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STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

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12
13
14
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16
17
18
19
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21
22
23
24
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26
27

Case No. POM 0202-932

DEBRA P. HERRERA,

Applicant

vs.

RALPHS GROCERY CO.; self-insured,

Defendants.

FINDINGS AND AWARD

Kenneth G. Campion, Attorney for Applicant.

Kegel, Tobin & Truce, by Joseph D. Kieffer, Attorney for Defendant.

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE FRANCIS G. BURKE, Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. Debra P. Herrera, born November 20, 1961, while employed as a Courtesy Clerk on June 23, 1993 by Ralphs Grocery Company then self-insured, sustained injury arising out of and in the course of employment to her right foot.
2. This injury caused temporary total disability beginning June 30, 1993 through July 15, 1993.
3. This injury caused permanent disability of 1.75%, equivalent to 5.25 weeks at \$140.00 per week, in the total sum of \$735.00.
4. Further medical treatment to cure or relieve from the effects of this injury is not required.
5. State of California, Employment Development Department is entitled to reimbursement in the event that unemployment compensation disability benefits were paid during said period.

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
CASE NO. POM 0202-932

DEBRA HERRERA

vs.

RALPHS GROCERY CO.;
self-insured

WORKERS' COMPENSATION
JUDGE: FRANCIS G. BURKE

DATE: JUL 14 1995

Kenneth G. Campion, Attorneys for Applicant.

Kegel, Tobin & Truce, by Joseph D. Kieffer, Attorney for Defendant.

OPINION ON DECISION

INJURY AOE/COE:

It is found that applicant did sustain an injury arising out of and occurring in the course of her employment on June 23, 1993 to her right foot.

This finding rests upon applicant's unrebutted testimony coupled with that partially corroborated evidence that the event was reported to the employer within a short time after the event. Mike Vriens, acknowledges that a Mr. Middleton had received a call from applicant reporting the injury. Further, the medical records of the West Beverly Podiatry Group reflect that on June 30, 1993 applicant complained of problems with her right foot precipitated with an event at work. These elements in combination persuaded the judge that such an event did in fact occur.

PERMANENT DISABILITY, APPORTIONMENT:

It is concluded that by reason of the injury herein applicant has sustained a permanent disability of 1-3/4%, without apportionment, payable forthwith.

In determining the extent of the residual disability the judge is persuaded that this is best reflected by the subjective elements as found within the range of evidence contained herein. (See U.S. Auto Stores vs. WCAB (1971), 36 CCC 173).

Applicant has testified that currently her condition is better than what it was when she was seen by Jacob Rabinovich, M.D. in December, 1993. (See Summary of Evidence, page 4). She has testified that her feet did not bother her "...except sometimes when she is on her feet three to four hours..." (Ibid, page 5).

Further, the medical range of evidence consists of the opinion of Dr. Rabinovich of subjective factors and Roger Sohn, M.D. reporting for defendant on October 14, 1993.

There is no evidentiary basis to apportion to any pre-existing or non-

industrial factors of disability.

DURATION OF TEMPORARY DISABILITY:

It is concluded that applicant was temporarily disabled beginning June 30, 1993 the date she first presented herself to The West Beverly Podiatry Group through July 15, 1993 when she was released to return to work. There is no further evidence indicating that she was temporarily disabled beyond that date by reason of her right foot injury. In fact, there are records of Dr. Lewis Esquenazi (Defendant's Exhibit "B") which reflects that applicant was certified for inability to work for reasons other than the right foot disability.

The Employment Development Department shall be entitled to reimbursement for the period awarded herein in the event the Department has provided benefits.

MEDICAL TREATMENT:

It is concluded applicant does not require medical treatment to cure or relieve from the effects of the injury herein. This is consistent with the conclusions of Dr. Slonim.

MEDICAL-LEGAL COSTS:

Applicant has reasonably and necessarily incurred expenses to prove a contested claim for the examinations and report of Jacob Rabinovich, M.D. (unknown amount).

Defendant is allowed credit for sums paid on account.

LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT:

It appears that the only treatment that applicant received for this condition was through the West Beverly Podiatry Group which shall be entitled to full reimbursement for the costs of the medicals services provided by the group.

ATTORNEYS' FEES:

Reasonable attorneys' fees are determined to be \$100.00.

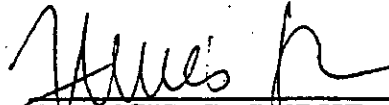
WHETHER DEFENDANT DID VIOLATE LABOR CODE §132 (a):

It is concluded that defendant did not contravene the provisions of Labor Code §132 (a) assertedly discriminated against her because of her industrial injury.

It appears that the employer did attempt to ascertain the basis for applicant's absence from work. However, because of a mix-up due to an incorrect mailing address, applicant never received these inquiries and because of the failure to receive these inquiries necessitated a failure to respond to those inquiries she was terminated. This termination was later rectified. However, the judge is not persuaded that the termination was by reason of the industrial injury but rather due in part to applicant's failure to advise her employer of her whereabouts.

In light of this, it is deemed that applicant take nothing by reason of her application for penalty for wrongful discharge pursuant to Labor Code § 132 (a).

In light of the immediate above finding, the balance of the issues raised pursuant to the asserted violation of Labor Code § 132 (a) are deemed moot.



FRANCIS G. BURKE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

FGB:mcc

cc: Kenneth G. Campion
Kegel, Tobin & Truce