

WORKERS' COMPENSATION APPEALS BOARD

CASE NOS. 87 LBO 166726, 166727 and 166728

JOY-DAY POWLEY (Dec'd)
CHRISTINA POWLEY,
PATRICIA POWLEY,

vs. SOUTHERN CALIFORNIA
RAPID TRANSIT DISTRICT;
ASSOCIATED RISK
MANAGEMENT

Workers' Compensation Judge:
Date:

LAWRENCE LOW
December 14, 1993

KENNETH ROWEN, by Murray Jackson, Attorneys for Applicant.
KEGEL, TOBIN & TRUCE, by Dena Rosen Epstein,
Attorneys for Defendant.

**OPINION AND DECISION OF WORKERS'
COMPENSATION JUDGE**

Based on the testimony elicited from decedant's brother, Thor L. Eggum, and the testimony of the investigating Police Officers, and the medical evidence submitted into evidence, I find that the death of Joy-Day Powley was willful and self-inflicted without any showing of a suicide with industrial factors in the causal chain.

Neither is there any evidence of industrial factors that so overwhelmed the decedent, that she was unable to resist the impulse of suicide.

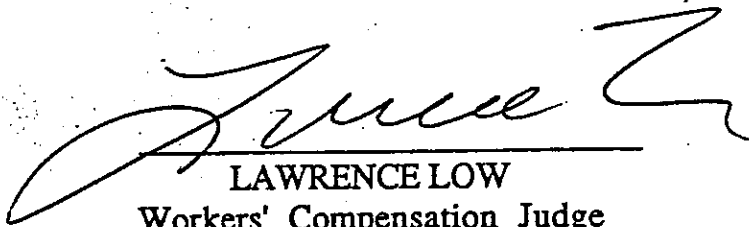
What the testimony and medical-legal evidence showed was a woman who was an alcoholic, who lived with a physically abusive and alcoholic male companion.

Further, one or both of her daughters, Applicant's minor children herein, was or were dealing in drugs which she probably ingested thus causing her death.

Yes, she had industrial injuries to her knee in 1985, and was taking prescribed medication and painkillers by various treating doctors, but to say that this fact brings this case within the exceptions to the provisions of Labor 3600, which denies compensability for willfully and deliberately caused death is beyond the bounds of reasonableness.

Testimony of the brother showed he picked her up from a bar and decedent was intoxicated. While he was present, she made an abortive attempt to commit suicide. After he left her home, she successfully killed herself.

The sole factor for the demise of an alcoholic female was a result of excessive use of alcohol and not of a result of any industrial injury.



LAWRENCE LOW
Workers' Compensation Judge
DIVISION OF WORKERS' COMPENSATION

LL/hs

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD
CASE NOS. 87 LBO 166726; 166727 and 166728

JOY-DAY POWLEY (Dec'd)
CHRISTINA POWLEY,
PATRICIA POWLEY,
Applicant

v.

SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT; ASSOCIATED
RISK MANAGEMENT,

Defendants.

Joint Finding and Order

KENNETH ROWEN, by Murray Jackson, Attorneys for Applicant.
KEGEL, TOBIN & TRUCE, by Dena Rosen Epstein, Attorneys for
Defendant.

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

GOOD CAUSE APPEARING THEREFOR:

IT IS FOUND that the sole factor for the demise of Applicant
was a result of excessive use of alcohol and not of a result of any
industrial injury.

ORDER

IT IS HEREBY ORDERED that Applicants take nothing herein.

Filed and Served by mail on: DEC 14 1993

On all parties on the
Official Address Record.

By: *Hatsumi Suzuki*

Lawrence Low
LAWRENCE LOW
WORKERS' COMPENSATION JUDGE

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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. LBO 166728

JOY-DAY POWLEY (Deceased),
CHRISTINA POWLEY,
PATRICIA POWLEY,
Applicant,

vs.

SOUTHERN CALIFORNIA RAPID
TRANSIT DISTRICT; ASSOCIATED
RISK MANAGEMENT,
Defendants,

OPINION AND ORDER DENYING
RECONSIDERATION AND
GRANTING RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

Applicants, Christina Powley and Patricia Powley, seek reconsideration of the December 14, 1993, Joint Finding and Order wherein it was found that the sole factor for the death of Joy-Day Powley, their mother, was a result of excessive use of alcohol and not the result of any industrial injury. It was ordered that applicant take nothing.

Lien claimant, Pacific Healing Services and Psychological Group, Inc., seeks reconsideration of the September 27, 1993 order which states:

"GOOD CAUSE APPEARING:

Psychological Assessment specialist is hereby ordered to pay \$125 to defendant, as restitution for monies overpaid in connection with the June 26, 1987 evaluation of Joy-Day Powley."

Lien claimant contends that its October 22, 1993 letter should be regarded as a Petition for Reconsideration of the September 27, 1993 order and that lien claimant, Psychological Assessment Specialist, Inc., has never been served with a copy of the

1 petition for restitution... Therefore, it was denied its due
2 process right to file a written response and objection.

3 Applicant contends that (1) the suicide was work related
4 insofar as decedent was unable to resist the impulse of suicide
5 and that she had ingested pain relieving drugs for her industrial
6 injury along with some alcohol which resulted in her death; (2)
7 the assault at work resulted in decedent having anxiety, fear of
8 going outside her home, and fear of an additional assault which
9 lead to her suicide; and (3) decedent's third work related surgery
10 on her shoulder which left her in a state of anxiety, depression,
11 and pain was a contributing cause of the suicide.

12 Based on our review of the record and for the reasons stated
13 herein, we will deny applicant's petition for reconsideration.
14 However, based upon the record and for the reasons stated herein
15 we will grant lien claimant's petition for reconsideration,
16 rescind the Order Disallowing the Lien and return the case to the
17 trial level for further proceedings and decision.

18 With respect to lien claimant's petition we note it was timely
19 filed October 25, 1993, within 25 days of the receipt on October
20 5, 1993 of the September 27, 1993 order. (Lab. Code, §5903, Code
21 of Civil Procedure section 1013; *Hartford Accident and Indemnity*
22 *Company v. Workers' Comp. Appeals Bd. (Phillips)* (1979) 86
23 Cal.App.3d, [43 Cal. Comp. Cases 1193].) There is no indication
24 in the record that either the Minutes of Hearing of September 27,
25 1993 or the order of restitution was served on lien claimant prior
26 to the date lien claimant states, e.g. October 5, 1993. Insofar
27 as the WCJ has provided no reasons for ordering restitution we

1 believe the most appropriate procedure is to grant
2 reconsideration, rescind the WCJ's order and return the matter to
3 the trial level for further proceedings and decision.

4 However, with respect to applicant's petition, we affirm the
5 WCJ's decision that the suicide is noncompensable. The record
6 reflects that Dr. John M. Stalberg, reporting in the area of
7 psychiatry, opined on January 29, 1991 that it appears with a
8 reasonable medical probability that the applicant indeed killed
9 herself while intoxicated, getting into a dispute with her
10 boyfriend and overdosing. Moreover, he states:

11 "It is my understanding that she killed herself
12 primarily with Darvon, its metabolite, and
13 Tylenol, when she actually was prescribed
14 Naprosyn, Meclomen and Valium. None of these,
15 however, were found in the body. She was
16 prescribed those medications by Dr. Tang.
17 Also, on August 6, 1987, she was prescribed
18 codeine." (See, January 29, 1991 report.)

19 In addition, he found it significant, according to the
20 materials reviewed, that applicant did not express suicidal
21 ideation on the day in question and had been actively going to
22 physical therapy to improve her physical condition that week. He
23 noted, "usually when an individual had suicidal ideation, it is
24 persistent and it would be unlikely that she would be attending
25 physical therapy the same week that she killed herself for the
26 problem she was receiving treatment for." After reviewing a
27 report dated August 12, 1987, signed by K. Star, Ph.D., the doctor
noted a questionnaire wherein applicant denied thinking about
death, noted she never thought of killing herself, and denied

1 feeling depressed much of the time for the last two years. Dr.

2 Stalberg also reviewed the coroner's report and recounted:

3 "It was the officer's investigation opinion
4 that she died either of suicide or an
5 accidental overdosed, and there was no sign of
6 struggle or foul play. Five to six large,
7 white, oval tablets, were found in the stomach.
8 She had blood alcohol of .15 noted, Darvon
9 noted, all .37, a tablet of Darvon, as well as
10 the Propoxyphene was 3.37, what appears to be
11 micrograms per milliliter, and metabolite of
12 3.55 the same, and acetaminophen, 193.10
13 micrograms per milliliter. Each is in the
14 toxic range. She initially sustained the
15 injury on June 12, 1987 while working as an RTD
16 bus driver and was assaulted by a passenger.
17 She was operated on Long Beach Hospital on
18 August 11, 1987 for a torn rotator calf of the
19 right shoulder, and discharged on August 15,
20 1987. She did well during the hospital stay
21 and was given medication in the form of
22 vicodene, 40 tablets, at the time of
23 discharged. She fell on her shoulder on
24 September 8, 1987. She had surgery performed
25 on October 20, 1987 for adhesive capsulitis
26 of the right shoulder. She had previous
27 surgery for a torn rotary cuff on November 8,
1987. After surgery, her pain complaints were
minimized."

17 Turning to the statutory and case law, Labor Code section 3600
18 provides:

19 "(a) Liability for the compensation provided by
20 this division, in lieu of any other liability
21 whatsoever to any person except as otherwise
22 specifically provided in Sections 3602, 3706,
23 and 4558, shall, without regard to negligence,
24 exist against an employees arising out of and
25 in the course of employment and for the death
26 of any employee if the injury proximately
27 causes death, in those cases from where the
following conditions of compensation occur:

24 . . .
25
26 (4) Where the injury is not caused by the
27 intoxication, by alcohol or the unlawful
use of a controlled substance, of the
injured employee. As used in this

1 paragraph, 'controlled substance' shall
2 have the same meaning as prescribed in
3 Section 11007 of the Health and Safety
4 Code.

5 (5) Where the injury is not intentionally
6 self-inflicted.

7 (6) Where the employee has not willfully
8 and deliberately caused his or her own
9 death.

10 . . ." (Emphasis added.)

11 Thus, in order to defeat a claim for death benefits, the
12 employer must show that the employee voluntarily committed suicide
13 and also that the employee could have resisted the impulse to do
14 so. (*Donovan v. Workers' Comp. Appeals Bd. (Finnerty)* (192) 138
15 Cal.App.3d 323, 327 [47 Cal. Comp. Cases 1411, 1413].) If, for
16 example, the record reflects substantial persuasive expert
17 evidence that without the industrial injury there would have been
18 no suicide, then the injury is the proximate cause of the death.
19 (See *Burnight v. Industrial Acc. Com.* (1960) 181 Cal.App.2d 816,
20 828 [25 Cal. Comp. Cases 128], wherein work related stresses
21 caused depression that gave rise to the suicidal impulse.) The
22 Burnight, supra, case also discussed the situation wherein death
23 by suicide is compensable when the pain resulting from an
24 industrial injury has caused the employee to feel that death would
25 afford the only relief, unless it appears that the employee could
26 have resisted the impulse to act. (See, also 99 C.J.S., §264, pp.
27 911-012.)

28 Again in Burnight the court specifically stated at page 822:
29 "We think that the test is and should be, not did the employee
30 know what he was doing, but was the compulsion or the impulse to

1 commit suicide one which she could not resist. In general the
2 rule above mentioned the courts have practically stated this very
3 concept, ... where he kills himself under compulsion of an
4 irresistible or uncontrollable impulse."

5 In *Wells v. Workers' Comp. Appeals Bd.* (1985) 50 Cal. Comp
6 Cases 599 (writ denied) the Appeals Board found that although the
7 stress of applicant's employment was a caused of his suicide
8 attempt, applicant intentionally shot himself and his death was
9 willfully and deliberately caused by himself. The Board noted
10 that the medical evidence and the testimony of witnesses supported
11 the conclusion that there was no industrial psychiatric cause for
12 the applicant's suicide attempt in that the work stress did not
13 cause a disabling mental condition which resulted in the suicide
14 attempt.

15 Finally, the case of *Guerra v. Workers' Comp. Appeals Bd.*
16 (1985) 168 Cal.App.3d 195 cited by applicant, is factually
17 distinguished insofar as there was substantial evidence to
18 conclude that after the work related injury applicant developed
19 depression and anxiety and in its course developed a rather poor
20 self image and poor impulse control leading to the self-inflicted
21 incident. Moreover, in Guerra the Court of Appeal specifically
22 found that the employer's physician's opinion did not constitute
23 substantial evidence and that there was insufficient evidence to
24 support a finding of non-compensability. However, the court noted
25 that the employment must be a contributing caused of the injury.

26 In the instant matter the substantial medical evidence of Dr.
27 Stalberg justifies the finding that the suicide occurred as the

1 result of alcohol intake and the ingestion of a toxic overdose of
2 pills which was precipitated by a fight with decedent's boyfriend.
3 This renders the suicide on a volitional basis rather than in the
4 inability to resist the impulse to commit suicide due to pain,
5 anxiety, and depression from work.

6 We are persuaded that applicant's alcohol consumption, the
7 fight with her boyfriend, and the ingestion of non-prescribed
8 toxic pills was a new and independent agency which broke the chain
9 of causation arising from the industrial injury of the assault at
10 work. Noting that the issue of whether an employee's injury is
11 proximately caused by his employment is a question of fact, we
12 find based on the entire record that the WCJ's finding of non-
13 compensability is supported by substantial evidence. (See *State*
14 *Compensation Insurance Fund v. Industrial Acc. Com.* (1959) 176
15 *Cal.App.2d* 10, 14-15.)

16 In passing we further note that the Darvon and Tylenol drugs
17 ingested by applicant which were found to be toxic in conjunction
18 with a .15 alcohol content at the time of testing, were not
19 prescribed medications for applicant's industrial injury.

20 Thus, we find that decedent knew what she was doing and
21 therefore her death was an intentionally self-inflicted one with
22 no direct, proximate or causal connection to her work.
23 Compensation recovery is therefore prohibited under Labor Code
24 section 3600.

25 For the foregoing reasons,

26 IT IS ORDERED that applicant's Petition for Reconsideration
27 filed January 7, 1994, be, and the same hereby is, DENIED.

1 IT IS FURTHER ORDERED that lien claimant's, Specific Health
2 Services and Psychological Group, Inc., (Psychological Assessment
3 Specialist, Inc.) Petition for Reconsideration filed October 25,
4 1993, be, and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that the September 27, 1993 order
6 requesting restitution from psychological assessment specialist
7 for an overpayment of \$125.00 be, and the same hereby is,
8 RESCINDED and the case be RETURNED to the trial level for
9 further proceedings and decision on the issue of the merits of the
10 lien claim.

11 WORKERS' COMPENSATION APPEALS BOARD

12
13 *Richard P. Gannon*
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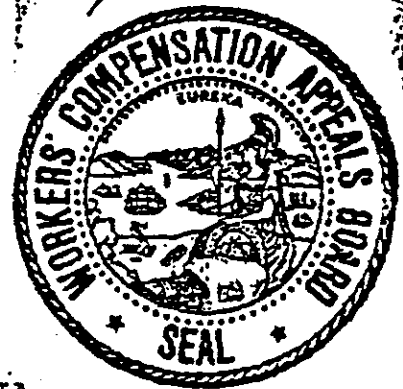
15 I CONCUR,

16 *[Signature]*
17

18 NOT PARTICIPATING

19 Rick Dietrich

DEPUTY



20 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

21 MAR 8 1994 *[Signature]*

22 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
23 AS SHOWN ON THE OFFICIAL ADDRESS RECORD.

24 vp
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