

DRT

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

JAIME SALAZAR,

Applicant,

vs.

HYDRO WEST;
INDUSTRIAL INDEMNITY COMPANY,

Defendants.

Case No. AGO 4785,
AGO 2188
VNO 236885

**JOINT
FINDINGS AND ORDERS**

SAVIN & BURSK
By George Savin,
Attorneys for Applicant.

✓ KEGEL, TOBIN & TRUCE
By Dennis Triplett
Attorneys for Defendants.

The above-entitled matter having been heard and regularly submitted, the Honorable JOHN K. C. MAH, Workers' Compensation Judge, now makes his decision as follows:

FINDING OF FACT

1. Jaime Salazar, born May 8, 1960, while employed as a landscape foreman at Agoura Hills, California a) on August 15, 1989

in case no. AGO 4785, b) during the period of August 15, 1989 to May 11, 1990 in case no. AGO 2188, and c) on September 1, 1989 in case no. VNO 0236885, by Hydro West, then insured as to workers' compensation liability by Industrial Indemnity, did not sustain injuries arising out of and occurring in the course of his employment to his a) back, neck and both shoulders in case no. AGO 4785, b) back, both shoulders, neck, psyche and internal system in case no. AGO 2188, and c) back, both shoulders and head in case no. VNO 236885.

2. Defendants have no liability for providing temporary disability indemnity to the applicant.

3. Defendants have no liability for the costs for self-procured medical treatment incurred by the applicant.

4. Applicant is entitled to payment of reasonable and necessary medical-legal costs which may consist of the following:

- a) the medical-legal portions of the lien of Wellington Medical Group in the amount of \$5,300.00;
- b) the lien of American Psychometric Consultants in the amount of \$2,102.40;
- c) the lien of Moussa Mosheegh, M.D. in the amount of \$950.00;
- d) the lien of First Western Medical Group in the amount of \$992.00; and
- e) the liens of Ed Santiago & Associates in the amounts of \$100.00 and \$210.00.

5. All other issues have been rendered moot.

AWARD

AWARD IS MADE in favor of Jaime Salazar against Industrial Indemnity of reasonable and necessary medical-legal costs which may consist of the lien stated above in Finding of Fact no. 4, which are to be paid or adjusted less credit to defendants for all sums previously paid, with jurisdiction reserved in the event the parties are unable to resolve them.


ORDERS

IT IS ORDERED that the lien of the state Employment Development Department in the amount of \$6,308.00 for unemployment compensation disability benefits it provided to the applicant during the period of September 15, 1990 to February 27, 1991 is disallowed.

IT IS FURTHER ORDERED that the following costs incurred by applicant for self-procured medical treatment are disallowed:

- a) the self-procured medical treatment portions of the liens of Pace Medical Group in the amount of \$3,000.70, \$980.00, \$970.00, \$1,269.00 and \$1,507.00;
- b) the self-procured medical treatment portions of the lien of Wellington Medical Group in the amount of \$5,300.00;
- c) the lien of Lien Services in the amount of \$2,897.00; and
- d) the lien of Mascarin Professional Pharmacy in the amount of \$65.20.

IT IS FURTHER ORDERED that the applicant take nothing further by reason of his three applications.



JOHN K. C. MAH
Workers' Compensation Judge

Dated **JAN 4 1994**
Served on all parties as shown
on the Official Address Record.

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

CASE NUMBERS: AGO 4785,
AGO 2188,
VNO 236885

JAIME SALAZAR vs. HYDRO WEST;
INDUSTRIAL INDEMNITY COMPANY

JUDGE: JOHN K. C. MAH

JOINT OPINION ON DECISION

These three matters originally came to trial on September 24, 1992 when facts and issues were framed on the record and documents were admitted into evidence. Testimony from the applicant and three other witnesses was heard on March 18, 1993, May 24, 1993, July 12, 1993, and August 25, 1993.

Because the issues in these three matters are identical, the cases are decided together.

I. INJURY

It is found that applicant did not sustain injuries a) on August 15, 1989 to his back, neck, and both shoulders, b) during the period of August 15., 1989 to May 11, 1990 to his back, both shoulders, neck, psyche, and internal system, and c) on September 1, 1989 to his back, both shoulders, and head, which arose out of and occurred in the course of his employment with Hydro West.

Following a review of the applicant's trial testimony as well as the medical record, it was determined that applicant was not a credible witness and many of his medical reports would not constitute substantial evidence.

This trier of fact cannot believe that in this day and age, applicant was prohibited from squatting or kneeling under penalty of termination. (See 3/18/93 Summary, p. 5) Nor could this trier of

fact believe that applicant was forced to install sprinklers and pipes in a bent-over position without kneeling or squatting. (3/18/93 Summary, p. 5, lines 8-10) Such a requirement by the employer would not only be cruel and inhumane, it defies logic. Applicant would have been constantly working at a 90 degree angle. Furthermore, he would have needed extraordinarily long arms or an extremely limber back to install sprinklers and pipes in that manner.

Applicant testified that following his August 15, 1989 injury he had pain of a level between 6-1/2 and 7 on a scale of 10 in his low back, neck, and right shoulder. Following the alleged injury of September 1, 1989 in which his face was struck by bender board and he was knocked backward to the ground (see 5/24/93 Summary, p. 3), applicant's back pain increased to a level of 8-1/2 or 9. After four months of therapy, the pain returned to a level of 6-1/2 or 7. (7/12/93 Summary, p. 2, lines 15-18) It appears the four months of therapy was not received until the period of September, 1990 to January, 1991 when applicant was treated at Pace Medical Group. (7/12/93 Summary, p. 3, lines 1-4) It also appears that applicant did not receive his first treatment until May, 1990, after he was terminated by the employer and eight months after the two alleged specific injuries. Applicant testified at trial that he first saw a doctor for his second injury at Kaiser during May of 1990. (7/12/93 Summary, p. 2, lines 22-23) Because the treatment that applicant received at Kaiser was through his wife's health insurance (see 7/12/93 Summary, p. 5, lines 23-24), one must ponder why he did not seek medical attention there before his termination, in light of the severity of pain.

Applicant further testified that during the 30 day period following the August 15, 1989 injury, he lost no time from work though he was in pain. (5/24/93 Summary, p. 3, lines 5-7) Within that 30 day period, applicant sustained his alleged September 1, 1989 bender board injury. According to applicant's trial testimony, he continued to perform his regular work until May, 1990, when he was fired. (7/12/93 Summary, p. 3, lines 7-8)

While applicant admitted at trial that he was involved in an automobile accident during October, 1990 which resulted in injuries to his neck, right shoulder, low back, and right foot (7/12/93 Summary, p. 3, lines 17-20), it appears that he did not disclose this incident to his own doctors. Applicant testified that he had no recollection of telling Dr. Lloyd Tom and Dr. Azari of Pace Medical Group about the automobile accident. (August 25, 1993 Summary, p. 3, lines 13-14) In fact a review of the medical reports in Applicant's Exhibit 1 uncovers no mention of the automobile accident by any of applicant's doctors.

Applicant testified that he did not look for work following his layoff from Hydro West because he hoped to get his job back so he could be sent to a doctor. (August 25, 1993, p. 3, lines 16-18) This testimony is not persuasive since he had gone to Kaiser during May, 1990 and could have been treated there. Even though applicant testified that he was unable to recall if he went to Kaiser for treatment during his employment at Hydro West (7/12/93 Summary, p. 3, lines 10-11), this trier of fact does not believe he sought treatment while employed.

These findings of no industrial injuries are also supported by the persuasive opinions of Dr. Eleby Washington, Dr. Eugene Koprowicz, and Dr. Sanford Miller, as presented in their respective medical reports in the record. Dr. Washington noted in his report of December 14, 1990 (Defendant's Exhibit A) that applicant had no ratable disability. Dr. Koprowicz in his December 14, 1990 report (Defendant's Exhibit A) found no psychiatric disability, and stated in his supplemental report of February 13, 1993 (Defendant's Exhibit A), "It is still my opinion that there was no industrial causation to an injury in regard to this case from a psychiatric standpoint." In his report of December 19, 1991 (Defendant's Exhibit A), Dr. Miller questioned applicant's reliability as an historian and noted that applicant failed to mention his automobile accident to other doctors.

It was Dr. Miller's conclusion that applicant did not sustain an industrial injury of an internal nature.

Applicant's failure to be candid with his own doctors by failing to disclose his automobile accident of October, 1990 has rendered all of his reports written after the date of the incident and which make no mention of the accident, useless. Such reports cannot constitute substantial evidence because they do not contain a complete and accurate history.

In the end, this trier of fact found that applicant did not meet his burden of proof under Labor Code Section 3202.5.

II. CLAIM FOR TEMPORARY DISABILITY INDEMNITY AND LIEN OF EDD

With the finding of no industrial injuries, defendants have no liability for temporary disability indemnity. Accordingly the lien of the Employment Development Dept. in the amount of \$6,308.00 for unemployment compensation disability benefits it provided during the period of September 15, 1990 to February 27, 1991 is disallowed.

III. LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT

With the finding of no industrial injuries, defendants also have no liability for the costs for self-procured medical treatment rendered to applicant. Accordingly the following are disallowed:

- a) the self-procured medical treatment portions of the liens of Pace Medical Group in the amount of \$3,000.70, \$980.00 \$970.00 \$1,269.00 and \$1,507.00;
- b) the self-procured medical treatment portions of the lien of Wellington Medical Group in the amount of \$5,300.00;
- c) the lien of Lien Services, Inc. in the amount of \$2,897.00; and
- d) the lien of Mascarin Professional Pharmacy in the amount of \$65.20..

IV. MEDICAL-LEGAL COSTS AND LIENS

Applicant is entitled to the payment of reasonable and necessary medical-legal costs incurred in the prosecution of these three matters. Defendants are to pay or adjust the following:

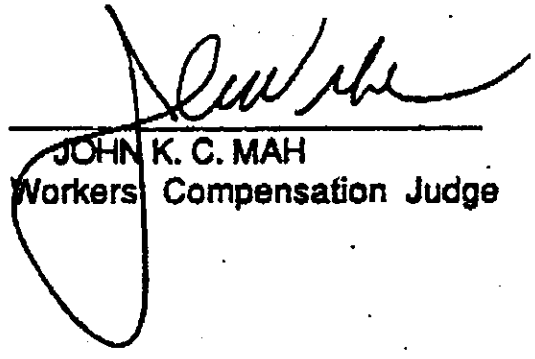
- a) the medical-legal portions of the lien of Wellington Medical Group in the amount of \$5,300.00.
- b) the lien of American Psychometric Consultants in the amount of \$2,102.40;
- c) the lien of Moussa Mosheegh, M.D. in the amount of \$950.00;
- d) the lien of First Western Medical Group in the amount of \$992.00; and
- e) the liens of Ed Santiago & Associates in the amounts of \$100.00 and \$210.00.

Jurisdiction is reserved over these liens in the event the parties are unable to resolve them.

It is noted that pursuant to the request of lienclaimant Pace Medical Group on July 12, 1993, the liens it filed for medical-legal costs were ordered withdrawn.

V. REMAINING ISSUES

With the findings of no industrial injuries, all remaining issues are moot. It is noted that applicant's counsel, George Savin, Esq., expended considerable time and effort in the prosecution of this matter after replacing Michael Lopiano. But the tremendous skills and efforts of Mr. Savin could not overcome the applicant's poor credibility.



JOHN K. C. MAH
Workers Compensation Judge

Dated: JAN 4 1994
Served by mail on parties as shown
on the Official Address Record.
By M. Lujano
M. Lujano