

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

SALVADOR NUNEZ,

Applicant

vs.

TACO BELL;
TRAVELERS INSURANCE COMPANY; and
NATIONAL UNION FIRE COMPANY c/o
CRAWFORD & COMPANY
Defendants.

CASE NO. AHM 023499

FINDINGS AND ORDER

- Kegel, Tobin & Truce, by Anju Khurana, attorneys for Defendants
- Sheffield Medical Group, by Alton Brown, hearing representative for Lien Claimant

Compromise and Release having previously been approved, the remaining issue of the Sheffield Medical Group lien having been regularly submitted, the Honorable NANCY M. GORDON, Workers' Compensation Judge, now finds and orders as follows

FINDINGS OF FACT

1. It is found that the Applicant SALVADOR NUNEZ did not sustain an internal or orthopedic injury of any type during his employment with TACO BELL from May 6, 1990, to May 6, 1991.
2. There being no injury, all treatment for the alleged continuous trauma injury is disallowed.
3. It is found that the medical-legal reports were generated as a result of improper doctor referrals.
4. It is found that the initial internal report generated as a result of an examination on 5/6/91 is a violation of Labor Code Section 4620. It is found that the medical-legal reports contain a history that is so false as to render the reports not substantial evidence.

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ORDER

For the reasons set forth above,

IT IS ORDERED that the lien of SHEFFIELD MEDICAL GROUP, INC., is disallowed in its entirety.

Filed and Served by mail on: 2/3/95
On all parties on the
Official Address Record.
By: S. Foss



NANCY M. GORDON
WORKERS' COMPENSATION JUDGE

IN THE EVENT A PETITION FOR RECONSIDERATION IS FILED FROM THIS DECISION, IT IS REQUIRED, PURSUANT TO RULE 10840, THAT SAID PETITION BE FILED AT THE ANAHEIM WCAB.

CASE NO. AHM 023499

SALVADOR NUNEZ,

v. TACO BELL;
TRAVELERS INSURANCE COMPANY,
and NATIONAL UNION FIRE COMPANY,
c/o CRAWFORD & COMPANY,

WORKERS' COMPENSATION
JUDGE: NANCY M. GORDON

INJURY: 6/90 through 5/6/91

COUNSEL - Kegel, Tobin & Truce, by Anju Khurana, attorneys for Defendants
- Sheffield Medical Group, by Alton Brown, hearing representative for Lien Claimant

OPINION ON DECISION

The underlying claim filed by Mr. Salvador Nunez against Taco Bell had been resolved by Compromise and Release on October 15, 1993. Included in that Order was a Finding pursuant to Thomas v. Sports Chaler, Inc., 42 CCC 625. The settlement was for the sum of \$1,250.00.

On the date of the hearing, defense counsel arrived with a trial brief. She represented to the court that she did not want to file it that day due to errors. The court invited the defense counsel to amend the brief that day if she wished. Defense counsel indicated that she did not want to do so, but rather wanted an opportunity to correct the brief and submit it at a later date. This request was denied. Neither party chose to call oral witnesses. Both sides were allowed to make oral argument. Thereafter, the matter stood submitted. After the trial, defense counsel submitted a trial brief asking that it be considered. As stated above, this request had already been dealt with at the time of trial and was denied. To admit it now would then reopen the case again to allow a response and probably a further hearing. This is unacceptable to the court. Defense counsel had three months to prepare a trial brief. It is inappropriate to file one after a case has been submitted. It will not be considered and therefore there is no need for Lien Claimant to respond.

On 5/6/91, Salvador Nunez executed a DWC Form 1 alleging a continuous trauma injury from 5/6/90 to 5/6/91 in which he alleged injury causing headaches, painful neck, shoulders, nervousness, depression, loss of sleep and appetite/stomach problems. It was represented by both defense counsel and Lien Claimant that the Applicant has now moved to Iowa where he is currently employed in an occupation in which he hangs pigs. He was therefore unavailable within this jurisdiction and his deposition transcript was admitted into evidence without objection.

The services provided by Sheffield Medical Group, Inc., only relate to orthopedic and internal medical treatment and evaluations. In his deposition, the Applicant was asked whether he was injured at any time during his employment with Taco Bell. The Applicant responded that he injured a nerve in the middle part of his left arm. It was stipulated that it was the area beyond the joint up to the top of the shoulder, about half-way to the neck. He also represented that he injured the middle part of his back. He denied any other industrial injuries. When asked whether he had any emotional problems, he said he suffered nervousness and loss of appetite. Applicant's deposition was taken on October 20, 1992. He testified that he had moved to Iowa about five months prior to the deposition to obtain a job. He described his job as grabbing pigs by the ears and hanging them on a chain in a slaughter house. When asked why he ceased working for Taco Bell, he indicated that he was only working three days a week and left due to the short number of hours he was assigned. The Applicant simultaneously worked cleaning pools for a

pool company whose name he could not recall. He stopped working the the pool company because he left to move to Iowa.

The Applicant described his injury at Taco Bell as occurring when a box fell down which he caught with his hand. He reported the injury to the hand about two weeks later. The Applicant then corrected himself and indicated he had injured his arm in catching that box. The Applicant indicates that he requested treatment, but he was told to secure his own physician. He then went for treatment for a period of a month for which he received physical therapy. When asked what type of therapy he received, he indicated that he only received massages. Massages were to his back and not at all to the arm. He estimates he went for this back massage 4 or 5 times.

The Applicant also testified under oath that the doctor told him to go see an attorney. The doctor did not take him off of work because he worked very little. The Applicant specifically denied any other injuries while employed at Taco Bell.

The Applicant's testimony is unrebutted. Although the Applicant has only a first grade education, he seems to be able to communicate what happened at Taco Bell. The Applicant chose not to attend any of the evaluations set up by the Defendant but did attend the medical evaluations at Sheffield Medical Group, Inc. It is clear, however from the Applicant's deposition testimony that he reported an injury to his arm that went to the neck due to his carrying a box that had fallen. This bears no resemblance to the continuous trauma claim with depression, loss of sleep, that is said to have occurred on a continual basis for a full year. It is obvious that the claim form was generated on the Applicant's initial evaluation at Sheffield Medical Group on 5/6/91. This report is clearly generated in violation of Labor Code §4620 and must be disallowed pursuant to the case of Del Rio v. Quality Hardware, (1993) 58 CCC 147. There is also a permanent and stationary internal medicine report dated 5/6/91. In that report in the history section, it refers to the Applicant's last day of work as being May 6, 1991. This is contrary to the Applicant's sworn testimony that no doctor took him off of work and to the initial internal medicine report that even stated the Applicant was still working on the date of the evaluation. The Applicant clearly stated that he ceased his employment to take a better position in Iowa. Since the Applicant states that the pain he felt in the neck was due a specific injury that radiated from the arm and this is contradictory to the doctor's conclusion that the Applicant has suffered muscle contraction and headaches due to tension. There is also no evidence of any complaint of repetitive activities causing any type of cervical injury. There is also no evidence that the Applicant sustained an injury to the shoulder due to constant or frequent pushing, pulling, lifting or straining activities. The conclusions in the doctor's report bear no resemblance to the Applicant's testimony and therefore, the court finds that the history recited is so severely defective as to render the report meaningless and must be disallowed.

For the reasons set forth above, it is found that the Applicant did not sustain an internal or orthopedic continuous trauma injury. Complaints and history listed in the orthopedic reports also do not correspond to this Applicant's sworn, unrebutted testimony. The history being false, the orthopedic reports also must be disallowed. It is noted that in the initial orthopedic report, Dr. Tom does not even make a reference to the incident with the box. Surely if there was a continuous trauma injury, this should have been discussed.

It is also unrebutted that no medical-legal report was generated by the Applicant or his attorney of record, in this case representative Tom Fong. When asked by the court, the Lien Claimant acknowledged that he had no evidence to rebut the testimony. Therefore, it is found there was not a correct referral by Mr. Fong; therefore, no medical-legal reports can be compensated. He also had no contradiction for the dozens of billings for treatment for which the Applicant testified never took place.

Dated: 2/3/95


NANCY M. GORDON
Workers' Compensation Judge

NMG/sf