

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

JRP

Case No. LBO 246308

RUSSELL HAIRRELL,

*Applicant*

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT;  
Permissibly Self-Insured c/o Helmsman  
Management Services,

*Defendants.*

**FINDINGS & AWARD**

GLOW & KREIDA by Alan N. Kreida,  
attorney for applicant.  
KEGEL, TOBIN, & TRUCE by Jessalyn R. Pinder,  
attorney for defendants.  
Bixby Center Medical Group, lien claimant,  
represented by Mary Dickerson, Hearing Representative.

An application having been filed herein; all parties having appeared, and the matter having been regularly submitted, the Honorable MICHAEL TOMPKINS, Workers' Compensation Judge, Finds, and Awards as follows:

**FINDINGS OF FACT**

1. RUSSELL HAIRRELL, born November 5, 1935, did at Los Angeles, California, on February 16, 1993, sustain an injury to his back arising out of and occurring in the course of his employment as a teacher by Los Angeles Unified School District, who was then permissibly self-insured, and adjusted through Helmsman Management Services.
2. Applicant's earnings were \$937.75 per week.
3. The injury caused permanent disability of 10.25 percent equivalent to 31.25 weeks at 140.00 per week, in the total sum of \$4,375.00.
4. There is no basis for apportionment.

5. Further medical treatment to cure or relieve from the effects of this injury is not required.
6. Applicant secured necessary medical services to cure or relieve from the effects of his injury. Defendants shall pay the liens of The 4600 Group in the amount of \$1,848.00 and Bixby Center Medical Group in the amount of \$3,008.00; less credit to defendants for payments made, if any.
7. The reasonable value of the services of applicant's attorney is \$660.00.
8. The issue of late payment of applicant attorney's deposition fee has been resolved by stipulation in a total amount of \$104.84.

**AWARD**

AWARD IS MADE in favor of RUSSELL HAIRRELL against LOS ANGELES UNIFIED SCHOOL DISTRICT, Permissibly Self-Insured c/o Helmsman Management Services in the sum of \$4,375.00, payable FORTHWITH; less \$660.00 payable to Glow & Kreida as attorney's fees; plus \$104.84 payable to Glow & Kreida in accordance with Finding No. 8; together with payment of self-procurred treatment in accordance with Finding No. 6 above; together with payment of medical-legal costs in accordance with Finding No. 6 above.

Filed and Served by mail on: 10-26-94  
On all parties on the  
Official Address Record.  
By: *Agatha Magana*

  
MICHAEL TOMPKINS  
WORKERS' COMPENSATION JUDGE

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
Case No. LBO 246308

RUSSELL HAIRRELL,

vs.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT;  
Permissibly Self-insured  
c/o Helmsman Management Svcs.,

WORKERS' COMPENSATION JUDGE:  
MICHAEL TOMPKINS

DATED: October 24, 1994

OPINION ON DECISION

**PERMANENT DISABILITY:** The applicant is awarded permanent disability of 10 1/4 percent equivalent to 31.25 weeks in the sum of \$4,375.00 payable forthwith.

This finding is substantiated by the medical opinion of Dr. Thaler which is the most credible and persuasive on the issue. Dr. Thaler is of the opinion that the applicant is precluded from very heavy lifting and rates as follows:

18.1-10-41C-8-10:1

**APPORTIONMENT:** There is no basis for apportionment.

The general rule in aggravation cases is that the employer takes the employee as he finds him. Section 4750 provides an exception to this rule by limiting the employer's liability to the factors caused by the industrial injury in question, as if the previous disability did not exist.

If the applicant is asymptomatic, it shows that he had no disability pre-existing the injury. In this case, the applicant testified that he feels that he made a complete recovery before the date of injury.

It is incumbent on the defense to show that the applicant is symptomatic where Section 4750 is to be applied; since the defense did not, that section is not effective.

However, whether or not the applicant is asymptomatic prior to the injury is irrelevant if section 4663 is applicable. Under Labor Code Section 4663, you can only apportion in those instances where part of the disability would ~~come~~ have

resulted, absent the industrial injury, based on the normal progression of a pre-existing disease process.

To apportion under Labor Code Section 4663, you must have the following:

1. There must be evidence of a progressive disease process.
2. There must be medical evidence that the progressive disease condition would have become disabling absent the industrial injury.
3. There must be medical evidence that the underlying disease process would have become disabling at a definite ascertainable time; and
4. All of the above must be based on a medical that is legally sufficient and based on reasonable medical probability.

The medical report of Dr. Thaler dated December 30, 1993 addressed apportionment as follows: "If he did, indeed, have a 30-percent permanent disability, then I would apportion all of his current condition to the pre-existing disability that resulted from prior injuries".

This is not valid apportionment under Section 4750 since it is not shown that the applicant was symptomatic prior to the injury. Further, the four elements needed to apportion under Section 4663 are not present, since there is no evidence of a progressive disease process.

The medical report of Dr. Drake dated February 15, 1994, addresses apportionment as follows: "I would apportion 30 percent of his present lower lumbar disability to prior industrial injuries." This is not valid apportionment.

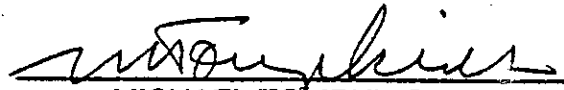
**NEED FOR FURTHER MEDICAL TREATMENT:** Further medical treatment is not awarded.

This finding is substantiated by the medical opinion of Dr. Thaler. The doctor states: "He could be utilizing over-the-counter mild analgesic anti-inflammatory medication for exacerbations of symptoms. I do not believe that in the absence of specific reinjury, he will require further diagnostic studies or further medical care".

**MEDICAL-LEGAL COSTS AND LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT:** The applicant necessarily and reasonably incurred medical legal costs and will be reimbursed for self-procured medical treatment consisting

of the following lien claims payable by defendants: 1) The 4600 Group (on behalf of Kaiser...\$1,848.00). 2) Bixby Center Medical Group....\$3,008.00. Less credit for payment made on above liens.

**ATTORNEY FEE:** The reasonable value of services and disbursements of applicant's attorney is \$660.00.



MICHAEL TOMPKINS  
WORKER'S COMPENSATION JUDGE

MT:mam

RUSSELL HARRRELL  
LBO 246308