

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

PHILLIP SMITH

*Applicant,*

vs.

SIGNS TO GO; FIREMAN'S FUND

*Defendants.*

Case No. SBR 168991

FINDINGS AND AWARD

A Petition for Reconsideration from this decision shall be filed only at the San Bernardino District Office of the Workers' Compensation Appeals Board.

FINDINGS OF FACT

- 1) Applicant, Philip Smith, born on October 12, 1953, while employed by Defendant did not sustain injury arising out of or in the course of his employment to his cardiovascular gastrointestinal, head, shoulders, neck and psyche.
- 2) The stipulations in the Minutes of Hearing and Summary of Evidence dated June 1, 1995, are true, accurate, correct and incorporated herein by this reference as if set forth in full.
- 3) Dr. Voyagis treatment lien is hereby disallowed in that it was not obtained in order to cure or relieve from the effects of an industrially related injury.
- 4) The lien of Dr. Scheinbaum and Psycholocial Evaluations Specialists is hereby disallowed in that said services were procured by Injury Hotline and not procured by Applicant in order prove a valid disputed claim.
- 5) On the basis of the evidence submitted at trial all outstanding liens are hereby disallowed.

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

PHILIP SMITH  
SBR 168991


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AWARD

AWARD IS MADE in favor of DEFENDANT, against LIEN CLAIMANTS as follows;

(a) The liens in this matter are hereby denied and disallowed pursuant to Findings 1,2,3,4 and 5.

DATED: 10-13-95  
Filed and Served by mail on  
all parties on the Official Address Record.  
Date: 10-13-95  
By: A. Lewis

  
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DENNIS STACH  
WORKERS' COMPENSATION JUDGE

PHILLIP SMITH  
SBR 168991

v.

SIGNS TO GO; FIREMAN'S FUND

HEARING DATE: June 1, 1995  
JUDGE: Dennis Stach

WORKERS' COMPENSATION JUDGE'S  
OPINION ON DECISION

Applicant filed an Application for Adjudication of Claim with the WCAB on March 3, 1990 alleging injury arising out of and in the course of his employment in March of 1989.

The matter was set for pre-trial conference on December 2, 1994. At that time the matter was put over for trial on March 8, 1995 and was settled that day by way of Compromise and Release approved by Judge Parker. Said Compromise and Release contained a valid Thomas wavier. All lien claimants received notice of trial and on March 8, 1995, the matter was set over for lien trial on June 1, 1995. All lien claimants received notice.

On June 1, 1995 the matter was submitted on the record plus, the court ordered Points and Authorities to be filed and admonished all parties present that the failure to file Points and Authorities by any party, would result in disallowance of their lien, and in the event Defendant failed to file Points and Authorities all liens would be allowed.

At the time of trial Bruce Barnes appeared representing Neurological Evaluation Specialists and Dr. Scheinbaum. Dale Henney appeared representing Dr. Voyagis and Defendant was represented by Joy Dhaolakia.

Defendant filed time Points and Authorities and Dr. Voyagis an untimely letter of appeal in lieu of Points and Authorities.

A review of the record and evidence submitted by the parties at trial establish that Applicant did not sustain injury arising out of or in the course of employment to his psyche, gastrointestinal system and other parts as alleged in his Application.

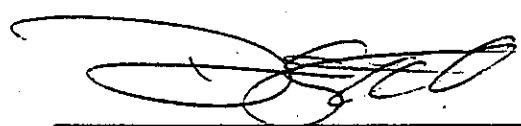
The psychological services of Dr. Scheinbaum and Psychological Evaluation Specialists were procured by Injury Hotline, in violation of the Labor Code. Additionally, Dr. Scheinbaum's reports fail to contain vital

data concerning Applicant's progress attending Pace Setter Building Services' classes during the alleged period of psychological treatment. The reports of Dr. Scheinbaum and Psychological Evaluation Specialists were not procured to prove a contested claim. Applicant had not filed a claim until May 8, 1990 and said services beginning in December of 1989 were obtained in violation of the Labor Code.

As for Dr. Voyagis, the doctor provided an upper GI series at the request of Dr. Bernstein. The gastrointestinal problems pre-existed Applicant's employment with Defendant as evidenced by the United States Navy records. In addition the report of Internist Dr. Neveln attributes Applicant's GI flex problem to Applicant's excessive alcohol and tobacco abuse. The services of Dr. Voyagis were not procured to cure or relieve from the effects of an industrial injury and the lien for said services is hereby disallowed.

On the basis of the evidence submitted at trial all outstanding liens are hereby disallowed.

Dated: 10-13-95



\_\_\_\_\_  
DENNIS STACH  
Workers' Compensation Judge

DS/cl

Service made all parties as listed on the Official Address Record.

Effective 10-13-95  
By: A. Love

P. Smith, SBR 168991

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STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
WORKERS' COMPENSATION APPEALS BOARD

PHILLIP SMITH;  
APPLICANT;  
VS.  
SIGNS TO GO;  
FIREMANS FUND INSURANCE COMPANY;  
DEFENDANT.

CASE NUMBER/NUMBERS:

SBR 168991

MINUTES OF HEARING  
STIPULATIONS

PLACE: SAN BERNARDINO, CALIFORNIA  
DATE: JUNE 1, 1995

JUDGE:  
DENNIS STACH

REPORTER:  
COLLEEN A. MURPHY CSR #2352

APPEARANCES:

PSYCHOLOGICAL EVALUATION SPECIALISTS  
BY: BRUCE BARNES  
HEARING REPRESENTATIVE FOR LIEN CLAIMANT:  
M. J. SCHEINBAUM, M.D.

KEGEL, TOBIN & TRUCE  
BY: JOY DHOLAKIA  
ATTORNEYS FOR DEFENDANTS:  
SIGNS TO GO  
FIREMANS FUND INSURANCE COMPANY

CONSTANTINE VOVAGIS, M.D.  
BY: DELL HEINEY  
HEARING REPRESENTATIVE FOR LIEN CLAIMANT

WITNESSES:

(NONE/NO TESTIMONY TAKEN)

EXHIBITS:

LIEN CLAIMANT'S EXHIBIT NUMBER I: (C. VOVAGIS, M.D.)  
DR. CONSTANTINE M. VOVAGIS' MEDICAL REPORT DATED 12/12/89  
IDENTIFIED AS LIEN CLAIMANT'S I.

LIEN CLAIMANT'S EXHIBIT NUMBER II: (DR. SCHEINBAUM)  
THE MEDICAL REPORTS AND/OR RECORDS SUBMITTED BY DR. SCHEINBAUM  
AND DR. CARMEN, CONSISTING OF THREE REPORTS BY DR. SCHEINBAUM  
AND ONE REPORT BY DR. CARMEN, WITH THE APPLICATION FOR  
ADJUDICATION OF CLAIM AND LIEN FILED BY BOTH LIEN CLAIMANTS  
DATED JANUARY OF 1995, BOTH BEING MARKED LIEN CLAIMANT'S II.

DEFENDANT'S EXHIBIT NUMBER A:  
APPLICANT'S DEPOSITION TRANSCRIPT; SEVERAL MISCELLANEOUS  
MEDICAL REPORTS, ALL OF WHICH ARE LISTED ON DEFENDANT'S  
EXHIBIT LIST WHICH HAS BEEN SIGNED BY THE DEFENDANT.

LET THE RECORD SHOW

THIS CASE WAS SETTLED BY WAY OF COMPROMISE AND RELEASE APPROVED MARCH 8TH, 1995, BY JUDGE PARKER IN THE AMOUNT OF \$2,000, INCLUSIVE OF A SUMNER AND THOMAS WAIVER. THIS MATTER WAS SET THIS DATE FOR TRIAL ON THE LIEN CLAIMS.

IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

PHILLIP SMITH, APPLICANT, BORN ON OCTOBER 12, 1953, WHILE EMPLOYED IN MARCH OF 1989, CLAIMS TO HAVE SUSTAINED INJURY TO HIS CARDIOVASCULAR, GASTROINTESTINAL, HEAD, BACK, SHOULDERS, NECK, AND PSYCHE.

ISSUES:

1. LIABILITY FOR MEDICAL/LEGAL EXPENSES
2. ALL LIEN CLAIMS OF RECORD:
  - (A) DR. SCHEINBAUM (\$2,590) (MEDICAL/LEGAL)
  - (B) CONSTANTINE VOVAGIS, M.D.
  - (C) PSYCHOLOGICAL EVALUATION SPECIALISTS (\$1,375) (MEDICAL/LEGAL)
3. VIOLATION OF LABOR CODE SECTION 4620, INACCURATE HISTORY AS IS REPORTED IN LIEN CLAIMANT (DR. VOVAGIS) EXHIBITS
4. THE VALIDITY OF THE AMOUNTS CLAIMED BY DR. VOVAGIS PERTAINING TO MEDICAL/LEGAL IN ACCORDANCE WITH THE OFFICIAL MEDICAL FEE SCHEDULE
5. INJURY AOE/COE

DISPOSITION:

THE MATTER WILL STAND SUBMITTED ON THE FOLLOWING CONDITIONS: DEFENDANTS WILL HAVE THIRTY (30) DAYS WITHIN WHICH TO SUBMIT POINTS AND AUTHORITIES WHICH IS TO CONSIST OF A STATEMENT OF FACTS, ARGUMENT, AND LEGAL POINTS AND AUTHORITIES IN SUPPORT OF THEIR POSITION.

EACH RESPECTIVE LIEN CLAIMANT SHALL THEN HAVE THIRTY (30) DAYS WITHIN WHICH TO RESPOND WITH A STATEMENT OF FACTS, ARGUMENT, AND LEGAL POINTS AND AUTHORITY IN SUPPORT OF THEIR POSITIONS.

FAILURE TO SUBMIT POINTS AND AUTHORITIES BY ANY OF THE PARTIES WILL RESULT IN A DISMISSAL OF THE LIEN OR IN ACCEPTANCE OF THE LIEN IF DEFENDANT FAILS TO SUBMIT. THE MATTER WILL THEREAFTER STAND SUBMITTED.

DENNIS STACH  
WORKERS' COMPENSATION JUDGE

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