

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

RUTHIE ZIPPER,

Applicant

vs.

DOWNEY COMMUNITY HOSPITAL;
PERMISSIBLY SELF-INSURED,
Defendants.

Case No. NOR 193797; 193798

FINDINGS AND AWARD

The above-entitled matter having been heard and regularly submitted, the HONORABLE EDMUND P. BALL, Workers' Compensation Judge, finds, awards and orders as follows:

FINDINGS OF FACT

1. Applicant, Ruthie Zipper born march 16, 1963, while employed as a Business Office clerk (Group 39) at Downey, California by Downey Community Hospital, permissibly self-insured, sustained a specific injury arising out of and in the course of said employment in Case NO. NOR 193798 to her right little finger. In Case no. NOR 193797 she sustained no injury to her finger, stress, harassment, back and right hand of a cumulative nature October 2, 1991-June 2, 1992.
2. Applicant's weekly earnings were \$255.33 for purposes of Temporary Disability Benefits and maximum for purposes of Permanent Disability Benefits.
3. There is need of further medical treatment to cure and relieve the effects of said injury in Case No. NOR 193798 as to the right little finger only.
4. Applicant suffered no Temporary Disability as a result of her injury.
5. The injuries caused permanent disability of 1.75% equivalent to 5.25 weeks of disability payments at the rate of \$140.00 a week for a total sum of \$735.00 payable from December 13, 1991, less the attorney's fee as set forth in (7) below to be commuted from the far end of the Award.
6. No apportionment is found herein.
7. The reasonable value of services of applicant's attorney is \$110.00.
8. A Notice of Intention to disallow the lien claims of Downey Family Medical, James Pearce M.D., Downey MRI and L. A. Portable Diagnostic will issue. The lien of E.D.D. is denied.

RUTHIE ZIPPER
NOR 193797; 193798
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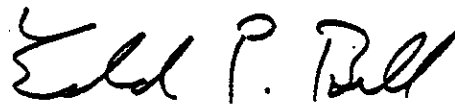
A W A R D

AWARD IS MADE in favor of RUTHIE ZIPPER and against DOWNEY COMMUNITY HOSPITAL as follows:

1. Permanent disability benefits of \$735.00 payable at the rate of \$140.00 per week from December 3, 1991, less the attorney's fee set forth in (2) below to be commuted from the far end of the Award, and less the credit set forth in (9) above.
2. An attorney's fee of \$110.00 to Harrison & Rodriguez, Applicant's attorney, payable forthwith.
3. Applicant is entitled to receive further medical care to relieve the effects of her injury per paragraph 3 of the findings above.
4. The lien claims shall be disposed of as set forth in paragraph (8) of the Findings. The Board reserves jurisdiction over any lien disputes.

Dated: 3-21-95
Filed and Served by mail
On parties as shown on the
Official Address Record.

By: 



EDMUND P. BALL
WORKERS' COMPENSATION JUDGE

CASE NO. NOR 193797; 193798

RUTHIE ZIPPER

vs

DOWNEY COMMUNITY HOSPITAL
PERMISSIBLY SELF-INSURED
Adjusted by Sedgwick James

DATE OF INJURY:

CT DECEMBER 1991
DECEMBER 2, 1991

WORKERS' COMPENSATION JUDGE:

EDMUND P. BALL

DATE:

MARCH 21, 1995

OPINION ON DECISION

In this matter, I have reviewed my Minutes of Hearing and Summary of Evidence for both hearing and all matters contained under the exhibit list of the parties.

As to defendant's motion to enforce its subpoena duces tecum, it is denied. This subpoena is signed by Judge Welsh who is not a Judge at the Norwalk Board. As a matter of policy for which there is obvious good reason, we do not enforce orders of other boards.

On the merits I find that Applicant has not sustained her burden of proof and should take nothing by her application alleging a cumulative trauma injury to her finger, stress, harassment, back and right hand over the period of October 2, 1991 to June 2, 1992 in NOR 193797 on the grounds that she is not credible as to her complaint of injury therein. She is substantially impeached by:

- 1) Her statement that she had to move furniture which contributed to her symptoms while her supervisor, Lewis, testified credibly that they have only bolted furniture which was not moved when they changed the office.
- 2) Her testimony that she had to work long hours, up to a 16 hour day which is not reflected in her time cards which show only modest overtime at best.
- 3) Applicant's failure to acknowledge personal problems with her rentals and with her boy

friend which were confirmed by both Lewis and Kajcazar, her co-employees.

More importantly per the pre-trial stipulations filed previously, Applicant worked for Defendant from October 2, 1991 to June 2, 1992. In the subpoenaed records is a report of Dr. Rappaport dated November 14, 1991 showing he had been treating her for much the same complaints she presently complains are only industrial related (nervousness, headaches, neck pain) arising from an auto accident of August 1, 1991. The report attributes all her problem to this auto accident. So does a later auto accident report of Dr. Lemus of August 24, 1992 arising from a March 3, 1992 auto injury. Her prior medical history in the latter report only acknowledges the prior auto accident even though she was being examined and treating with Dr. Breslaw and a host of others at the time and subsequently for her various industrial complaints.

Applicant cannot have it both ways. She cannot have her problems all be related to her work for purposes of this case and have them all related to the auto accident for purposes of her personal injury claim. Based on this above fact I find that the history she gave to her doctors was not merely exaggerated but false and further find that their reports are, accordingly, not substantial evidence under Labor Code Section 4628 and WCAB Rule 10987. I will follow the reports of the defense which confirm that she did not suffer the cumulative trauma to the various body parts mentioned by her.

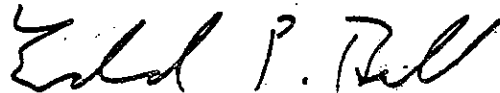
I do also find that she did suffer a compensable injury in No. NOR 193798 in that she did sustain an injury to the little finger of her right hand on December 2, 1991. She did testify to and report this injury. The most thorough and accurate assessment of her injury and the one I have followed in assessing her disability therefrom is the report of Dr. Robert Kropac of March 5, 1993, (p. 20) which I followed in issuing my instruction to the rater. Based on the same report and page I will also award future medical care for this portion of the body only.

Neither injury caused any periods of temporary disability from the evidence presented.

No apportionment is found from the medical reports and I find none in this case.

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A Notice of Intention to Disallow the lien claims as to treatment as being excessive and the medical-legal portion of the liens for the reason set forth above will issue. I note the only portion of the body Applicant demonstrated needed treatment was her little finger and this had been treated before the listed lien claimant appeared herein.



EDMUND P. BALL
WORKERS' COMPENSATION JUDGE

EPB/jel