

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case Nos.: VNO 0390287
VNO 0310611

DAISY ZAYAS,

Applicant,

vs.

TWA, INC.;
GALLAGHER BASSETT SERVICES, INC.,

Defendants.

**OPINION ON DECISION
and FINDINGS & ORDER**

The above-entitled matter having been heard by and submitted for decision, the Honorable MARK S. FELDMAN, Workers' Compensation Administrative Law Judge, finds and orders as follows:

OPINION ON DECISION

INJURY AOE-COE:

Based on a review of the entire record, it is found that applicant did not sustain injury arising out of and occurring in the course of employment as alleged during the period of October 24, 1995 to March 5, 1999 and that there is no good cause to reopen for new and further disability.

As to the orthopedic claim, Dr. Berman reported after having reviewed the relevant medical records, "I find no evidence to suggest any appreciable increase in her condition or worsening." In fact, applicant testified without any detail that she noticed that her wrists are "a little bit worse." However, no further testimony was offered and applicant did not secure a rebuttal to Dr. Berman's report.

Regarding the internal medical claim, Dr. Miller's report constitutes substantial evidence and he found no industrial disability. Dr. Majcher admitted that it was

"difficult to render a final conclusion..." He requested additional information, but no supplemental report was offered into evidence. Also, the internal medical claim is predicated on a cumulative trauma psychiatric stress theory, which is denied for the reasons indicated below.

The psychiatric claim is denied based on the requirements of Labor Code § 3208.3 (b) (1) and an evaluation of applicant's credibility. It is believed that applicant was ask by Mr. Lundy to document in writing her knowledge regarding the investigation of Debra Lee. It is further believed that applicant and Lee exchanged notes warning each other to leave each other's personal items alone: In fact, applicant probably developed a concern about physical retaliation by Lee and/or her boyfriend. However, contrary to applicant's testimony, it is not believed that an actual threat was made.

Under direct testimony, applicant testified that the note from Lee stated "Keep your f-ing hands off my stuff." Davis testified similarly. On rebuttal, applicant then claimed that the note contained the previously noted sentence and, in addition, stated "or I'll beat the living shit out of you." No testimony was provided that Lee's boyfriend threatened applicant, eventhough she was apparently concerned about him as well. It is noted as per Kravette's testimony that applicant was always desirous of remaining at work. Further, it is noted that Davis testified that applicant did not complain to her about a threat and advised that she could "take care of herself." Contrary to applicant's testimony, Davis testified that she had not referred applicant to Kravette. Of further interest is applicant's testimony that while in TWA flight attend school, she reported that a maid had taken items from her room after which she developed a concern: about retaliation by the maid.

Dr. David has identified the alleged threat as being the predominant cause of applicant's Post-Traumatic Stress Disorder. It is not believed that applicant was actually threatened and such this alleged threat is not an "actual event of

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employment." Applicant's history of non-industrial drug abuse and personal life problems is found to be the predominant cause of her disability.

LIENS:

Based on a review of the entire record, defendant is ordered to adjust the medical legal liens for payment. Jurisdiction is reserved to the WCAB. In light of the finding of no industrial injury, medical treatment liens and the EDD lien is denied.

Medical Evidence:

The reports of Dr. Glaser dated August 23, 2000 and November 30, 2000 are taken into evidence as defendant's "F." The report of Dr. David is taken into evidence as applicant's "3." No additional evidence will be accepted by the court.

Other Issues:

All other issues are moot.

FINDING

1. It is found that defendant is liable for the Medical-Legal liens.
2. It is found that applicant is to take nothing.

ORDER

IT IS ORDERED that applicant take **nothing**.



MARK S. FELDMAN

Workers' Compensation Administrative Law Judge

Service by mail on December 15, 2000,
on all parties as shown on the
Official Address Record.

By: Antonio Magtal
Antonio Magtal

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