

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
ANAHEIM, CALIFORNIA

Case No. AHM 003599

ORLANDO SANCHEZ,

Applicant,

vs.

ARB, INCORPORATED;
PERMISSIBLY SELF-INSURED,

Defendants.

FINDINGS AND ORDER

Hearing having been held herein and the matter having been duly submitted for decision, the Honorable Jerre D. Van Gorder, Workers' Compensation Judge, Finds and Order as follows :

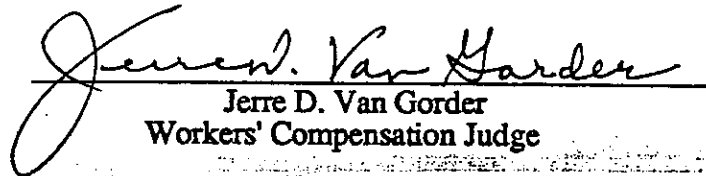
FINDINGS OF FACT

1. Orlando Sanchez, born April 21, 1935, while employed as a boilmaker/welder, at Bakersfield, California by ARB, Incorporated, permissibly self-insured did not sustain an injury arising out of and in the course of said employment to his head, neck, right shoulder and back on July 11, 1991.
2. Issues of temporary and permanent disability, apportionment, occupation, further medical care, self-procured medical care and attorney fees are moot.
3. All costs incurred prior to September 18, 1991 are denied.
4. The medical/legal costs of Hawthorne and Sherbourne Medical post September 18, 1991 are allowed in a reasonable amount to be adjusted by the parties. The same finding is applicable to the liens of Dr. James Dahlgren and Pacific Toxicology, Labs & Hearing Care Associates.
5. The lien of Employment Development Department is denied.

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
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ORDER

IT IS HEREBY ORDERED that applicant take nothing from the defendant with the exception of medical/legal costs as set forth in Finding of Fact #4.


Jerre D. Van Gorder
Workers' Compensation Judge

Served by mail on persons shown
on the Official Address Record:

Date: 9/15/93

By: 
Rebecca Soliman

NOTE:

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

AHM 003599

ORLANDO SANCHEZ

vs.

ARB, INC.
PERMISSIBLY SELF-INSURED

Workers' Compensation Judge:
JERRE D. VAN GORDER
Date: September 15, 1993

LAW OFFICES OF RICHARD M. ENGLISH & ASSOCIATES
BY: RICHARD ENGLISH, ESQ.
Attorney for Applicant

LAW OFFICES OF KEGEL, TOBIN & TRUCE
BY: FREDERICK R. STEVENS, ESQ.
Attorney for Defendant

OPINION ON DECISION

The question presented is the threshold issue of compensability in face of evidence that applicant has ingested a "controlled substance" and was thus intoxicated per Labor code § 3600 (a) (4). That Section states the conditions of compensability and where an injury is caused by intoxication, the injury is barred.

The leading case is that of Smith v. Workers' Compensation Appeals Board 46 CCC 1053 (1981) which bars compensability of intoxication is the proximate cause of a substantial factor in causing the injury. In sum, intoxication need not be the sole causative factor incident to the claimed injury. The burden of showing the causal relationship rests with defendant (Republic Indemnity Co. v. Workers' Compensation Appeals Board) (Dickens) 47 CCC 1387 (1982). Applying the law to the case herein results in a finding of non-compensability.

Applicant admitted to taking a small amount of cocaine the night before his injury. He admitted to a "pinch" on a few prior occasions. It is noted that Labor Code § 3600 (a) (b) was amended effective January 1, 1991 to include intoxication by alcohol or the unlawful use of a controlled substance. Cocaine so qualifies. Applicant's injury occurred on July 11, 1991.

The scientific proof reduced by defendant clearly established that applicant's blood testing revealed the presence of significant amounts of cocaine having been taken within a more recent time and in a longer quantity than testified to by applicant.

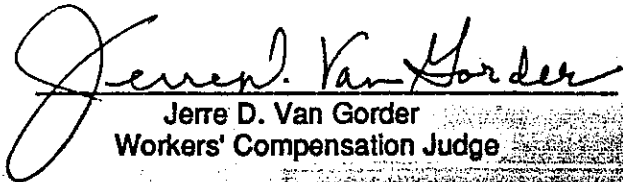
Further, the persuasive testimony of defendant's witnesses establish more than adequate warning to applicant to remain clear of the crane-lifting procedure. In short, the injury to applicant was not the result of his mere forgetfulness or momentary inattention. Substantial evidence is presented to indicate that applicant's injury resulted from his being under the influence of cocaine. It is thus found that applicant was not injured in the course and scope of his employment and that he take nothing herein.

Issues of temporary and permanent disability, apportionment, occupation, further medical care, self-procured medical care and attorney fees are moot.

Applicant received substantial medical-legal expense. It is noted that evaluations were obtained as early as August 2, 1991. It is further noted that applicant's claim was denied on September 18, 1991 per Labor Code § 5402. There cared not have been a contested claim per Labor Code § 4620 prior to this latter date and there is no evidence of a "free choice" election by applicant prior to the denial letter. The exchange of correspondence per Labor Code § 4062 is a futile gesture by the parties, as that code section only applies to accepted injuries.

Orlando Sanchez
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Jerre D. Van Gorder
Workers' Compensation Judge

JDV: rrs