

BMG

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. VNO 286478, 283191, 309746

EDDIE LANIER

Applicant,

vs.

WELLS FARGO SECURITY SERVICES;
PERMISSIBLY SELF-INSURED,
Defendants.

**NOTICE OF INTENTION
TO DENY APPLICANT
A BENEFITS OF THE
PRESUMPTION OF
COMPENSABILITY**

TO THE PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that it is the INTENTION OF THIS COURT, on its own motion to deny to the applicant the benefits of the presumption of compensability as provided in Labor Code Section 5402 not withstanding any prior rulings and findings to the contrary are to be vacated.

The basis for said denial of the presumption of compensability is set forth in the attached opinion relating to the presumption of compensability.

IT IS ORDERED that the prior submission is hereby vacated. The parties have 15 days to show, if any good cause exists, why such orders shall not be made.

~~Filed and Served by mail on: 10-18-96
On all parties on the
Official Address Record.
By: *M. Kazaryan*~~

Charles Gordon
CHARLES GORDON
WORKERS' COMPENSATION JUDGE

Correction: Notice was served on
November 18, 1996 instead of October 18, 1996
Reserved on November 19, 1996
on all parties by mail
By: *M. Kazaryan*
M. Kazaryan

*Amended
re-date
of service*

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

SML

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By: W. C. Gordon



CHARLES GORDON
WORKERS' COMPENSATION JUDGE

day statutory period and deprives the applicant of any benefit based upon the presumption of compensability.

The testimony of Lynn Miles relating to her intentions to deny the claim for injuries referred to in Dr. Berman's report of May 4, 1993 is reasonable and convincing in light of Dr. Berman's report and it is confirmed in her uncontradicted phone conversation with the applicant on June 28, 1993, which she told the applicant that his claim was denied based upon Dr. Berman's report of May 4, 1993.

To believe that Lynn Miles did not intend to deny the December 1992 injury after a review of Dr. Berman's May 4, 1993 report is an attempt to subvert the obvious and is a failed attempt to obtain a reward based upon a warped interpretation of Labor Code Section 5402. In addition thereto Labor Code Section 5402 requires that an injury has been sustained. Further development of this opinion supports the conclusion that circumstances arose which may have given a rise to an injury, but an injury did not occur.

The applicant also submits to the court as evidence (Applicant's Exhibit-101) which purports to be DWC-1 claim dated April 20, 1995 alleging a continuing trauma during the period of 1992 through February 1993. The claim provides in the space which is provided for the signature of the claimant the phrase " Signature On File". This DWC-1 claim has not been acknowledged by the defendants in the space provided below the claim and does not provide any explanation of the phrase "Signature On File" nor are we informed as to whether "Signature On File" is an authorized representative of Eddie Lanier. Nor is this court provided with proof that service of the claim was ever made upon the defendants.

Without evidence that the defendants had the notice of the claim (the court is aware that the applicant has filed a report confirming injury to the psyche written by Anthony Francisco, Ph. D. dated December 12, 1994. However, the date of service of the report is not included so as to advise the court as to when the defendants had "first notice". The court can not determine the adequacy or timeliness of any denial.

Based thereon it is found that the presumption of compensability is not available for the benefit of the applicant in case number 286478, 283191 and 309746.

11/18/96



CHARLES GORDON
Workers' Compensation Judge

CG/mk

WCAB CASE NUMBER: VNO 286478, VNO 283191, VNO 309746

EDDIE LANIER -v- WELLS FARGO SECURITY SERVICES;
PERMISSIBLY SELF-INSURED,

DATE: NOVEMBER 18, 1996

JUDGE: CHARLES GORDON

**OPINION ON PRESUMPTION OF COMPENSABILITY IN
ACCORDANCE WITH LABOR CODE SECTION 5402 IN CASE
NUMBERS VNO 286478, 283191, 309746**

The parties have entered into stipulations and admitted facts, which are accepted by the court and deemed conclusive proof of facts admitted and agreements made.

PRESUMPTION OF COMPENSABILITY:

The testimony of the applicant relating to oral notice of injury he may have given to the defendants at the sight of the injury is vague and ambiguous and lacks the certainty that would persuade the court that his employer had notice of physical injury prior to March 25, 1992 in accordance with the DWC-1 admitted into evidence as Applicant's 101 and 104. Based thereon it is found that the defendant/employers first notice of physical injury, if any did occur, occurred on March 25, 1993.

The testimony of Lynn Miles, an adjuster for the defendant/carrier that a denial of the worker's claim for injury arising out of the October 1992 injury was sent on June 22, 1993 is uncontradicted. The denial was based upon the report of Jeffrey Berman, M.D., dated May 4, 1993. This denial is well within the 90