

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

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Case No. MON 220-323

PEDRO QUIJADA (LAINEZ),
Applicant
vs.
BEVERLY HILTON HOTEL;
ARGONAUT INSURANCE COMPANY,
Defendants.

FINDINGS AND AWARD
and
ORDERS

SHANDLER & ASSOCIATES
By: Garret Shandler
Attorneys for Applicant

KEGEL, TOBIN & TRUCE
By: Theodore C. Hanf
Attorneys for Defendants

The above-entitled matter having been heard and regularly submitted, The Honorable YOSHI YAMANAKA, Workers' Compensation Administrative Law Judge, now makes his decision as follows:

- FINDINGS OF FACT

1. Stipulations of the parties as set forth in the Minutes of Hearing are accepted and incorporated herein as Findings of Fact.
2. It is found that Applicant failed to show that employment was the predominant cause of his alleged psychiatric injury, as required by Labor Code § 3802.3.
3. It is found that Dr. Goodman's reports do not constitute substantial evidence.
4. Associated Reproduction Services will be allowed \$82.43 for photocopying at Argonaut Insurance Company.
5. The lien claim from Dr. Brooks for services rendered on May 6, 1997 in the sum of \$60.78 will be allowed.

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6. The Court finds that the liens of Edwin Gromis, M.D.; Dr. Goodman; PX Drug Store and, balance of Dr. Brooks lien will be disallowed.

7. The Court finds that the order of submission of the liens of Associated Reproduction Services; Christina Arana; and Estella Rosales will be rescinded, and those issues will be ordered off calendar.

8. All other issues are moot.

A W A R D

AWARD IS MADE In favor of PEDRO QUIJADA (LAINEZ) and against ARGONAUT INSURANCE COMPANY, as follows:

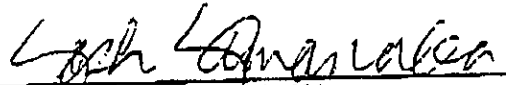
(a) Reimbursement in the sum \$60.78 payable to Dr. Brooks and \$82.43 payable to Associated Reproduction Services whose liens are hereby allowed.

O R D E R

IT IS ORDERED that the lien claims from Edwin Gromis, M.D.; Dr. Goodman; PX Drug Store, and balance of Dr. Brooks liens, be, and they hereby disallowed.

IT IS FURTHER ORDERED that the lien claims from Associated Reproduction Services; Christina Arana; and Estella Rosales be, and they hereby are, taken Off Calendar.

Dated on: 5/10/00



YOSH YAMANAKA
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Dated: 5/10/00

Served by mail on parties listed on Official Address Record on above date.

By: Delia Morales

Pedro Quijada-MON 220323
Findings & Award & Orders

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PEDRO QUIJADA (LAINEZ),

v s.

BEVERLY HILTON HOTEL;
ARGONAUT INSURANCE
COMPANY,

DATE OF INJURY:
December 14, 1996

WC ADMINISTRATIVE LAW JUDGE:

YOSH YAMANAKA

OPINION ON DECISION

STIPULATIONS:

The parties' stipulations are accepted as true.

SUBSTANTIAL EVIDENCE:

Applicant's psychiatrist, Dr. Stanley Goodman, makes almost no mention of Applicant's pre-existing stressors and emotional problems. The doctor seems to accept the worker's claim that his arrest, conviction and sentencing for spousal abuse was not for hitting his wife; "he simply hugged her to try to make her happy." Dr. Goodman also accepts the worker's explanation that the problems with his spouse "were highly related to his unhappiness, displeasure, tension and stress related to his work related [sic] situation."

Dr. Goodman also downplays the fact that the worker's daughter has congenital microencephaly, has needed around-the-clock care for over 21 years, and suffered an embolism in 1986. The doctor did review Psychiatrist Alfred Bloch's report and "would concur with all of his conclusions" including "apportionment in the ratio of 30% to non-industrial factors and 70% to the work stress described." (Emphasis added.) Yet, in his final report, Dr. Goodman states that no apportionment is indicated because, "The patient denies any current non-industrial work-disabling stressors." As the doctor fails to explain why he abandoned the earlier 30% apportionment, it is found that Dr. Goodman's reports do not constitute substantial evidence.

PARTS OF BODY INJURED:

Applicant's first allegation of cumulative injury to his psyche (during the period 1/10/95 through 1/10/96) has previously been adjudicated at trial. The earlier trial resulted in the WCJ's Opinion that "even if Labor Code § 5402 were applicable, any presumption of compensability would have been rebutted by Applicant's lack of credibility, and the Court finds that he did not sustain industrial injury to his psyche." (Emphasis added.)

Applicant's second claim is for a psychiatric injury on 12/14/96, concurrent with the admitted injuries to his left leg and back. He admitted on cross-examination that he obtained psychological treatment with Dr. Morgan in 1995 or 1996, prior to his slip and fall injury of 12/14/96. To substantiate his claim of psychiatric injury on 12/14/96, he procured a medical-legal report from Psychiatrist Goodman. However, as discussed above, Dr. Goodman's report is not substantial evidence. It is found that Applicant failed to show that actual events of employment were the predominant cause of his alleged psychiatric injury, as required by Labor Code § 3802.3.

LIEN OF EDWIN GROMIS, M.D.:

Applicant initially sought treatment with Orthopedist Leon Brooks. However, Dr. Brooks failed to report as required by Administrative Director Rule 9785, so defendant filed a petition for Order Requiring Employee to Select an Employer-Designated Physician. The petition was granted on 10/7/97 and Applicant selected Orthopedist Charles Resnick from the list of five doctors provided by defendant. He subsequently received treatment from Dr. Resnick.

Notwithstanding the Administrative Director's Order, Applicant improperly began treating with Orthopedist Edwin Gromis. His attorney did not even go through the motions of objecting to Dr. Resnick's opinions by sending a letter pursuant to Labor Code §§ 4061 or 4062. The attempted election with Dr. Gromis had no justification under the law. Although lien claimant was placed on notice of defendant's objection, he continued to provide treatment on a lien basis. As such, the entirety of Dr. Gromis' lien will be disallowed.

LIEN OF STANLEY GOODMAN, M.D.:

Labor Code § 4620(c) provides that, "Costs of medical evaluations, diagnostic tests, and interpreters incidental to the production of a medical report do not constitute medical-legal expenses unless the medical report is capable of proving or disproving a disputed medical fact." In the instant case, Applicant's claim of psychiatric injury was previously adjudicated and found to be due to preexisting factors. Hence, his latest claim of psychiatric injury would need to consider apportionment to those preexisting factors. Nonetheless, in his initial report, Neuropsychiatrist Goodman opined that no apportionment is indicated because, "The patient denies any non-industrial stressors. Therefore, apportionment is not an issue." (Emphasis added.) Thus, Dr. Goodman improperly abdicated consideration of apportionment to his patient.

In his permanent and stationary report of 3/9/99, Dr. Goodman again states, "The patient denies any current, non-industrial work-disabling stressors." Due to the doctor's cursory rejection of apportionment after earlier concurrence with Dr. Bloch's 30% apportionment, his medical-legal reports cannot be considered to be substantial evidence. As Dr. Goodman's medical legal reports and associated testing are incapable of proving the disputed psychiatric injury, his lien will be disallowed pursuant to Labor Code Section 4620(c).

LIEN OF PX DRUG STORE:

Pursuant the above discussion of the disallowance of Dr. Gromis and Dr. Goodman's liens, the lien of PX Drug Store will be disallowed.

LIEN OF ASSOCIATED REPRODUCTION SERVICES:

The only lien for Associated Reproduction Services is that in the amount of \$110.43 for photocopying at Argonaut Insurance Company on 12/15/98. ARS will be allowed \$82.43 for services on that date. The parties will be directed to adjust the balance of the ARS lien by and between themselves. In the meantime, the order of submission of the lien balance will be rescinded, and the issue of the lien balance will be ordered off calendar.

LIEN OF CHRISTINA ARANA:

Although the parties placed the lien of Christina Arana in issue, Gilbert at Christina Arana advised defendant on day of trial, 1/25/00, that there is no outstanding balance. As such, the order of submission of Christina Arana's lien will be rescinded, and that issue will be ordered off calendar.

LIEN OF LEON BROOKS, M.D.:

From the existing record, it appears that, after 1/25/97, the only report from Dr. Brooks that was served was that of his 5/6/97 examination. As such, Dr. Brooks will be allowed \$60.78 for services on 5/6/97, less credit for prior payment and the balance of his lien will be disallowed.

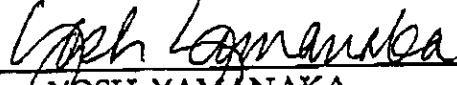
LIEN OF ESTELLA ROSALES:

Although the parties placed Interpreter Estella Rosales' lien in issue, her lien cannot be located in the Board file. As such, the order of submission of her lien will be rescinded, and her lien will be ordered off calendar.

OTHER ISSUES:

As the case-in-chief was settled by way of Compromise and Release on the day of trial, all other issues are moot.

Dated on: 5/10/00



YOSH YAMANAKA
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE