

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. SDO 0182515

VERNELL GILLARD,

Applicant,

v.

22nd DISTRICT AGRICULTURE
ASSOCIATION FAIRS AND
EXPOSITIONS, Permissibly Self-
Insured,

Defendants.

DECISION, FINDINGS AND AWARD
AND ORDER

OPINION

The stipulations of fact entered at the hearing of August 1, 1994, are accepted as true.

INJURY AOE/COE. The employer treated this injury as an admitted injury. There was no evidence offered that the injury was denied within 90 days. In fact there was no evidence that it was ever denied except in the defendant's pleadings. I conclude therefore that the alleged injury of July 2, 1993, is presumed compensable. Defendant has offered no substantial evidence to rebut the presumption that this was a compensable injury. No evidence was offered of a possible conspiracy or solicitation to commit fraud on the part of the worker. The worker's testimony as to how the injury occurred was not rebutted. Based on the evidence of record and the failure of defendant to rebut the presumption of compensability, I conclude that the worker sustained injury to his low back and right knee arising out of and occurring in the course of employment on July 2, 1993. I further conclude that he did not sustain injury to his neck, left knee or left and right lower extremity.

TEMPORARY DISABILITY. The employer provided treatment immediately following the worker's accident. Monica S. Moore, M.D., after examination of the worker, returned him to modified work that same day. There was testimony that modified work was available to the worker. The worker chose neither to follow the doctor's medical advise nor to return to modified work. Instead, the worker chose to secure his own medical treatments from James V. Dentice, D.C., 18 days following his injury. The worker did not have this option and I conclude that the defendant is not bound by the determination of Dr. Dentice of July 23, 1993, that the worker be off work for one month. The employer then made a proper objection under Labor Code section 4062 as to continuing need for medical treatment and claim of temporary disability. When the parties could not agree on a medical evaluator, the worker obtained a QME but defendant did not. By its failure to obtain rebuttal evidence on this matter, I conclude that defendant acquiesced in further determinations of the treating physician, James V. Dentice, D.C. I further conclude, relying on the reports of Dr. Dentice and G. Charles Roland, M.D., that the worker is entitled to temporary disability for the period beginning September 2, 1993, to and including March 23, 1994, at the rate of \$21.33 per week.

PERMANENT DISABILITY. Relying on the medical reports of Paul C. Murphy, M.D., who had available the worker's entire medical record at the time he performed his evaluations, that there is no factors of permanent disability attributable to this injury.

NEED FOR FURTHER MEDICAL TREATMENT. Based upon the medical reports of Paul C. Murphy, M.D., I conclude that the worker is not in need of further medical treatment to cure or relieve from the effects of the injury to his back and right knee. Based upon the testimony of the worker and the medical report of Alan M. Liker, O.D., I conclude that the worker is entitled to repair or replacement of his glasses in accordance with Labor Code section 3208.

SELF-PROCURED MEDICAL TREATMENT AND MEDICAL-LEGAL COSTS. The worker was entitled to select a treating physician of his choice 30 days from the date of his injury. On April 8, 1994, Paul C. Murphy, M.D., concluded that the worker required no further medical treatment to cure or relieve from the effect of these injuries. Based on the foregoing, I conclude that defendant is responsible for medical treatment rendered for the worker from August 2, 1993, to and including April 1, 1994, by James V. Dentice, D.C.

G. Charles Roland, M.D., provided medical-legal reports for the worker on November 15, 1993, and March 23, 1994. These reports relate to medical issues that the defendant has contested. I conclude that the worker is entitled to reimbursement of medical-legal costs in an unknown amount to be informally adjusted by and between the parties for the reports of Dr. Roland less credit to defendant for all sums heretofore paid on account thereof, if any.

ATTORNEY'S FEE. Based upon the WCAB Rules of Practice and Procedure, I conclude that an attorney's fee of \$74.00 is reasonable.

FINDINGS OF FACT

1. The stipulations in the Minutes of Hearing of August 1, 1994, are true and are incorporated herein by reference.
2. Vernell Gillard, born July 22, 1951, while employed as a janitor at Del Mar, California, on July 2, 1993, by the 22nd District Agricultural Association Fairs and Expositions, then permissibly self-insured as to workers' compensation liability, sustained injury arising out of and occurring in the course of employment to his back and right knee.
3. Vernell Gillard, born July 22, 1951, while employed as a janitor at Del Mar, California, on July 2, 1993, by the 22nd District Agricultural Association Fairs and Expositions, then permissibly self-insured as to workers' compensation liability, did not sustain injury arising out of and occurring in the course of employment to his neck, left knee and left and right lower extremity.
4. This injury caused temporary disability beginning September 2, 1993, to and including March 23, 1994, entitling worker to temporary disability at a rate of \$21.33 per week.
5. This injury caused no permanent disability.
6. Worker will not require further medical treatment to cure or relieve from the effects of the injury to his back and right knee.
7. Worker is entitled to repair or replacement of his eyeglasses which were injured incidental to an injury causing disability.
8. Worker is entitled to reimbursement of self-procured medical treatment provided by Steven V. Dentice, D.C., between August 2, 1994, to and including April 1, 1994.

9. Worker is entitled to reimbursement of medical-legal costs, for services provided by G. Charles Roland, M.D., in an unknown amount to be informally adjusted by and between the parties, less credit to defendant for all sums heretofore paid on account thereof, if any.

10. A reasonable attorney's fee is \$74.00.

AWARD

AWARD IS MADE in favor of VERNELL GILLARD against the 22nd DISTRICT AGRICULTURAL ASSOCIATION FAIRS AND EXPOSITIONS, PSI, of

(a) Temporary disability in accordance with Finding No. 4 above, less the attorney's fee in Finding No. 10.

ORDER

IT IS ORDERED that the lien of James V. Dentice, D.C., be paid in accordance with Finding No. 8 above and that the balance of the lien be, and it hereby is, disallowed.

IT IS FURTHER ORDERED that the lien of G. Charles Roland, M.D., be paid in accordance with Finding No. 9 above.

DATED AT SAN DIEGO, CALIFORNIA

11/3/95

FILED AND SERVED ON SAID DATE
TO ALL PARTIES AND LIEN CLAIMANTS
SHOWN ON THE OFFICIAL ADDRESS
RECORD.


By: E. Abano



J.P. McHENRY
WORKERS' COMPENSATION JUDGE