

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

Case No.: POM 141381

DOMINIC HERNANDEZ,

*Applicant;*

vs.

L.A.C.M.T.A. (SCRTD)/ ASSOCIATED  
RISK SERVICES,

*Defendants.*

**FINDINGS & ORDER**

**LAWRENCE DRASIN & ASSOCIATES**

By: **Lawrance Drasin**  
Attorneys for Applicant

**LAW OFFICES OF KEGEL, TOBIN & TRUCE**

By: **Joseph D. Kieffer**  
Attorneys for Defendant

**MARILYN KAY WARD**, Workers' Compensation Judge, finds and orders as follows:

**FINDINGS OF FACT**

1. Dominic Hernandez, born February 9, 1960, while employed as a bus driver, by L.A.C.M.T.A., insured by Associated Risk Services, was discharged for violations including falsifying a sick report. The present pending action is solely on an August 11, 1993 Petition for Reinstatement, lost wages, work benefits and for increased compensation under Labor Code Section 132(a).
2. The stipulations in the Minutes of Hearing of March 22, 1995 and April 29, 1996 are true and are incorporated herein by reference.
3. Average weekly earnings at injury were maximum.

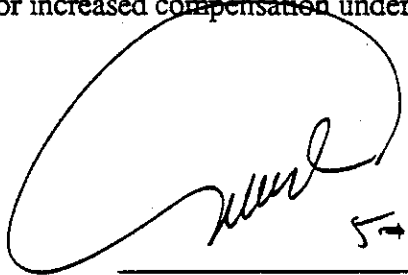
4. Applicant has not sustained the burden of proof by a preponderance of the evidence in this case. Applicant was terminated for falsifying a sick report, not for being injured or losing time from work due to his injury.

5. All other issues have been rendered moot.

### ORDER

**IT IS ORDERED** that applicant take nothing by reason of his Petition for Reinstatement, lost wages, work benefits, and for increased compensation under Labor Code Section 132(a) filed herein on August 11, 1993.

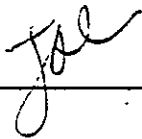
Dated:



5-13-96

**MARILYN KAY WARD**  
**WORKERS' COMPENSATION JUDGE**

Serve By:



Date:

5/13/96

CASE NO. POM 141381

DOMINIC HERNANDEZ

vs. L.A.C.M.T.A.  
NAME

DATE OF INJURY:

2/1/88

WCAB REFEREE:

HON. MARILYN KAY WARD

### OPINION ON DECISION

#### 132(a)

Applicant sustained an admitted low back injury on April 1, 1988. This resolved via a Stipulation with Request for Award dated 8/6/92. The pending action is solely on an August 11, 1993, Petition for Reinstatement, lost wages, work benefits, and for increased compensation under Labor Code Section 132(a).

Applicant had returned to his usual and customary job as a Bus Driver.

On October 6, 1992, after his early morning shift, applicant checked with Dispatcher, Helen Perez-Sawyer to see "how it looked" as far as getting the rest of the day off. Applicant had been served with an eviction notice and needed time to move some personal belongings. The Dispatcher indicated it did not look good.

Thereafter, applicant again reported to the Dispatcher requesting the balance of the day off. When Perez-Dwyer stated she could not give him the rest of the day off, applicant requested to see the company doctor.

Applicant was sent to the company doctor who advised him to take medication and rest.

A Division Manager observed applicant sitting in the training room laughing following his visit to the doctor. When applicant left the division, an investigator followed him and took sub-rosa tapes. The applicant drove to his old address and moved various items to his new address. The actions he took were inconsistent with being sent home to rest for a back injury.

The following day, after being requested to submit a document as to his whereabouts after leaving work on October 6, 1992, he stated "after I finished with company doctor, I proceeded home, took medication given by doctor, slept and then picked up wife." Applicant was charged with rules violations constituting falsifying sick reports and gross misconduct. A hearing was held. Applicant presented his eviction notice in defense. Also, it had been shown

that he was given time off on several occasions before this date to move his belongings. His discharge was upheld.

The WCR finds that applicant has not sustained the burden of proof by a preponderance of the evidence in this case. Applicant was terminated for falsifying a sick report, not for being injured or losing time from work due to his injury.

Dated: 5-13-96, 1996



MARILYN KAY WARD  
Workers' Compensation Referee  
Workers' Compensation Appeals Board

Served by mail on persons shown  
on the Official Address Record on  
5/13/96 by Jed.