

WJT

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. MON 228579

CHARLES YURKO,

Applicant,

v.

LOS ANGELES METROPOLITAN TRANSIT
AUTHORITY, (Permissibly Self-Insured, Third
Party Administrator; Presidium Incorporated)

Defendants.

**FINDINGS, AWARD
AND ORDER**

Law Office of Lawrence Drasin by: Steven Rosenstein, Attorney for Applicant

Kegel, Tobin & Truce by: Joseph Truce, Attorneys for Defendant

An application having been filed herein; all parties having appeared and the matter having been regularly submitted, the **Honorable RAYMOND F. CORREIO**, Workers' Compensation Referee, finds, awards and orders as follows:

FINDINGS OF FACT

1. CHARLES A. YURKO, born October 7, 1944, while employed as a bus operator, at Los Angeles, California, by Los Angeles County Metropolitan Transit Authority, permissibly self-insured, whose third party administrator was Presidium Incorporated, did not sustain injury arising out of or occurring in the course of his employment to the third finger of his left hand.

2. Applicant actually, reasonably and necessarily incurred medical-legal costs for the purposes of proving a contested claim in amounts to be adjusted by the parties or to be determined subsequently upon the filing of a petition and supporting documents.

3. Given the finding of no injury arising out of or occurring in the course of applicant's employment, any bills and liens related to unauthorized self-procured medical treatment are properly disallowed.

4. All other issues have been rendered moot.

AWARD

AWARD IS MADE in favor of **CHARLES A. YURKO** against **LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY**, (Permissibly self-insured), (Presidium Incorporated, third-party administrator) of:

(a) Reimbursement of medical-legal costs as provided in finding number 2.

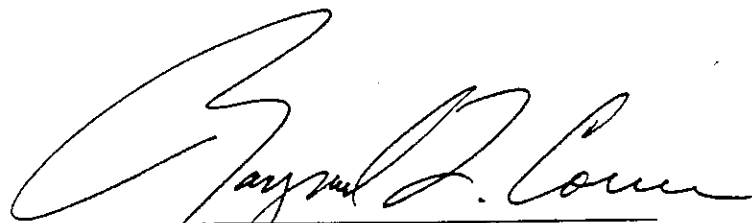
ORDER

IT IS ORDERED, that applicant take nothing further.

Dated: 7/27/98

Served on the above date on parties listed on Official Address Record by:

J. Harpole
L Harpole



RAYMOND F. CORREIO
Workers' Compensation Referee

Charles Yurko
MON 228579

CASE NUMBER: MON 228579

CHARLES YURKO v. LOS ANGELES METROPOLITAN TRANSIT
AUTHORITY

(PERMISSIBLY SELF INSURED;
(PRESIDIUM INCORPORATED;
THIRD PARTY ADMINISTRATOR)

REFEREE:

RAYMOND F. CORREIO

DATE OF INJURY:

6/6/97

OPINION ON DECISION

INJURY ARISING OUT AND OCCURRING IN THE COURSE OF
EMPLOYMENT

Taken as a whole, the testimony of the two defense witnesses, Mr. Jose Alatorre and Mr. John Jung, was more credible and plausible than applicant's testimony with respect to the facts and circumstances related to the alleged injury of June 6, 1997.

Under both direct and cross-examination, applicant adamantly asserted when Mr. Alatorre, a mechanic, arrived on the scene of applicant's disabled bus, that he reported his finger injury to Mr. Alatorre. He also asserted that when he spoke to Mr. Alatorre he had an ice bag on his allegedly injured hand or finger. Applicant also asserted he interacted with Mr. Alatorre over a prolonged period of time, i.e., approximately one (1) hour. In contrast, Mr. Alatorre testified he interacted with the applicant for only fifteen (15) minutes. Moreover, Mr. Alatorre indicated applicant did not report or mention any work injury to him when he arrived at the location of applicant's disabled bus. Mr. Alatorre also testified applicant did not have any ice bag on his hand or finger.

More importantly, Mr. Alatorre testified to established procedures wherein if a bus driver reports an injury to a mechanic, the mechanic must call in the reported or alleged injury to a supervisor who will be dispatched to the scene. Mr. Alatorre indicated he did not call for a supervisor since applicant never reported any injury to him on June 6, 1997.

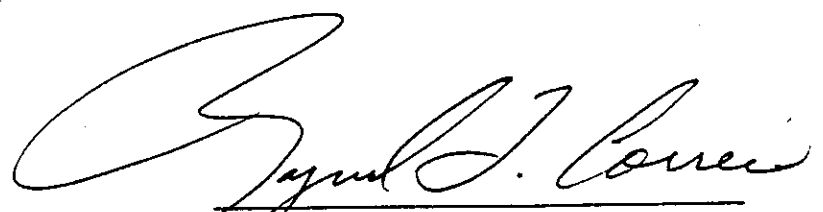
Both in his trial testimony and during his deposition, applicant adamantly testified that he reported his injury to his supervisor, John Jung, after he returned to the station late in the afternoon on June 6, 1997. In his deposition he actually asserted that he filled out a minor injury report and gave it to Mr. Jung. However, Mr. Jung testified, and his testimony was substantiated by the actual minor injury report dated June 10, 1997, that applicant did not actually fill out the minor injury report form until four (4) days after the alleged injury, i.e., on June 10, 1997, as opposed to June 6, 1997, asserted by applicant. When applicant was confronted with the minor injury report dated June 10, 1997, he changed his testimony. More importantly, applicant tried to allege or assert that his recollection and memory with respect to key events and dates might be impaired due to an old head injury he suffered in an industrial injury occurring in 1993. However, the trier of fact must emphasize applicant's alleged memory loss appeared to be a convenient ploy in a futile attempt to offset testimony where applicant was impeached or gave contradictory testimony. Interestingly, applicant had an acute recollection and memory for names and issues where credibility was not at issue. However, when his credibility came under attack, applicant conveniently claimed alleged memory loss.

With respect to applicant's general credibility, he was consistently evasive and equivocal in responding to critical areas of inquiry on cross-examination. Applicant's testimony was essentially not credible. More importantly, the multiple defense witnesses' testimony was straight forward and credible and not undermined by applicant's attorney's cross-examination. In addition to applicant's lack of credibility the facts and circumstances related to the alleged injury are suspicious. Applicant alleged a specific injury on June 6, 1997. As the credible testimonial evidence indicates, he did not actually report the injury on June 6, 1997. Applicant was then off on Saturday and Sunday. There was no telephone call to his place of employment to report a work injury that had allegedly occurred on June 6, 1997. More importantly, when he returned to work on Monday, June 9, 1997, and verbally advised his supervisor that he had allegedly injured his finger, he chose not to fill out any accident or injury forms which were recommended to him by his supervisor, Mr. Jung. He did not actually fill out any injury reports or forms until June 10, 1997, four (4) days after the alleged injury.

The trier of fact, based on a preponderance of the credible testimonial and documentary evidence of record, finds no injury arising out of or occurring in the course the applicant's employment.

Dated: 7/28/98

RFC/jh *jh*


RAYMOND F. CORREIO
Workers' Compensation Referee

Charles Yurko
MON 228579