later. All this, by the way, while continuing to perform her full job duties on a daily basis. For these reasons this Court will find applicant did not sustain an injury aoe/coe in 2/03 while employed by defendant.

**PRESUMPTION OF COMPENSABILITY:**

Applicant raised the presumption of compensability. Defendant denied the claim of 2/03 injury by letter dated 4/23/04, however the Court is not aware of when the defendant received the applicant's claim of injury so cannot compute the 90-day period. However, for purposes of this opinion the Court assumed the presumption applied and felt that the applicant's lack of credibility, the defense medical reports, plus the lack of support for her claim in the documentary evidence, was enough to overcome the presumption.

**OTHER ISSUES:**

All other issues are moot.



KELLEY R. DAVIS  
Workers' Compensation Administrative Law Judge

Dated ~~February 28~~ <sup>March 1</sup>, 2006  
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