

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

JEFFREY WALDEN,

Case No. GOL 91670, 91669

Applicant

vs.

COMP USA; AMERICAN HOME
ASSURANCE; ZURICH NORTH
AMERICA,

Defendants.

FINDINGS

OF FACT

AND ORDER

The Honorable Kelley R. Davis, Workers' Compensation Administrative Law Judge,
makes his Findings and Award as follows:

FINDINGS OF FACT

1. Applicant sustained no injury arising out of and occurring in the course of employment to his psyche, high blood pressure, or bilateral upper extremities as a result of his employment with Comp USA.
2. There are no funds from which to award applicant's attorney a fee.
3. Labor Code Section 5402 is inapplicable.
4. All other issues are moot.

Continued

E. CHARLES MAKI

MAY 19 2005

ORDER

GOOD CAUSE APPEARING, IT IS ORDERED that Applicant, Jeffrey Walden, will take nothing by way of the above Findings of Fact.



Kelley R. Davis

Workers' Compensation Administrative Law Judge

Dated: May 16, 2005

Service by mail on parties as shown on the official address record effected on the above date.

By: Terri A. Hourigan

CASE NO. 00 GOL 91670, 91669

JEFFREY WALDEN,

vs.

COMP USA,
AMERICAN HOME
ASSURANCE; ZURICH
NORTH AMERICA,

JUDGE: KELLEY R. DAVIS

OPINION OF JUDGE ON DECISION

INJURY AOE/COE:

Applicant filed a CT application alleging that while employed by defendant as a warehouse coordinator during the period 11/30/00 to 11/30/91, he sustained injury to his psyche, high blood pressure and bilateral upper extremities. Injury AOE/COE was denied by the defendant. This case came to trial on 2/16/05, 2/17/05, 5/9/05, and 5/10/05, following which the matter was submitted for decision.

After reviewing the testimony of the parties and witnesses as well as deposition transcripts, documentary evidence, medical reports and medical records, this Court makes the following findings:

1. PSYCHE:

Applicant presented the medical report of Dr. Stulberg dated 2/20/03, in support of his claim. Defendant has objected to the admission of this report and said objection will be denied.

Labor Code Section 3208.3 (b)(1) states as follows: "In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury."

Dr. Stulberg glosses over the applicant's psychiatric history and states that "... it is my opinion that the events in the workplace were causative in the development of Mr. Walden's emotional distress."

In light of the language of Labor Code Section 3208.3 (b)(1) above, this medical report does not meet applicant's burden of showing the events at defendant's employment were the predominant cause of his alleged psychiatric injury. He never connects the various psychiatric events in applicant's history in terms of what role they might have played in applicant's current psychiatric condition. This is especially distressing when one considers applicant's prior workers' compensation claim against Kinko's which is almost a mirror image of this case.

The same problem occurs with the report of Dr. Brooks who conducted a psychological evaluation of the applicant on 12/20/01. While he acknowledges a history of depression he states, "It is unclear precisely how much depression was present prior to his hiring at Comp USA on 10/13/99." Dr. Brooks sees this strictly as an apportionment issue and so never discusses whether applicant's employment with Comp USA is the predominant cause of the psychiatric injury.

This Court will find applicant has not sustained a psychiatric injury AOE/COE as a result of his employment with Comp USA.

2. HIGH BLOOD PRESSURE:

Applicant alleges high blood pressure as a result of stress at work during his employment with Comp USA. According to applicant's testimony at trial, he was diagnosed with hypertension and situational anxiety by Dr. Beyers in early November 2001. Dr. Beyers continued to treat the applicant until they had a falling out in August 2002, whereupon he came under the care of Dr. Danson.

Applicant presented the reports of Dr. Leoni in support of his claim. Although styled the PTP by applicant at trial, it appears that Dr. Leoni was in fact a QME in internal medicine. In his report dated March 3, 2002, Dr. Leoni diagnoses labile hypertension brought on by stress at work with Comp USA. This is apparently based upon his belief that applicant had been under tremendous stress while employed at Comp USA. While he spends a tremendous amount of time contending that hypertension flows from stressful situations, he only spends one sentence on the defense QME, Dr. Meth's contention, that applicant's hypertension preceded his employment with Comp USA.

This Court found the reports of Dr. Meth to be better reasoned. As Dr. meth pointed out, Dr. Beyers and Dr. Curatalo both diagnosed applicant with hypertension prior to his employment with Comp USA.

This Court will find this to be a pre-existing condition, not one caused by employment with Comp USA.

3. BILATERAL UPPER EXTREMITIES:

Applicant alleges injury to the bilateral upper extremities as a result of repetitive lifting activities during the course of his employment at Comp USA.

According to the testimony of the applicant at trial, he first experienced problems in April 2003, with his right shoulder as a result of a fall while skimboarding at the beach resulting in a massive tear.

Applicant testified that doctors told him he had a degenerative condition caused by repetitive motion. Applicant also testified to gym attendance with weight lifting several times per week prior to April 2003.

Dr. Peus treated applicant and documented right shoulder rotator cuff tear which he suspected had been torn for many years.

Dr. Birch then examined and opined that one-half of his right shoulder problems arose from the skimboard incident and one-half from lifting activities at Comp USA.

Dr. Peus then opined that any shoulder problems arose out of applicant's work at Comp USA.

Dr. Montgomery, reporting for defendant, noted in his April 19, 2004, report that applicant had made no shoulder complaints until the skimboarding accident, some 18 months after he ceased employment with Comp USA. Dr. Montgomery noted that applicant lifted weights and played tennis without problem during this period. It was only the non-industrial skimboarding accident that gave rise to symptomatology. Dr. Montgomery finds no injury AOE/COE to the bilateral upper extremities and this Court finds his report more persuasive than those presented by applicant. There were no shoulder problems at work until after the skimboarding accident.

This Court will find no injury AOE/COE to the bilateral upper extremities.

LABOR CODE SECTION 5402:

Applicant alleges defendant failed to deny in a timely manner. Based upon a review of the testimony and documentary evidence presented at trial, this Court will find Labor Code Section 5402 inapplicable.

A handwritten signature in black ink, appearing to read "K.R. Davis", written over a horizontal line.

Kelley R. Davis

Workers' Compensation Administrative Law Judge

Dated: May 16, 2005

Service by mail on parties as

Shown on the Official Address Record

Effected on the above date.

By: Terri Hourigan