

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. LAO 0773880

GEORGE CLANTON,

Applicant

vs.

LOGISTICS EXPRESS; NATIONAL UNION
FIRE INSURANCE COMPANY OF
PENNSYLVANIA,

Defendants.

FINDINGS
AND ORDER

1 MBC Systems, by Michael T. C. Falotico, Attorneys for Lien Claimant Dr. Ross;
2 Forensic Psychiatric Service, by Melissa Smith, Lien representative for C. Diane De Silva;
3 Kegel, Tobin & Truce, by W. Joseph Truce, Attorney for Defendant.

4 * * * * *

5 Application having been filed herein, all parties having appeared and the matter having
6 been regularly submitted, JACK J. JAMES, Workers' Compensation Administrative Law
7 Judge, now finds and orders as follows:

8 FINDINGS OF FACT

9 1. George Clanton has resolved the case-in-chief by a Compromise & Release
10 Agreement. It was approved on February 26, 2003.

11 2. The opinion of Dr. Reynolds is selected as the better reasoned opinion on the
12 issue of Injury AOE/COE.

13 3. Lien claimants have not sustained their burden of proof that applicant's stroke
14 and its consequences arose out of and in the course of his employment on August 14, 1998.

15 4. The treatment lien of Dr. Robert Rose for \$4,118.24 is denied. The treatment
16 lien of Forensic Psychiatric for \$4,165.11 is denied.

17 //

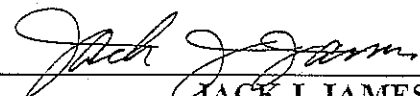
18 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS ORDERED that lien claimants take nothing further herein.

DATED AT RIVERSIDE, CALIFORNIA



JACK J. JAMES
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

SERVED BY MAIL ON PERSON SHOWN
ON THE OFFICIAL ADDRESS RECORD

BY: T. Calcote Date: NOV 20 2003

STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD
CASE NO. LAO 0773880

GEORGE CLANTON

vs.

LOGISTICS EXPRESS; NATIONAL
UNION FIRE INSURANCE; COMPANY
OF PENNSYLVANIA

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

JACK J. JAMES

DATE: NOV 20 2003

MBC Systems, by Michael T.C. Falotico, Attorneys for Lien Claimant Dr. Ross;

Forensic Psychiatric Service, by Melissa Smith, Lien Representative for C. Diane De Silva;

Kegel, Tobin & Truce, by W. Joseph Truce, Attorney for Defendant.

OPINION ON DECISION

George Clanton has resolved the case-in-chief by a Compromise & Release Agreement. It was approved on February 26, 2003.

Supplemental proceedings have been conducted regarding the liens of Forensic Psychiatric and Dr. Robert Rose.

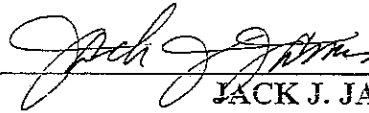
Lien claimants stand in the shoes of the employee once the employee has resolved the underlying case-in-chief. This includes the same burdens of proof that the employee has regarding threshold issues.

Notwithstanding the testimony of the defense witness that the job of driving a LNG tanker-truck can be stressful, lien claimants did not submit any direct substantial evidence that Mr. Clanton worked the number of hours as recorded in the various medical histories. Other than the information of the last trip to Wyoming, Mr. Clanton's employment records were not admitted into evidence. Even those records dispute a portion of the history provided to at least one examiner that the assigned driver was inexperienced and applicant did most of the driving.

Also, notwithstanding the fact that Dr. Stanford had diagnosed hypertension and Mr. Clanton was taking medication, the blood pressure readings before the stroke show the hypertension was under control. Additionally, Mr. Clanton's stroke was due to a clot as confirmed by the post-traumatic CAT scan. Thus the opinion of Dr. Reynolds is selected as the better reasoned opinion on the issue of Injury AOE/COE.

Lien claimants have not sustained their burden of proof that Mr. Clanton's unfortunate stroke, and its consequences, arose out of and in the course of his employment on August 14, 1998.

The treatment lien of Dr. Robert Rose for \$4,118.24 is denied. Dr. DeSilva saw Mr. Clanton based upon a referral from Dr. Rose. Therefore the lien of Forensic Psychiatric is for treatment and their lien totaling \$4,165.11 is also denied.



JACK J. JAMES
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

JJJ:tc

cc: MBC
Forensic Psychiatric Service
Kegel, Tobin & Truce

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD

WJT

GEORGE CLANTON,

Applicant,

CASE NO. LAO 773880

vs.

MINUTES OF HEARING
AND
SUMMARY OF EVIDENCE

LOGISTICS EXPRESS;
NATIONAL UNION FIRE INSURANCE
COMPANY OF PENNSYLVANIA,

Defendants.

Place & Time: Riverside, California;
Wednesday, October 15, 2003;
3:00 p.m.

W.C. Judge: HON. JACK J. JAMES
Reporter: Randy Pang

Appearances: MBC Systems
By Michael T. C. Falotico
Attorney for Lien Claimant
Dr. Rose

Melissa Smith
Representative for Lien Claimant
Forensic Psychiatric Service
C. Diane De Silva

Kegel, Tobin & Truce
By W. Joseph Truce
Attorneys for Defendant

Witness: Jack Lona

Disposition: MATTER STANDS SUBMITTED.

Parties served per
Official Address record
On 11-20-03 / T.C.

(40 pgs tm)

11/20/03 AJ

1 Dictated: (10/15/03)

2 Returned: (10/16/03)

3 LET THE RECORD REFLECT that the case-in-chief
4 of George Clanton has been resolved by means of a
5 Compromise and Release Agreement and Order Approving
6 issued on February 26, 2003.

7 LET THE RECORD ALSO REFLECT that we are present
8 today at a lien trial regarding the lien of Dr. Robert
9 Rose and the lien claim of Forensic Psychiatric.

10 THE FOLLOWING FACTS ARE ADMITTED:

11 1. George Clanton, born August the 28th, 1935,
12 while employed on August the 14th, 1998, as a truck
13 driver, Occupation Group 350, at Sun City, California, by
14 Logistics Express, claims to have sustained injury
15 arising out of and in the course employment to the right
16 side of his entire body, his right hand, his speech,
17 vocal, internal, psyche, heart, back and nervous system.

18 2. At the time of the alleged injury the
19 employer's worker's compensation carrier was National
20 Union Fire Insurance Company of Pennsylvania.

21 3. No benefits have been provided.

22 4. No medical treatment has been provided.

23 THE ISSUES ARE:

24 1. Injury arising out of and in the course
25 employment.

26 2. The lien claim of Forensic Psychiatric
27 Service, both for consultation and for treatment. The
28 consultation was \$2,633.13, and the treatment was
29 \$1,531.98; lien of Dr. Robert Rose, for treatment,
30 \$4,118.24.

31 3. Lien claimant, Forensic Psychiatric
32 Services, claims defendants are estopped from raising any
33 objection not raised within the body of their objection
34 letters, that they are an invalid objection and
35 nonpayment towards any medical-legal or treatment.

36 4. Penalties and interest.

37 5. Defendant asserts the provision of Labor
38 Code Section 5703 regarding the admissibility of the

1 bills of both Dr. Rose and Dr. De Silva.

2 6. Lien claimant's Dr. Rose's assertion that he
3 need not comply with the reporting requirements, as this
4 claim has been denied and the medical reports are
5 admissible when an employee is unavailable.

6 EXHIBITS:

7 Lien Claimant's L-1: Received into evidence lien
8 claimant Forensic Psychiatric Services, October 6, 2003
9 letter addressed to Mr. Clanton.

10 Lien Claimant's L-2: Received into evidence as
11 lien claimant Forensic Psychiatric Services February 4th,
12 2003 letter addressed to defense counsel, and the January
13 20th, 2003 letter addressed to defense counsel.

14 Lien Claimant's L-3: Received into evidence as
15 lien claimant Forensic Psychiatric Service, the following
16 medical reports with attached bills of Dr. De Silva,
17 February 6, 2002, October 10th, 2001, and March 9, 2001.

18 Lien Claimant's L-4: Received into evidence, a
19 letter from defense counsel addressed to Dr. Rose, dated
20 February 23rd, 2001.

21 Lien Claimant's L-5: Received into evidence
22 medical reports of Dr. James Lineback, dated July 29th,
23 2002 and March 7th, 2002.

24 Lien Claimant's L-6: Received into evidence lien
25 claimant, Dr. Rose, a December 6, 2001 report of
Dr. Ernest Levister.

Lien Claimant's L-7: Received into evidence
lien claimant, Dr. Rose, a medical report of Dr. C. Diane
De Silva, dated February 6, 2002 with attachments.

Lien Claimant's L-8: Received into evidence lien
claimant, Dr. Rose's medical reports of August 8, 2001,
September 25th, 2002, June 18th, 2002, May 20th, 2002,
November 27th, 2001, August 8, 2001, May 8, 2001,
December 12th, 2001, February 27th, 2001 and March 19th,
2002.

Lien Claimant's L-9: Received into evidence lien
claimant, Dr. Rose, the following bills: October 10th,
2002, July 23rd, 2002, June 25th, 2002, December 31st,
2001, September 10th, 2001, June 1st, 2001, January 12th,

1 2001, April 22nd, 2002, March 28th, 2001, and a
2 recapitulation of Dr. Rose's bills.

3 LET THE RECORD REFLECT that Dr. Rose appears to
4 have certified within the body of his individual reports
5 and bills and testified, or made a statement under
6 penalty of perjury that the billings were also correct;
7 and defendant's objection to their admissibility is
8 denied.

9 Defendant's A: Received into evidence
10 the following reports of Dr. Timothy Reynolds, September
11 10th, 2002, June 4th, 2002, November 30th, 2001, February
12 16th, 2001 with attachments, and November 30th, 2001.

13 Defendant's B: Records from the Employment
14 Development Department with attached claim form and
15 medical reports.

16 Defendant's C: A letter of December 23rd, 1999
17 addressed to Mr. Clanton.

18 Defendant's D: Records from Logistics Express
19 dealing with trip records.

20 Defendant's E: The following objection letters
21 addressed to Dr. Rose, February 23rd, 2001, August 2nd,
22 2000, September 19th, 2001, April 11, 2001, and defense
23 counsel's objection to Dr. Rose dated December 11, 2001.

24 Defendant's F: Letters from Willis addressed to
25 Forensic Psychiatric of April 11, 2001, May 24th, 2001
and July 5th, 2001.

LET THE RECORD ALSO REFLECT that pursuant to
Coldiron, coverage is provided by National Union Fire
Insurance Company of Pennsylvania with the employer
having a \$250,000 high retention level.

LET THE RECORD FURTHER REFLECT that Mr. Falotico,
attorney for lien claimant Dr. Rose, notes for the record
that the medical reports as well as the letter that he
has submitted from Dr. De Silva shows that George Clanton
suffered a stroke which impaired his speech and his
inability to testify to his deposition; and defendant
contends that the applicant, the employee, George Clanton
is unavailable, and since he cannot talk they are not
calling the applicant.

LET THE RECORD REFLECT that defense counsel also

1 understands that the other lien claimant also made an
2 attempt to subpoena Mr. Clanton but that was
unsuccessful.

3 LET THE RECORD ALSO REFLECT that said contention
4 by defendant is evidenced by Lien Claimant's L-1.

5 LET THE RECORD FURTHER REFLECT that the history
6 given to all of the doctors was given by the applicant's
7 wife and daughter who were available for subpoena, were
8 subpoenaed at the last trial by Forensic Psychiatric and
9 that they were here.

10 LET THE RECORD REFLECT that Ms. Smith, lien
11 claimant for Forensic Psychiatric, had tried again and
12 was unsuccessful in subpoenaing them.

13 LET THE RECORD ALSO REFLECT that neither of the
14 lien claimants have any witnesses to produce.

15 LET THE RECORD FURTHER REFLECT that the parties
16 stipulate that on August 14th, 1998 George Clanton
17 sustained a stroke, or as the Court understands a
18 cerebral vascular accident.

19 SUMMARY OF EVIDENCE

20 JACK LONA,
21 having been duly sworn, was examined and testified
22 substantially as follows:

23 DIRECT EXAMINATION: (By Mr. Truce)

24 He's a truck driver at Logistics Express. He's
25 worked for them since March of 1972.

When they were in El Segundo he was the terminal
manager and supervised about 50 drivers. The
applicant was a truck driver.

The company hauls compressed or liquefied gases.
There may be short hauls as short as 10 miles or
they might haul cross-country.

They are covered under the Department of
Transportation Regulations which deals with the number of
hours of service per day and the physical condition of
the drivers. They check the blood pressure and the
driver's vision. Regulations have been about the same
since 1977.

1
2 It's okay for a driver to drive 10 hours per day
3 and then he must be off duty for eight hours.

4 When they go cross-country they have partners, and
5 they would trade off about every 8 to 10 hours.

6 In 1994, the company transferred their business
7 elsewhere.

8 The applicant was at the El Segundo
9 Terminal until 1981. He would see the applicant on a
10 daily basis, if the applicant was in town.

11 Mr. Clanton was very happy-go-lucky type of
12 individual. He was popular with his co-employees and he
13 got along fine with management.

14 The applicant would volunteer for extra work. He
15 did not complain. He would joke and laugh at jokes made
16 by others.

17 After the applicant transferred to Sacramento in
18 1981, the witness may have seen him when he would make
19 deliveries in the Southern California area.

20 The applicant then transferred back to Southern
21 California in 1987, and to El Segundo in 1998. He would
22 see the applicant weekly.

23 The applicant did not change after he returned to
24 the El Segundo Terminal. He was still happy-go-lucky.

25 The El Segundo Terminal closed in 1994, and they
26 transferred all of the people to Santa Fe Springs. The
27 applicant never complained. He seemed to like his job.

28 The witness heard that the applicant had a stroke.
29 He is aware that the applicant has not returned to work
30 since the stroke.

31 Between 1994, when they were at the Santa Fe
32 Springs Terminal, and August 14, 1998, he would see the
33 applicant on a daily basis if the applicant was in town.
34 They would talk business. The applicant never complained
35 about his job. He liked his job.

 He would volunteer for extra work. He was still a
happy-go-lucky individual, telling jokes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

He talked to the applicant after he had the stroke. He and some other drivers went to see him in the rehabilitation hospital. The witness was able to understand the applicant, and they engaged in some small talk.

CROSS-EXAMINATION: (By Mr. Falotico)

The chemicals that they hauled were flammable gas that could explode and burn if they were ignited.

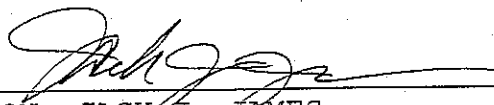
Between 1977 and August of 1998, he does not know if the applicant drove more than 20 hours per shift. He does not know if the applicant, in fact, worked six days per week. He was never the applicant's driving partner. The applicant was an honest individual.

He has been a truck driver since 1969 and truck driving can be stressful.

Between 1994 and August 1998, he would see the applicant two or three times per week.

When he saw the applicant after the stroke, the applicant did have difficulty speaking. He would stutter and stop as he did not seem to get his thoughts out as he wanted.

He does not know what the cause of the stroke is. He is not a medical doctor.



HON. JACK J. JAMES
WORKERS' COMPENSATION JUDGE
WORKERS' COMPENSATION APPEALS BOARD