

**STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD**

GARY ROBINSON,

Applicant

vs.

CITY OF LOS ANGELES; P.S.I.;
ELK'S LODGE; S.C.I.F.,

Defendants.

Case Nos. VNO 0114690, VNO 0130480,
VNO 0205738 & VNO 0205739

FINDINGS & AWARD

The above-entitled matter having been heard and regularly submitted, the Honorable JEROLD S. COHN, Workers' Compensation Judge, now makes his decision as follows:

Findings of Fact

1. Applicant reasonably and necessarily incurred medical-legal expenses, which are payable to the providers in the amounts billed, one-half by State Compensation Insurance Fund and one-half by the City of Los Angeles.
2. Applicant did not sustain any compensable injury AOE/COE, as alleged.

AWARD


1. Applicant is to take nothing by reason of his cases.
2. Defendants State Compensation Insurance Fund and City of Los Angeles are each liable to pay one-half of the medical-legal expenses in the amounts billed.

DATED: 9-24-97

Filed and Served by mail on: 9-24-97

On all parties on the
Official Address Record.

By: J. Ross
J. ROSS


JEROLD S. COHN
Workers' Compensation Judge

**STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD**

**CASE NOS. VNO 0114690, VNO 0130480, VNO 0205738
& VNO 0205739**

GARY ROBINSON

vs

CITY OF LOS ANGELES;

ELKS LODGE;

CITY OF LOS ANGELES;

STATE COMP. INS. FUND

WORKERS' COMPENSATION JUDGE

JEROLD S. COHN

OPINION ON DECISION

One of the most chilling factors of this case is that applicant, because of alcohol abuse and its consequences, has blacked out and suffered memory losses, which make it impossible for this trier of fact to conclude, based upon applicant's conflicting testimony alone, that he suffered any injury at work. His oral evidence was unreliable.

On the very first day of trial, he was able to testify that he worked as a Los Angeles Police Department police officer from 1-26-69 to the last part of 1981, i.e., he never could remember the last day upon which he was a sworn police officer any closer than, "the last part of 1981." 6-10-97 Minutes of Hearing (MOH), page 6, lines 1 - 3.

Next, (6-10-97 MOH, page 6, lines 8 - 12) in answer to a specifically leading question, he affirmed that on 8-3-63, he was blown out of a building, suffering a broken wrist, as well as being "hurt all over" at age 17.

To the dismay of the trier of fact, his actual testimony on 6-10-97 was summarized (MOH, pages 6 - 7) as follows:

See attached Minutes of Hearing, pages 6 - 8.

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He worked for the City of Los Angeles as a police officer from January 26, 1969 to the last part of 1981. (He apparently never could remember the exact date that he last worked there but specifically mentioned his first day as a police officer.)

Before that he had had some police experience in the military police having served in the United States Army beginning in September of 1965 with duty in Vietnam and in Utah where he worked around a chemical center and also worked around traffic. He never injured himself in the army and never saw a psychiatrist.

In answer to a specific question as to whether or not he got blown out of a building on 8/3/63, he said he did when he was 17 years old, suffering a broken left wrist and that he hurt all over. He was hospitalized four or five days, casted for about six months, but had no back or psychiatric permanent disability.

At the LAPD he had a pre-employment physical examination at Central Receiving where they also took a psychiatric history as well as a physical history.

At the LAPD, he was assigned as a patrol officer working for eight years at the University Division which ultimately became the Southwest Division and then working at North Hollywood Division until his last day of work. (He didn't give the indication that he knew the last day at work.) During that period of time, he would have physical altercations about twice a week.

He was asked if he sustained an injury at work, and he answered in the affirmative indicating he doesn't recall the first day of accident. When specifically asked if he injured himself on April 28, 1978, he answered in the affirmative but could not describe anything about the accident including how it happened or where it happened or what he injured. He was then specifically shown a copy of the Application alleging an injury on 4/28/78 involving a vehicular accident and he still couldn't recall anything indicating that the dates are throwing him and it was a poor time in his life. The Application refreshes his recollection but when asked what happened, he paused stating that he had had several traffic accidents and couldn't recall which occurrence took place on 4/28/78 nor could he glean what applicant's attorney was referring to.

1 However, he does believe he had about seven
2 accidents while working for LAPD although he was often told
3 by his superiors to write "not injured" on his report. If
4 treatment was necessary, he was sent to the nearest contract
5 hospital. When asked which hospital that would have been,
6 he states that in North Hollywood it would have been
7 Riverside Hospital or St. Joseph Hospital or one in Sun
8 Valley, but he couldn't recall specifically going to any of
9 them. He missed work from an accident and doesn't believe
10 he took any IOD (injured on duty) time. At the LAPD you get
11 salary for a period of time in lieu of temporary disability.

12 If he had one automobile accident where he suffered
13 back disability, he still had it when he left the LAPD.
14 Then he volunteers it was painful all the time and was a 6
15 or 7 on a scale of 1 to 10, at times more and at times less.

16 He can't recall any further treatment other than
17 initially right after the accident.

18 He does not recall if he was advised of his right to
19 file a workers' compensation claim.

20 When asked if he recalls seeing Dr. Moskowitz as an
21 Agreed Medical Examiner, the answer was yes, but states he
22 couldn't recognize Dr. Moskowitz in a crowd.

23 Some time while working for the LAPD, he either
24 started drinking or resumed drinking alcoholic beverages.
25 He didn't have a a drinking problem when he started but
developed it at the University Division after about five
years. Stress on the job from street dangers and
supervisory harassment were things he experienced.

26 He started receiving harassment three years after he
27 was hired and felt it was unjustified, and if he objected to
28 it, it became twice the problem.

29 There was no drinking associated with police work
30 but quite often fellow officers would go drinking after work
31 and he occasionally went for a drink after his first three
32 years, and after five years on the force he went out
33 drinking after work all the time.

34 He seldom drank alone and there were always fellow
35 officers to drink with and even superiors, and he states
36 that once he drank with a lieutenant and once with a
37 captain. It was sort of a routine after work. His
38 immediate supervisor participated. He felt it was condoned
39 and he drank. He drank after work each day.

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If he wasn't working, he was doing one of three things; either sleeping, eating or drinking, and it was the latter that was more prominent.

He drank to be just one of the guys. And once a Southwest officer called him a sissy and so he proceeded to outdrink his superior. His drinking did not stop after he ceased being a LAPD officer.

JEROLD COHN
Workers' Compensation Judge

(Hearing adjourned at 4:05 pm)
MINUTES COMPLETED & RETURNED TO JUDGE

By: *J. Skala* Date: 6/12/97
Arnell on Counsel: 6.12.97
By: Jhon

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His so-called last industrial injury occurred at the Elk's Lodge, where he alleges he hurt his back and neck in October of 1993 bringing a case of beer downstairs, and while carrying it across a newly waxed floor, he slipped.

No other witnesses testified.

Applicant's history includes bar fights (some at the Elk's Lodge) with at least one hospitalization.

Applicant states and gives the impression that he drinks when he has money. He has refused Alcoholic's Anonymous (A.A.) assistance, Veteran's Administration (V.A.) medical treatment and antibiotic.

Applicant has not proven an established and dangerous policy on the part of either employer of making use of alcohol a part of the job. Indeed, he was fired from both jobs in part, for drinking and drinking excessively. It appears that applicant's alcoholic intake is his own personal choice and always has been. Regretfully, he has shown no interest in participating in well-known plans to reduce or stop alcoholic intake.

Either applicant has severe memory problems, or was less than candid in testifying, or both, e.g., in a 5-20-82 report from Dr. Siegler, he gives a history of alcoholic blackout in 1974, followed by hypnotherapy and a twenty-one (21) day self-admission to Crossroads Hospital. The trier of fact does not recall his having mentioned the latter, and was vague about the former.

He seems to deny certain aspects of his history that could be important to him, e.g., on direct examination, he states a doctor's theory that his diarrhea is caused by stress at work with the police department, only acknowledging alcohol as a cause on cross-examination.

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He gave little weight to some historical factors. In testimony, he gave the impression of having only one accident where he failed to qualify at target practice, whereas Dr. Wiese (8-29-92 report, page 2) refers to occasion(s) [plural] of failure to qualify resulting in a 1 - 3 day suspension without pay. During the three (3) month suspension, he testified to not drinking at all. Dr. Wiese records a history (id., page 4) of four (4) beers. While that was a long time ago for a person with an alcohol problem, four (4) beers might be substantial. No matter what the facts, part of the reason for the termination after thirteen (13) years was alcoholic intake. Per Dr. Wiese, page 6, applicant gives a history of drinking one beer daily. He doesn't tell us if that occurred before, during or after his employment with defendant. Nor does he diagnose alcoholism on page 8.

The 8-19-82 wording of Dr. Wiese is substantially similar to that of Dr. Fried in his 3-2-84 report; but, at page 4, Dr. Fried describes applicant's back going out subsequent to a traffic accident. After a special assignment, applicant was off work eighty-nine (89) days. At page 4, he states: His alcoholism resulted as an attempt to reduce the tensions and stresses. . . he was experiencing as a policeman. . ." He does not mention the 1983 back injury at the Elk's Lodge, but does discuss back symptoms due to an auto accident. At page 6, "he denies being an alcoholic but admits drinking beer to excess." He was arrested for being drunk and has been admitted to a detoxification hospital for alcohol abuse.

At page 6, Dr. Schwartz' 1-11-86 report discloses facts that vary from applicant's, e.g., drinking to excess daily, as opposed to not using alcohol daily prior to 1974.

At page 3 of his 1-11-88 report, Dr. Schwartz states applicant made formica-like counter tops in the back yard in 1986, after working as a handy man in 1985 - 1986.

In a 7-22-87 report, Richard Shaw, M.D., takes a history and makes a diagnosis,

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neither of which refer to the diarrhea problem, whereas Dr. Shaw notes the diarrhea discussions in reviewing reports from doctor's reporting to applicant's attorney, as well as the applicant's deposition. He states that because applicant did not mention gastrointestinal problems, he concludes that applicant no longer has them.

Applicant's testimony left the trial judge with the impression that he attended the required number of Alcoholic's Anonymous meetings to meet the conditions of his probation, but that his captain didn't want him back, testifying applicant failed to report to the captain. Dr. Hochman's 2-23-89 report (page 3) records termination due to failure to attend the required number of A.A. meetings.

The medical reports speak of two (2) marriages ending in divorce. Applicant testified to only one.

Dr. Hochman, on 2-23-89 (page 7) suggested that applicant, having only \$72.00, check into the Sepulveda V. A. Alcoholic Treatment Program. No evidence indicates applicant followed up on that suggestion.

Dr. Hochman's 6-23-89 report reviews records about prior accidents and gives additional opinions. At page 10 he states, "The patient failed to mention that he had been abusing alcohol since age eighteen (18), several years prior to the L.A.P.D. job." He notes considerable evidence above of the patient having difficulties with reliability and honesty presenting historical data, as his concluding comment.

In short, it is felt that applicant has failed to prove his case.

In the course of the work-up, various sums were expended for medical-legal

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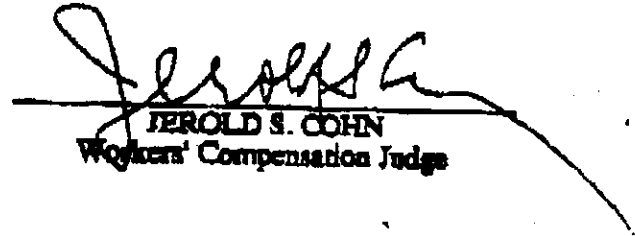
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expenses, which, without contrary evidence, are deemed necessary and reasonable and payable as billed to the providers.

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