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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

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MICHAEL MARTIN,

Applicant,

vs.
DRIFTWOOD DAIRY; INDUSTRIAL
INDEMNITY INSURANCE CO.

Defendants,

Case No. MON 111446

OPINION AND ORDER
GRANTING
RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award of November 7, 1991, wherein it was found that the applicant, while employed as a loading dock worker on May 18, 1988, sustained an industrial injury to his head and neck causing temporary total disability from May 22, 1988 through August 26, 1989 and a need for medical treatment. It was also found that applicant's death on August 26, 1989 was not attributable to his injury.

Defendant contends that there is no substantial medical evidence to support the finding of temporary disability and medical treatment, asserting that the record is filled with false and inaccurate histories given by the decedent to his doctors and given at his deposition, and that evidence at trial demonstrates the inaccuracy of the history upon which applicant's doctors base their findings. Defendant also contends that medical-legal expenses are not recoverable where the reports are based on a false and misleading history given by the applicant. Defendant argues that applicant had a long history of prior head injuries

1 which he denied and failed to report and that applicant's lies
2 cannot justify the outcome of this case.

3 In reviewing the record in this matter, the Board notes that
4 the workers' compensation judge (WCJ) has filed a Report and
5 Recommendation on Petition for Reconsideration which is less than
6 one-and-a-half pages long and which fails to comply with either
7 WCAB Rule 10860 or Policy and Procedural Manual Section 6.2.5.
8 Specifically, Rule 10860 requires a statement of the contentions
9 raised in the petition, a discussion of the support in the record
10 for the findings of fact and conclusions of law, and the action
11 recommended with regard to each issue. Policy and Procedural
12 Manual Section 6.2.5 indicates that the WCJ's report should be
13 divided into three sections. The first section or introduction
14 should include brief statements as to (1) applicant's occupation,
15 age at injury, date of injury, parts of the body injured, and
16 manner of injury, (2) decision complained of and date issued, with
17 specific reference only to the portion complained of, (3) identity
18 of pertinent and specific contentions raised, whether or not the
19 petition is timely, whether or not it is legally effective, and
20 (4) a brief summary of facts as to the extent necessary for proper
21 understanding of the issues raised. Under discussion the WCJ
22 should supply (1) the reasons for the determination of the issues
23 (all issues) in question and a reply to the contentions raised if
24 necessary, (2) any admission of error where the contentions are
25 correct and a material error has occurred, (3) a comment on any
26 misstatements of material facts, and (4) a professional attitude
27 should be maintained, extensive discussion of established legal

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1 principles should not be provided, and adoption and incorporation
 2 of any other documents is not allowed. Finally, under
 3 recommendation the WCJ should provide reasoning and analysis as to
 4 the conclusions reached for each and every issue.

5 In reviewing this matter, the WCJ in his report has merely
 6 indicated that he reviewed the record and found that the applicant
 7 was still unable to work at the time of his death according to the
 8 reports or records of Dr. "Nidite and Dr. Lesser." This response
 9 to the defendant's petition is inadequate.

10 Therefore, reconsideration must be granted in order to obtain
 11 a supplemental report from the WCJ wherein he complies with the
 12 Board's Rules and Policy and Procedural Manual as discussed
 13 herein. This is necessary in order for the Board to understand
 14 the reasoning and basis for the WCJ's decision. Reconsideration
 15 will be granted for that purpose and for such further proceedings
 16 as the Board may thereafter determine to be appropriate.

17 For the foregoing reasons,

18 IT IS ORDERED that reconsideration of the Findings and Award
 19 of November 7, 1991, be, and the same hereby is, GRANTED.

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IT IS FURTHER ORDERED that pending the issuance of a decision after reconsideration in the above-entitled case, all further correspondence, objections, motions, request, and written communications shall be filed with the Workers' Compensation Appeals Board, 455 Golden Gate Avenue, Rm. 2154, San Francisco, CA 94102, ATTENTION: Rehearing Unit, and not with any local office.

WORKERS' COMPENSATION APPEALS BOARD

John S. Oka

I CONCUR,

J. Wiegand

William D. Duvall Deputy

Dated and filed at San Francisco, CA
JAN 2 - 1992

Service by mail on said date to all parties listed on the official address record except lien claimants.

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