

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

Case No. PAS 9876

JOHANNA PEREZ,

*Applicant*

vs.

MARYVALE SCHOOL,  
permissibly self-insured,

*Defendants.*

**FINDINGS & ORDER**

Goldschmid, Silver & Spindel, by Vernon Goldschmid,  
attorneys for applicant.  
Kegel, Tobin & Truce, by Dennis Triplett,  
attorneys for defendant.

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Application having been filed herein; all parties having  
appeared, and the matter having been regularly submitted, the Honorable  
JAMES J. CASTRANOVA, Workers' Compensation Judge, finds, awards and  
orders as follows:

FINDINGS OF FACT

1. Johanna Perez, born October 12, 1962, while employed as  
a teacher, occupational group no. 41, at Rosemead, California, on November  
20, 1992, by Maryvale School, who was then permissibly self-insured, did  
not sustain injury arising out of and occurring in the course of her  
employment to her back.

2. Applicant reasonably, actually and necessarily incurred  
expense to prove a contested case, payable by defendant, in amounts to be

1 adjusted by the parties or determined herein upon the filing of a petition  
2 and supporting documents.

3 3. All other issues have been rendered moot.

4 A W A R D

5 AWARD IS MADE in favor of JOHANNA PEREZ against MARYVALE  
6 SCHOOL, permissibly self-insured, of medical-legal costs, as provided in  
7 Finding No. 2 above.

8 O R D E R

9 IT IS ORDERED that applicant take nothing by reason of her  
10 application filed herein on January 13, 1992.

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13 JAMES J. CASTRANOVA  
14 Workers' Compensation Judge

15 DATED: OCT 28 1992

16 Served on said date by mail on persons  
17 shown on the official address record.

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28 PAS 9876

JOHANNA PEREZ

vs.

MARYVALE SCHOOL,  
permissibly self-insured

Date of Injury: 11/20/90

Workers' Compensation Judge: JAMES J. CASTRANOVA

Dated: OCT 28 1992

OPINION ON DECISION

INJURY ARISING OUT OF AND OCCURRING IN THE COURSE OF EMPLOYMENT: Based upon applicant's testimony and all of the medical evidence, it is found that applicant did not sustain injury to her back arising out of and occurring in the course of employment on November 20, 1990

Although there was some evidence that the applicant was planning to file a "stress claim" before going out on maternity leave, as well as the applicant's initial failure to correctly identify which arm Emilio pulled on November 20, 1990, this Workers' Compensation Judge was willing to overlook or reason away these problems. This Workers' Compensation Judge was preparing rating instructions when a glaring inconsistency was found in the record which could not be overlooked.

The applicant testified that she injured her upper back between the shoulder blades on November 20, 1990. Please refer to Summary of Testimony of Hearing of October 20, 1992 as follows:

p. 3, line 21: ". . . felt a sharp pain in the upper part of her back between her shoulder blades."

p. 5, lines 8-9: ". . . the pain was in her lower back (prior to the injury) as opposed to her upper back."

This testimony is totally inconsistent with the history taken by both Dr. Capps and Dr. Karbelnig. Both doctors report that the applicant injured her lower back. Both report the applicant's current permanent disability in her lower back. The applicant testified on p. 5, lines 2-3 that her current problem is "pain in her back between her shoulder blades which is constant". The applicant elaborated that her prior back problems dealt with her lower back as opposed to her upper back:

"Immediately prior to her injury, applicant was not having low back pain. She did have such pain in the past. She would have it before her period or if she was performing a lot of activities such as during the holidays. The pain was in her lower back as opposed to her upper back." Summary of Testimony, Hearing of October 20, 1992, p. 5, lines 6 through 9.

How can one overlook this inconsistency? How can one list factors of disability for the upper back when the forensic doctors refer to the applicant's low back complaints? (Please note both doctors do refer to mid-back problems in 1992.) The applicant's testimony at the hearing stated that she currently had upper back problems, not lower.

In short, the above gives credence to the "rumors" that the applicant was planning to go out on "stress". Instead, in the eight month of her pregnancy, the applicant claimed a back injury. Based upon the aforementioned inconsistencies, this Workers' Compensation Judge does not believe that an injury occurred to her upper or lower back.

MEDICAL-LEGAL COSTS: Applicant incurred reasonable and necessary medical-legal expenses, in amounts to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents.



JAMES J. CASTRANOVA  
Workers' Compensation Judge

JJC:aga