

CASE No. ANA 0259924

RIGOBERTO RODRIGUEZ

vs.

RESTAURANT ENTERPRISES, INC.;  
TRAVELERS INSURANCE CO.,

SAMUEL C. BANIS

Workers' Compensation Judge

Date: December 29, 1993

Rigoberto Rodriguez, Applicant

Goli K. Alai, Esq.  
Attorney for Applicant

Kegel, Tobin & Truce, by: Georgia Connolly, Esq.  
Attorneys for Defendant

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

This case came on for trial November 18, 1993. Testamentary and documentary evidence was admitted. A Findings & Order issued December 01, 1993. This timely Petition for Reconsideration followed alleging:

- (1) The order, decision, or award was procured by fraud.

II

DISCUSSION

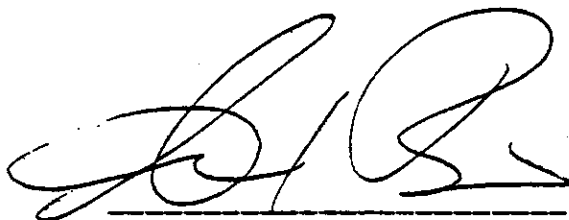
Applicant's claim was incredible. His appearance and testimony were such that he did not persuade the court of his having had an industrial injury.

Applicant does not support his allegation, this Findings & Order was procured by fraud. No fraud was found.

III

RECOMMENDATION

It is recommended, this Petition for Reconsideration be denied.



SAMUEL C. BANIS, Judge

SCB:hcs

Dated: December 29, 1993

Service by mail on persons  
listed below on this date.

Date: December 29, 1993

By: H/~~Monte~~

cc: Rigoberto Rodriguez, Applicant  
Goli K. Alai, Esq.  
Georgia Connolly, Esq.

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD  
SANTA ANA, CALIFORNIA

RIGOBERTO RODRIGUEZ,

*Applicant,*

vs.

RESTAURANT ENTERPRISES, INC.;  
TRAVELERS INSURANCE COMPANY,

*Defendants.*

Case No. ANA 0259924

FINDINGS AND ORDER

COUNSEL- Goli K. Alai, Esq., Attorney for Applicant  
Kegel, Tobin & Truce, by: Georgia Connolly, Esq., Attorneys for  
Defendant

Hearing having been held and the matter having been submitted for  
decision, Samuel C. Banis, Workers' Compensation Judge, finds and orders as  
follows;

FINDINGS OF FACT

Rigoberto Rodriguez, born January 08, 1960, while employed as a  
Cook's Helper (Group 35 F), during the period January 1990 to January 1991, at  
Huntington Beach, California, by Restaurant Enterprises, Inc., then insured by  
Travelers Insurance Company, did not suffer an industrial injury arising out  
of and occurring in the course of said employment.

ORDER

IT IS ORDERED, that applicant take nothing by reason of this case.  
There being no fund from which to order an attorney fee, none is awarded.

IT IS FURTHER ORDERED, that applicant's medical-legal expense and  
self-procured are denied on the basis there was no industrial injury and no  
injury took place.

Filed and Served by mail on: December 01, 1993.  
On all parties on the  
Official Address Record.  
By: H. C. Samonte

  
SAMUEL C. BANIS  
WORKERS' COMPENSATION JUDGE

RIGOBERTO RODRIGUEZ vs. RESTAURANT ENTERPRISES, INC.;  
Travelers Insurance Company,

SAMUEL C. BANIS DOI: January 1990 to January 1991  
Workers' Compensation Judge

Date: December 01, 1993

Goli K. Alai, Esq.  
Attorney for Applicant

Kegel, Tobin & Truce, by: Georgia Connolly, Esq.  
Attorneys for Defendant

### OPINION ON DECISION

Applicant's recitation as to how his injury occurred is incredible. Applicant's claim his nearsightedness was caused by going in and out of walk-in freezers is beyond belief.

Applicant continued work after his alleged incident.

It is noted the applicant moved during his testimony in a way suggesting he had no difficulty or pain with movement.

Applicant did have a hernia on the right side before his alleged incident. That may have caused applicant some difficulty but it is not an industrial injury. It has no connection with this case.

Applicant did not report an injury. Applicant did not complain of injury during his tenure at defendant's place of business.

Applicant wanted more work time not less.

Applicant exaggerates his time in the walk-in freezers but it is to no avail; this court does not believe his freezer activity caused applicant any injury.

Applicant did not suffer an industrial injury.

Applicant's self-procured is denied on the basis there was no industrial injury.

Applicant's medical-legal expense is denied. No injury took place.

Applicant is ordered to take nothing by reason of this case.

There being no fund from which to order an attorney fee, none is awarded.



SAMUEL C. BANIS  
Workers' Compensation Judge

SCB:hcs

Dated: December 01, 1993

Service by mail on persons  
listed below on this date.

Date: December 01, 1993

By: H. C. Samonte

cc: Goli K. Alai, Esq.  
Georgia Connolly, Esq.

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. 91 ANA 0259924**

4 **RIGOBERTO RODRIGUEZ,**

5 *Applicant,*

6 **vs.**

7 **RESTAURANT ENT./TIBBIES  
TRAVELERS INSURANCE CO.**

8 *Defendants,*

**ORDER DENYING  
RECONSIDERATION**

9  
10 We have considered the allegations of the Petition for  
11 Reconsideration and the contents of the workers' compensation  
12 judge's Opinion on Decision and the Report and Recommendation on  
13 Petition for Reconsideration. Based on our review of the record,  
14 and for the reasons stated by the workers' compensation judge,  
15 which we adopt and incorporate, we will deny reconsideration.

16 We are, moreover, extending to the WCJ's finding on  
17 credibility the great weight to which it is entitled (see Garza v.  
18 Workers' Comp. Appeals Bd. (1970) 3 Cal. 3d 312, 35 Cal. Comp.  
19 Cases 500).

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For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration be,  
and it hereby is, DENIED.

WORKERS' COMPENSATION APPEALS BOARD

Diana Marshall

I CONCUR,

Richard P. Gannon

[Signature]

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

FEB 11 1994

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED  
ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS.

vsr

Conelia L. Lopez

