

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

STEVEN HOHNSTEIN,

Applicant,

vs.

CITY OF MONTCLAIR;
permissibly self-insured

Defendants.

Case No. SBR 238464, SBR 238468,
SBR 256178, SBR 256179, SBR 256180

**JOINT FINDINGS AND
AWARD**

A Petition for Reconsideration from this decision shall be filed only at the Riverside District Office of the Workers' Compensation Appeals Board.

An Application having been filed herein: all parties having appeared and the matter having been regularly heard and submitted, the Honorable Dennis Stach, Workers' Compensation Judge, now makes his decision as follows;

FINDINGS OF FACT

- 1) Steven Hohnstein, born January 24, 1954, did not sustain injury arising out of or in the course of his employment as claimed. At the time of the claim, Applicant was employed by the city of Montclair who was permissibly self-insured.
- 2) The stipulations in the Minutes of Hearing and Summary of Evidence dated October 26, 1995, are true, accurate, correct and incorporated herein by this reference as if set forth in full.
- 3) The presumption under Labor Code 3212 does not apply in this case, in that Applicant did not sustain heart trouble.
- 4) Applicant secured medical services to cure or relieve from the effects of a non-industrial injury and Defendant is not liable for payment of same.

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STATE OF CALIFORNIA
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5) Applicant reasonably, actually and necessarily incurred expenses for medical reports and/or examination to prove a contested claim. Said reports are evidenced by the lien claim of Dr. DiSilva and the court finds Lien claimant has been paid \$1,829.00 for medical-legal expenses by Defendant. Lien claimant has been adequately compensated for the medical-legal portion of their services as outlined in the court's Opinion on Decision at IV.

6) The lien of Kaiser Foundation in the amount of \$37,033.97 and the self-procured portion of the lien of Dr. DiSilva in the amount of \$6,130.90 are hereby denied and disallowed.

AWARD

AWARD IS MADE in favor of Defendant against Lien claimants as follows:

- (a) Applicant did not sustain injury arising out of or in the course of his employment.
- (b) Labor Code § 3212 presumption does not apply.
- (c) Defendant is not liable for self-procured medical treatment for non-industrial injury/incident.
- (d) Dr. DiSilva has been adequately compensated for medical-legal services provided pursuant to the court's Opinion on Decision at IV.
- (e) The liens of Kaiser Foundation and Dr. DiSilva are hereby denied and disallowed pursuant to Finding 6 above.

DATED: 12-27-95
Filed and Served by mail on
all parties on the Official Address Record.
Date: 12 28 95
By: C. River


DENNIS STACH
WORKERS' COMPENSATION JUDGE

STEVEN HOHNSTEIN
SBR 238464, et al

v.

CITY OF MONTCLAIR, PSI

HEARING DATE: October 26, 1995
JUDGE: Dennis Stach
OPINION DATE: December 1995

WORKERS' COMPENSATION JUDGE'S
OPINION ON DECISION

The court finds the statement of facts as contained in Defendant's trial Brief, the Trial Brief of Lien claimant Kaiser and the Trial Brief of DiSilva are essential corrects except as follows.

Lien claimant Kaiser points out Dr. Joseph in his final report of August 12, 1994, concluded Applicant's chest pains were presumed to be due to coronary artery vasospasm, which could be due to work-related stress.

In fact the doctor stated "The reason for his chest pain is presumed from coronary artery vasospasm as supported by the review of the medical records above. The etiology (the cause) of coronary artery vasospasm is unclear, but it is well known that such spasms can be precipitated by stress of any kind, including work-related stress."

The doctor also noted "After my review of the above medical records, it is clear to me that Mr. Hohnstein's diagnosis of coronary artery vasospasm was made by presumption as clearly laid out by Dr. Greg Lewis in his report of June 16, 1992. Dr. Lewis went on to state that the possibility of atherosclerotic coronary artery disease was ruled out by an angiogram which was normal, and that the possibility of a coronary artery vasospasm existed, although this has not been proven."

As of August of 1994 no one had in fact established a heart related problem. There was at best a possibility which had not been proven, which is tantamount to speculation.

The matter was settled by Compromise and Release with a Thomas waiver for \$2,000.00. It should be noted Applicant's recovery potential based upon Dr. DiSilva and Dr. Monosson's findings, if those findings were supported by the evidence, would have amounted to \$36,000.00. This settlement is clearly a nuisance value settlement.

Following settlement Lien claimant Kaiser filed a Petition for Reconsideration on the Thomas waiver which was denied and the matter was set for trial on the following issues.

I
AOE/COE

In order for an injury to arise out of or in the course of employment it must occur by reason of a condition or incident of employment. That is the injury and employment must be linked in some causal fashion. The Applicant and/ or Lien claimant has the burden of proof to establish that the disabling condition arose out of that is it was proximately caused by a specific incident or exposures in the course of employment. The phrase "arising out of" refers to the proximate cause of the employee's injury or condition as previously discussed. whereas the phrase "course of employment" usually refers to time, place and circumstance under which the injury occurred. Thus under paragraph (2) of Labor Code section 3600(a) one of the condition of compensation is that at the time of the injury the employee is performing services growing out of and incidental to the employment and is acting in the course of employment. In doing so the employee and/or Lien claimant must comply with Labor Code section 3202.5 by establishing a causal connection by a preponderance of the evidence.

When it comes to weight and sufficiency of the evidence and credibility of the witnesses, this matter is to be determined by the WCJ. Ordinarily the uncontradicted testimony of a witness, to a particular fact may not be disregarded and this testimony should be accepted as sufficient proof of said fact. However, the most positive testimony may be contradicted by circumstances in connection with the matter that satisfies the WCJ that the testimony is false. The inferences thus drawn are final and not reviewable. Circumstantial evidence is sufficient to support an award. The test for weighing evidence in a compensation case, as in a civil case, is not the relative number of witnesses, but the relative convincing force of the evidence.

Lien claimant Kaiser first argues the medical records of the treatment provided to Applicant by Kaiser and Doctor's Hospital of Clairmont support Applicant's claim that he sustained an industrial injury.

After citing a number of medical treatment records they submit Applicant's chest pains were related to his work stresses.

Lien claimant then argues the medical-legal reports support Applicant's claim that he sustained industrial injury. Basically Lien claimant notes Dr. Monosson's conclusions, Applicant was suffering from coronary artery vasospasm which was related to his work stresses.

It is also pointed out that Dr. Levister did not give an opinion as to whether the chest pains were industrially related.

Counsel goes on to point out that Dr. Monsson agrees with Dr. Levister regarding absence of coronary artery vasospasm but held it was medically reasonably probable that Applicant has esophageal spasm which is stress related and specifically related to work stress. Counsel again notes Dr. Levister in his September 6, 1995 report does not address whether the chest pain is or is not work related.

Counsel does point out that Dr. DiSilva found Applicant had developed physiological factors effecting physical conditions effecting his musculoskeletal system and the cardio vascular system. The court notes Dr. DiSilva is a psychiatrist and not an internal medicine specialist. (Or practitioner.)

Counsel then presents Applicant's deposition testimony at page 31 lines 8 - 17, page 35 lines 9 - 11 of the March 2, 1992 deposition and page 25 and 26 of the January 25, 1993 deposition transcript.

At page 31 Applicant testified Dr. Paw of Kaiser was of the opinion the medical problem was stress related.

At page 35 Applicant testified in his opinion a specific thing that triggers the onset of pain is while he is at work. It should be noted that Applicant also experience pains while not at work.

At page 22 Applicant testified basically he is anxious, nervous and taking nitroglycerine for chest pain on the average of two time per week. He also stated the onset of pain is mostly at night and during the day at times when at work.

Defendant argues there is insufficient evidence to support a finding of injury AOE/COE. The initial claim for benefits was not based on an injury perse but symptomatology in the nature of chest pain. It is further argued that Applicant's deposition testimony does not contain evidence/testimony as to any occupational event which might give rise to or had precipitated the chest pain.

Applicant testified to several bouts of chest pain but none related to a specific or recent stressful event, or incident.

Defendant argues that Applicant testified to chest pain incidents at home as well as at work hence, there has been no causal link established between the work environment and the onset of chest pain.

The court notes on review of the medical records and deposition that Applicant related traumatic events during his employment but the events were a number of years prior to the chest pain incidents. As previously noted in Lien claimant's argument Dr. Monsson and Levister are the two internal medicine QME's in this case.

In his January 11, 1995 report Dr. Monsson states Dr. Levister may be right regarding coronary artery vasospasm because it has never been substantiated in Applicant's case. Yet, if he does not have coronary artery vasospasm it is Dr. Monsson's opinion it is reasonably medically probable he has esophageal spasm and it is stress related. The doctor goes on to conclude that as a result Applicant must be precluded from occupational emotional stress and strain.

The doctor does not state that the esophageal spasms are a work related injury but that given the condition it is unwise to continue working.

Dr. Levister in his September 6, 1995 report points out the esophageal spasms are a motor disorder and the etiology and the pathophysiology of the diffuse spasms are not known. He goes on to point out

"It is thought by some students of this disorder that this is a disease of later life. The true incident is unknown and in the interest of the referring physicians often determine incidence of the illness in a particular hospital or clinical setting.

One should note, though, there are clinical radiologic and manometric criteria for this diagnosis. This is of interest and importance in that at Kaiser facilities in 1992, they noted an upper GI series was performed and was normal. One would anticipate abnormalities on an upper GI series if the patient has esophageal spasms as a cause of chest pain, which occurs on a daily basis."

He goes on to paraphrase other Kaiser findings and concludes that

"We therefore have a patient with chest pain. The etiology of his chest discomfort is apparently elusive. One can state, though, with reasonable medical probability, based on the presently available information, that the patient does not have an internal problem as a cause or contributory factor to his chest pain and/or to the disability caused by his chest pain."

It is clearly stated in Dr. Levister's November 10, 1994 report that Applicant does not have heart trouble (page 11). The same report also points out at page 10 Applicant has a history of peptic ulcer disease and a history of chest pain.

As stated in his September 6, 1995 report it is Dr. Levister's conclusion that Applicant's chest pain discomfort is elusive but Applicant has not sustained an "internal injury as a cause of or contributory factor to his chest pain and/or to the disability caused by his chest pain."

Applicant's claim states injury to the cardio vascular system and psyche due to cumulative stress and strain.

Dr. Levister has established Applicant has not sustained injury to his cardio vascular system.

The next question is whether he has sustained a psychiatric injury or need for psychiatric treatment.

The area was addressed by Dr. DiSilva and Dr. Savodick.

After reviewing all the medical evidence the court finds the most accurate diagnosis to be that of Dr. Savodick in that Applicant has not sustained a psychiatric impairment on an industrial basis.

There is no question that police work involves stress. Yet, there are no incidents or events close in time to when Applicant first experienced chest pain/discomfort of a stressful nature which would have given rise to said symptoms. In addition subsequent to the initial chest pain incident/experience there were no specific stressful events or incidents referred to by Applicant. In fact Applicant was placed on modified duty pursuant to doctor recommendations.

The court finds there is insufficient evidence of stress factors, events, or circumstance to give rise to the chest pain and discomfort. In fact the reverse is eluded to in the doctor's reports.

II LABOR CODE § 3212 PRESUMPTION

The medical evidence establishes Applicant does not have heart trouble. This was clearly pointed out in Dr. Levister's reports. Hence, the presumption does not apply.

III LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT

Applicant has not sustained injury on a psychiatric or cardio vascular basis as alleged in his claim and Application. The self-procured treatment therefore is on a non-industrial basis for which Defendant is not liable.

IV LIABILITY FOR MEDICAL-LEGAL EXPENSES

Kaiser Foundation provided purely self-procured treatment according to their lien.

Dr. DiSilva provided self-procured treatment and medical-legal diagnosis.

Defendants have paid Lien claimant Dr. DeSilva \$1,829.00 for medical-legal charges. Given the evidence, circumstances and Labor Code § 4624 Lien Claimant has been adequately compensated for the medical-legal services.

V
LIENS

Based upon the evidence in this case the liens of Kaiser Foundation in the amount of \$37,033.97 and the lien of Dr. DiSilva in the amount of \$6,130.90 are denied and disallowed.

Dated: 12-27-95



DENNIS STACH
WORKERS' COMPENSATION JUDGE

DS/cl

Dated at:
San Bernardino, California

Service made on all parties as listed
on the Official Address Record.

Effective: 12-28-95

By: C. J. L. J.