

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. AGO 0005675

DIANE JUAREZ

Applicant

vs.

OCEAN VIEW SCHOOL DISTRICT;
KEENAN & ASSOCIATES
Defendants.

FINDINGS AND AWARD
AND
ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable ROGER G. JOHNSON, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

- (1) Diane Juarez, born 6/2/41, while employed as a teacher, at Oxnard, California, on 12/2/91, by Ocean View School District, then insured as to workers' compensation liability by Keenan and Associates did sustain injury arising out of and occurring in the course of her employment to her back
- (2) Applicant's average earnings per week was the maximum to produce a TTD rate of \$336.00 per week, and a permanent disability indemnity rate of \$140.00 per week.
- (3) Temporary Total Disability was adequately compensated.
- (4) Permanent disability of 12.3% equivalent to 41.25 weeks, at \$140.00 per week beginning 10/21/92 for a total of \$5,775.00, less the attorney fee awarded herein, less credit for payments made, based on the applicant's testimony and medical report of Dr. Pojunas, dated 9/7/93, as set forth hereinunder.
- (5) All medical-legal and self-procured medical treatment bills and liens are to be adjusted, paid and/or litigated within 90 days of the final Order or Award herein with jurisdiction reserved. Blue Cross lien was found necessary.
- (6) Future medical treatment is awarded per Dr. Pojunas' report of 9/7/93.

(7) An attorney fee of 12% or \$693.00 is awarded based on the responsibility assumed by the attorney, the care exercised, the time involved, and the results obtained -- consistent with Labor Code § 4906. To the extent that the accrued and unpaid permanent disability awarded herein is insufficient to pay the attorney fee, the balance of the fee is to be commuted off the far end of the permanent disability award.

(8) No serious and willful was found.

AWARD

AWARD IS MADE in favor of Diane Juarez against Ocean View School District/Keenan and Associates as follows:

- (a) Permanent disability is awarded per Finding of Fact # 4.
- (b) Medical-legal and self-procured treatment bills and liens is awarded per Finding of fact # 5.
- (c) Future medical is awarded per Finding of Fact # 6.
- (d) Attorney fees is awarded per Finding of Fact #7.

ORDER

IT IS ORDERED that applicant take nothing further on her serious and willful claim.

Filed and Served by mail on: 10-11-95
On all parties on the
Official Address Record.
By: *[Signature]*

[Signature]

ROGER G. JOHNSON
WORKERS' COMPENSATION JUDGE

1 OPINION ON DECISION

2 Permanent disability, and the need for future medical
3 treatment were found per the credible un rebutted report of the
4 Agreed Medical Examiner, Dr. Pojunas, dated 9/7/93.

5 The lien of Blue Shield for \$301.00 was found necessary, and
6 ordered paid per RVS.

7 The services and willful claim filed by the applicant, was not
8 found substantial by the Court. The testimony of defense witness,
9 Greg Bridges, who was the director of maintenance, and operations
10 established a reasonable on going effort by the employer to eradicate
11 the gophers on a daily basis! The same witness credibly testified to
12 mowing the grass every Thursday, unless the lawn mower was
13 broken or it was raining.

14 In any case, the Court finds that the employer's conduct was
15 neither serious or willful.

16 Furthermore, the alleged misconduct of the employer was not
17 the proximate cause of the injury.

18 Since she was walking backwards at the time of her injury
19 and did not look where she was going.

20 The Court was not convinced that the employer knew about
21 this specific risk, since the applicant did not know whether that the
22 gopher hole was there the day before or not. In any case, the
23 employer did not have specific knowledge regarding that gopher
24 hole.

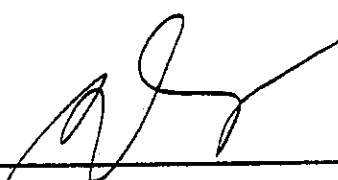
25 The Court was convinced, that all reasonable efforts were
26 being made by the employer to get rid of the gophers, since traps
27 and poison were set daily.

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For the above reasons, the applicant failed to establish both serious and/or willful misconduct by the employer.

Dated at Ventura, California

Dated: 10-11-95



ROGER G. JOHNSON
WORKERS' COMPENSATION JUDGE

Served by mail on interested parties of record by:

Juan Asler

Dated: 10-11-95