

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

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FRANCISCO VAZQUEZ,

Applicant

vs.

ANAHEIM FOUNDRY; permissibly self insured,

Defendants.

Case No. POM 198-075

FINDINGS AND ORDER
and
ORDER DISALLOWING LIENS

Ramon Otero, Jr. by K. M. Flannery, as attorneys for applicant;
Kegel, Tobin & Truce by Shirley Feagles, as attorneys for defendant.

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE; Judge; now finds, awards and orders as follows:

FINDINGS OF FACT

1. Francisco Vazquez, born December 9, 1947, was employed at Anaheim, California, on or about January, 1993 through March 21, 1993 as a laborer (Group 1), by Anaheim Foundry, who was permissibly self-insured as to workers' compensation.
2. Applicant did not sustain injury arising out of and occurring in the course of said employment to his right major hand, upper extremity and nerves.
3. Medical examination and reports of Donald Belk, M.D. and George Hanna, M.D. were neither reasonable nor necessary expenses to prove a contested claim.

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4. All other issues are moot.

ORDERS

IT IS ORDERED that the lien claims of Donald Belk, M.D. and George Hanna, M.D. be and they are hereby **DISALLOWED**.

IT IS FURTHER ORDERED that applicant take nothing further herein.

DATED AT POMONA, CALIFORNIA
November 15, 1994



FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

SERVED BY MAIL ON PERSON SHOWN
ON THE OFFICIAL ADDRESS RECORD
November 15, 1994

BY: 
L. H. Fuller

**STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD
CASE NO. POM 198075**

FRANCISCO VASQUEZ

VS.

ANAHEIM FOUNDRY;
self-insured

JUDGE: FRANCIS G. BURKE

DATE: NOV 15 1994

Ramon Otero, Jr. by K. M. Flannery, attorney for applicant;

Kegel, Tobin & Truce by Shirley Feagles, attorney for defendants.

* * * * *

OPINION ON DECISION

INJURY AOE / COE:

It is found that applicant did not sustain an injury arising out of and occurring the course of employment beginning on or about January, 1993 through March 21, 1993 to his right major hand, upper extremity and nerve.

In making this finding, the judge finds applicant's testimony incredible as manifested for the most part by his lack of candor.

Applicant has testified that he noticed problems with his hand in December 1992. (Summary of Evidence, May 2, 1994, page 5). He testified: "The symptoms included numbness into the fingers. As a result of that numbness, he would be required to hold the air-gun in his right forearm. The numbness lasted a long time." (Ibid, pages 5 and 6).

Applicant also testified that he complained to Melchior Vigile about his numbness. (Ibid). Applicant testified that "Melchior told him to see Lydia. Lydia told him it was due to a lack of exercise." (Ibid). Melchior Vigile testified that he supervised the applicant for approximately two months beginning in June, 1992 and applicant never reported any industrial injury to him. (Summary of Evidence, July 1, 1994, page 2). Mr. Vigile testified also that applicant "... did not have to lift pipes weighing up to 100 pounds. He did not have to lift them alone while packing. He did work with another employee." (Ibid).

Lydia Candelaria testified that the only other industrial injuries applicant reported was one occurring in February, 1993 (See POM 200462), and yet another in which he sustained an injury to this thumb. (Summary of Evidence, July 1, 1994, page 3). Ms. Candelaria testified that applicant was never referred to her in December 1992 regarding numbness or that she ever told him he needed more exercise. (Ibid).

Applicant was asked during his cross-examination why he had not mentioned a prior claim of injury to his psyche to Donald Belk, M.D. during the examination conducted by Dr. Belk on June 4, 1993. Applicant's testimony that he did not tell Dr. Belk about the prior examining psychiatrist, Herbert Goldman, M.D. because Dr.

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POM 198075

Belk did not ask. (See Summary of Evidence, May 2, 1994, page 8). This demonstrates a lack of candor on part of applicant which undermines his credibility.

All the above described elements persuade the judge that there applicant's claim of injury is a fiction.

MEDICAL-LEGAL COSTS:

He has concluded that applicant has not reasonably nor necessarily incurred expenses in attempt to prove a contested claim for the examinations and reports of Donald Belk, M.D., George Hanna, M.D., whose liens must be disallowed.

In light of the above finding as to compensability of applicant's claim the balance of the issues raised are deemed moot.


FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

FGB:lf

cc: Ramon Otero, Jr. Esq.
Shirley Feagles, Esq.

STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD
CASE NO. POM 200463

FRANCISCO VAZQUEZ VS. ANAHEIM FOUNDRY;
self-insured

JUDGE: FRANCIS G. BURKE

DATE: NOV 15 1994

Ramon Otero, Jr. by K. M. Flannery, attorney
for applicant;

Kegel, Tobin & Truce by Shirley Feagles, attorney
for defendants.

* * * * *

OPINION ON DECISION

INJURY AOE / COE:

It is concluded that applicant did not sustain an injury arising out of and occurring the course of employment or or about May, 1992 to his abdomen, resulting in bilateral hernia, and to his back.

The judge's finding rests upon the element that applicant has not demonstrated a compensable event by a preponderance of evidence. (See Labor Code section 3202.5). Applicant has testified as follows:

"In approximately May, 1992, he sustained an injury while lifting some pieces from a pipe barrel. When doing so he felt pain in his groin and his back. The big piece weighed from 80 to 90 pounds. He felt severe pain. He asked his manager for help and did tell his manager, Malchoir, that he is feeling bad and the pipe was too heavy. Malchoir said that this was not true and that the witness was lying. Malchoir did

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assign someone to help him. He did not ask to be sent to a doctor." (Summary of Evidence, May 2, 1994, page 4).

In contrast to this testimony is the testimony of Melchior Vigile who testified that applicant ". . . never reported any industrial injury to him." (Summary of Evidence, July 1, 1994). In fact, Mr. Vigile stated that applicant "did not have to lift pipes weighing up to 100 pounds. He did not have to lift them alone while packing. He did work with another employee." (Ibid).

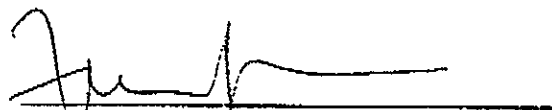
The history that applicant sustained an injury in May, 1992 was repeated to George Hanna, M.D. reporting on June 17, 1993. Dr. Hanna did obtain a history that applicant, while lifting heavy metal weighing 100 pounds felt pain in his back and groin. (See pages 1 and 2). He also reports that applicant ". . . reported the incident to his supervisor on the same day." (Ibid). Malchoir Vigile has testified that no such episode was reported.

The judge is persuaded that there has been sufficient rebuttal to applicant's assertions and applicant has not demonstrated by a preponderance of evidence that a compensable event occurred on or about May, 1992. Consequently, no finding can be made in favor of applicant.

MEDICAL-LEGAL COSTS:

Medical-legal costs in connection to this claim are covered in the applicant's companion claim entitled POM 200-462.

In light of the above finding as to compensability, the balance of the issues raised herein are deemed moot.


FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

FGB:lf

cc: Ramon Otero, Jr., Esq.
Shirley Feagles, Esq.

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FRANCISCO VAZQUEZ,

Applicant

vs.

ANAHEIM FOUNDRY; permissibly self insured,

Defendants.

Case No. POM 200-463

FINDINGS AND ORDER

Ramon Otero, Jr. by K. M. Flannery, as attorneys for applicant;
Kegel, Tobin & Truce by Shirley Feagles, as attorneys for defendant.

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE, Judge, now finds, awards and orders as follows:

FINDINGS OF FACT


1. Francisco Vazquez, born December 9, 1947, was employed at Anaheim, California, on or about May, 1992, as a laborer (Group 1), by Anaheim Foundry, who was permissibly self-insured as to workers' compensation.
2. Applicant did not sustain injury arising out of and occurring in the course of said employment to his abdomen, resulting in bilateral hernia, and to his back as alleged herein.
3. Medical legal costs in connection to this claim are covered in the applicant's companion claim entitled POM 200-462.
4. All other issues are moot.

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ORDER

IT IS ORDERED that applicant take nothing further herein.

DATED AT POMONA, CALIFORNIA
November 15, 1994



FRANCIS G. BURKE, JUDGE
 WORKERS' COMPENSATION APPEALS BOARD

SERVED BY MAIL ON PERSON SHOWN
ON THE OFFICIAL ADDRESS RECORD
November 15, 1994

BY: 
 L. H. Fuller

**WORKER'S COMPENSATION APPEALS BOARD
CASE NO. POM 200462**

FRANCISCO VASQUEZ

VS.

**ANAHEIM FOUNDRY;
self-insured**

JUDGE: FRANCIS G. BURKE

DATE: NOV 15 1994

Ramon Otero, Jr. by K. M. Flannery, attorney
for applicant;

Kegel, Tobin & Truce by Shirley Feagles, attorney
for defendant.

OPINION ON DECISION

INJURY AOE / COE:

It is concluded that applicant did sustain an injury arising out of and occurring the course of employment on or about February, 1993 to his left lower extremity (thigh) only.

In making this finding, the judge is persuaded that there are sufficient facts to warrant a conclusion that an episode of injury did occur on this date but that the injury involved only the thigh area of applicant's left upper extremity. Applicant has described an event occurring on this date which is largely un rebutted. Applicant has testified that he experienced injuries to his neck and low back in addition to his left leg as well as immediate pain in his groin area. (See Summary of Evidence, May 2, 1994, page 5).

Notwithstanding applicant's testimony, the judge is persuaded that the evidence of not only witnesses but the medical evaluators is more persuasive that the injury only involved the left thigh.

FRANCISCO VASQUEZ

POM 200462

In finding that there was a compensable event there is sufficient corroborating evidence that warrants such a finding. Raymond Booth, applicant's supervisor indicated that he, the applicant, reported injury to the left leg on February 22, 1993. (See Summary of Evidence, July 1, 1994, page 3). It was Mr. Booth who referred applicant to Lydia Candelaria the company nurse. (Ibid).

Ms. Candelaria testified that applicant did "He did report an injury in February 1993 and complained of pain in his left leg." (Ibid).

Finally, the physician to whom applicant was referred by Ms. Candelaria provides following history "PT. did the splits and strained L thigh muscles." (See report Scott Thayer, M.D. dated March 1, 1993).

In light of the evidence of witnesses at or near the event in question, judges comfortable in concluding that the injury was sustained to the left thigh only.

PERMANENT DISABILITY. APPORTIONMENT:

There is no evidence that would support a finding that applicant has sustained any permanent disability attributable to this injury. Applicant has not testified to any complaints nor is there any medical evidence that would warrant such a finding. Specifically references made to applicant's examining physician, George Hanna, M.D. who provides no history of any complaints involving the left lower extremity in his report of June 17, 1993.

TEMPORARY DISABILITY:

There is no evidence that applicant experienced any temporary disability by reason of the injury herein.

MEDICAL TREATMENT:

There is no medical evidence indicating applicant requires treatment to cure or relieve from the effects of the injury herein.

FRANCISCO VASQUEZ

POM 200462

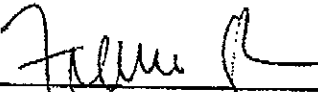
MEDICAL-LEGAL EXPENSES:

Applicant did recently and necessarily incur expenses to prove a contested claim for the examination and report of George Hanna on June 4, 1993, whose lien shall be allowed for the examination and report occurring in connection with this report.

LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT:

It appears applicant has not expended any monies nor incurred any costs in obtaining treatment to cure or relieve from the effects of the injury and thus none shall be awarded.

In light of the above findings, coupled with the fact that there are no benefits against which to assess attorneys' fees, no attorneys' fees can be awarded.



FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

FGB:lf

cc: Ramon Otero, Jr., Esq.
Shirley Feagles, Esq.

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FRANCISCO VAZQUEZ,

Applicant

vs.

ANAHEIM FOUNDRY; permissibly self-insured,

Defendants.

Case No. POM 200-462

FINDINGS AND AWARD

Ramon Otero, Jr. by K. M. Flannery, attorneys for applicant;
Kegel, Tobin & Truce by Shirley Feagles, attorneys for defendant.

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE, Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. Francisco Vazquez, born December 9, 1947, did, at Anaheim, California, on or about February, 1993, sustain injury to his left lower extremity (thigh), arising out of and occurring in the course of said employment as a laborer (Group 1) by Anaheim Foundry, who was permissibly self-insured as to workers' compensation.

2. This injury caused no temporary disability.

3. This injury caused no permanent disability.

4. Further medical treatment to cure or relieve from the effects of this injury is not required.

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5. Applicant is entitled to reimbursement of medical-legal costs as represented by the examination report from George Hanna, M.D. dated June 4, 1993 whose lien is allowed.

6. Applicant has not expended any monies nor incurred any costs in obtaining treatment to cure relieve from the effects of the injury.

7. There are no funds available from which to award attorneys' fees.

A W A R D

AWARD IS MADE in favor of Francisco Vazquez against Anaheim Foundry

of:

(a) Reimbursement for medical-legal costs as provided in Findings No. 5, less credit for sums paid, if any;

DATED AT POMONA, CALIFORNIA
November 15, 1994


FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

SERVED BY MAIL ON PERSONS SHOWN ON
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BY: 
L. H. Fuller