

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 173752, SBR 230442

RALPH L. NORTON,

Applicant,

vs.

**CITY OF VICTORVILLE; PSI c/o
Hertz Claims Management,**

Defendants.

**JOINT
FINDINGS AND AWARD**

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Application having been filed in these matters, all parties having appeared and the matters having been regularly submitted, the Honorable JOHN F. PARKER, Workers' Compensation Judge, makes his Findings and Award as follows:

FINDINGS OF FACT

- (1) Applicant, Ralph L. Norton, born 8-8-17, while employed on 9-15-89 (in Case SBR 173752), and on 7-29-91 (in Case SBR 230442) as a building inspector (occupational group 57) by the City of Victorville at Victorville, California, permissibly self-insured, sustained injury arising out of and occurring in the course of his employment to his neck (in Case SBR 173752), and to his mid-back and right major elbow (in Case SBR 230442).
- (2) Earnings were maximum in both cases entitling applicant to a temporary disability rate of \$224.00 per week (in Case SBR 173752) and \$336.00 per week (in Case SBR 230442), and to permanent disability rates of \$140.00 per week in Case SBR 173752, and \$140.00 or \$148.00 per week, depending on the level of disability, in case SBR 230442.
- (3) Applicant has been fully compensated for all periods of claimed temporary disability in both cases.
- (4) The injury of 9-15-89, in Case SBR 173752, caused permanent disability of 20.0% equivalent to 70.50 weeks of disability payments at the rate of \$140.00 per week in the total sum of \$9,870.00, payable forthwith.
- (5) The injury of 7-29-91, in Case SBR 230442 caused permanent disability of 18.5% amounting to 64.25 weeks of disability payments at the rate of \$140.00 a week in the total sum of \$8,995.00, payable forthwith.
- (6) There is no basis for apportionment.
- (7) Further medical treatment may be required to cure or relieve from the effects of both injuries.
- (8) Applicant reasonably, actually and necessarily incurred expense for medical reports and records to prove contested cases in amounts to be adjusted by the parties, payable to lien claimants Stephen W. Roberts, M.D., Associated Reproduction Services, Smart Corporation, and George S. Watkin, M.D. in satisfaction of their respective lien claims. Jurisdiction is reserved as to any unresolved lien claims.

(9) Attorney Carol Koppel is awarded \$162.50 under Labor Code Section 5710 for services provided at the deposition of applicant.

(10) Attorneys Joseph Carabino and Koppel and Associates have provided legal services of a reasonable value of \$2,265.00, to be deducted from the permanent disability awarded applicant.

AWARD

AWARD IS MADE in favor of **RALPH L. NORTON**, against **CITY OF VICTORVILLE**, Self-Insured, of:

(a) Permanent disability indemnity in accordance with Paragraphs 4 and 5 of a total of \$18,865.00, payable forthwith, less credit for amounts advanced, if any and less the sum of \$2,265.00 payable to applicants attorneys as the reasonable value of services rendered;

(b) Further medical treatment in accordance with paragraph 7 above;

(c) Medical-legal expense in accordance with Paragraph 8 above, payable to the respective lien claimants, in amounts to be adjusted by the parties;

Attorney Carol Koppel is awarded deposition attorneys fees of \$162.50 in accordance with Paragraph 9 above.

SAN BERNARDINO, CALIFORNIA
Filed and Served by mail on: 10-12-94
On all parties on the
Official Address Record.
By: *M. [unclear]* *cc*



JOHN F. PARKER
WORKERS' COMPENSATION JUDGE

R.Norton,SBR173752,230442

CASE NOS. SBR 173752, 230442

RALPH L. NORTON

vs.

CITY OF VICTORVILLE; PSI
c/o Hertz Claims Mgmt.JUDGE: JOHN F. PARKER
DATED:

OPINION ON DECISION

Applicant sustained 2 injuries while employed by the City of Victorville -- on 9-15-89, to the neck, and on 7-29-91, to the mid-back and to the right major elbow. The primary issues are extent of permanent disability, apportionment, and overlapping disability as between the 2 cases.

PERMANENT DISABILITY: The Agreed Medical Examiner -- George S. Watkin, M.D., in his report of 4-23-93, indicates that applicant was permanent and stationary, from the neck injury of 9-15-89, about 6 months post-injury. He gives a work restriction of no very heavy work as to that injury and disability. Despite the testimony of applicant and the argument of defendant, we find applicant is so restricted at this time -- at least on a prophylactic basis.

Dr. Watkin also advises that, as a result of the second injury -- on 7-29-91, applicant is unable to perform heavy work.

The judge considers that the overall disability of applicant is reflected by the restriction from heavy work. To add to such restriction, an additional work limitation by reason of injury to another part of the spine would be unduly compounding the disability. Specific ratings are issued in these cases as per the formal reports of Permanent Disability served 9-21-94, in each case.

APPORTIONMENT: There is no evidence attributing any part of the spinal disability of applicant to anything other than the two industrial injuries. Accordingly, there is no apportionment in either case to non-industrial causes.

OCCUPATION: Based upon the testimony of applicant and the defense witness Stephen Wagner, the duties of applicant would place him in Occupational Group 57.

FURTHER MEDICAL TREATMENT: Based upon the opinion of the AME, it is found that applicant may be in need of further medical treatment.

MEDICAL-LEGAL COSTS AND LIEN CLAIMS: Reimbursement for the expenses of the evaluation and report of Stephen W. Roberts, M.D. of 2-21-91, as well as the charges of Associated Reproduction Services, Smart Corporation, and Dr. Watkin (AME) are awarded in amounts to be adjusted by the parties, in satisfaction of the respective lien claims.

SELF-PROCURED MEDICAL EXPENSES: No evidence of any self-procured expenses has been presented. None will be awarded.

ATTORNEYS FEES: (a) Prior Attorney Carol Koppel is awarded a fee under Labor Code Section 5710 of \$162.50 based upon an hourly rate for the non-attorney appearing at the deposition based on \$75.00 per hour. (b) Attorneys Joseph Carabino and Koppel and Associates are awarded a fee of \$2,265.00 as the reasonable value of their services.



**JOHN F. PARKER
WORKERS' COMPENSATION JUDGE**

JFP:mi

SBR 173752, 230442

RALPH NORTON

v.

CITY OF VICTORVILLE;
Legally Uninsured

JUDGE: JOHN F. PARKER
DATED: NOV 15 1994

OPINION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR
RECONSIDERATION

PROCEDURE:

Applicant has filed a timely Petition for Reconsideration from Joint Findings and Award in these matters. The verification is a bit unusual, and it is questionable whether such meets the requirements of Labor Code Section 5902. Additionally, the document, received November 7, 1994 at San Bernardino, fails to show Proof of Service on all adverse parties as required by Labor Code Section 5905, and 8 Calif. Code of Regulations, Sections 10514 and 10850.

Such defects are sufficient grounds for the dismissal of the Petition for Reconsideration.

MERITS OF PETITION:

Petitioner complains that the decision is not based on substantial evidence. The argument is that the AME - George S. Watkin, M.D., - allowed a restriction against very heavy work for a cervical spine injury of September 15, 1989, and a restriction against heavy work for an injury of July 29, 1991, to the thoracic spine.

The evidence presented by defendant was consistent with a factual determination that applicant sustained no permanent disability as a result of the cervical spine injury of September 15, 1989. (See testimony of witness Stephen Bruce Wagner - Summary of Evidence from August 10, 1994 hearing; and testimony of applicant, fifth full paragraph on page 4 of said Summary).

Rather than finding no permanent disability as to the 1989 injury, this judge chose to divide the overall disability represented by the restriction against heavy work as to the entire spine as between the two injury dates. Recommended ratings were prepared and served with a restriction against very heavy work for the cervical spine injury of 1989, and with such shown as a pre-existing disability, a restriction against heavy work as a result of the thoracic spine injury of 1991.

Defendant filed a Supplemental Trial Brief pursuant to Order of Disposition on August 10, 1994. Attorney for applicant was given an opportunity to file rebuttal to such, but did not do so. Recommended ratings issued on both cases. No objection was made to such by the attorney for applicant. Now, what is little more than a skeletal Petition is filed objecting to the decisions.

RECOMMENDATION:

It is recommended that the Petition for Reconsideration be either dismissed, or denied on the merits.

JFP:jp


JOHN P. PARKER
WORKERS' COMPENSATION JUDGE

cc: Joseph Carabino, P. O. Box 220939, Newhall, CA 91322
Kegel, Tobin, et al, P. O. Box 3329, Rancho Cucamonga, CA 91730

Served: November 15, 1994
By: *Gfompa*

1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

3 Case Nos SBR 173752.
4 SBR 230442

4 RALPH L. NORTON,

5 *Applicant,*

6 vs.

7 ORDER DENYING
8 RECONSIDERATION

7 CITY OF VICTORVILLE;
8 Permissibly Self- Insured c/o HERTZ
9 CLAIMS MANAGEMENT.

9 *Defendants,*

10 We have considered the allegations of the Petition for
11 Reconsideration and the contents of the report of the workers'
12 compensation judge (WCJ) with respect thereto. Based on our
13 review of the record, and for the reasons stated in said report
14 which we adopt and incorporate, we will deny reconsideration.

15 For the foregoing reasons,

16 IT IS ORDERED that said Petition for Reconsideration be,
17 and it hereby is, DENIED.

18 WORKERS' COMPENSATION APPEALS BOARD

19 *Andrew N. Heath*

20 I CONCUR,

21 *Richard P. Gannon*

22 *Kate Quinn*

23 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

24 JAN 5 1995

25 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED
26 ON THE OFFICIAL ADDRESS RECORD, EXCEPT LIEN CLAIMANTS

27 vsr

Conchita L. Lopez

