

WJ

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

ANNA MADSEN

Case No. AHM 45091

Applicant

v.

ST. MARY MEDICAL CENTER, P.S.I.

Findings and Order

Defendants.

The above-entitled matter having been heard and regularly submitted, the Honorable Workers' Compensation Administrative Law Judge, Jules L. Greenberg now makes his decision as follows:

OPINION ON DECISION

PROCEDURAL AND FACTUAL BACKGROUND

The applicant a nurse at Kaiser hospital sustained a neck and back injury in 1993. She was work restricted by Dr. Ravessoud. She then self-restricted her work activities as to lifting, etc. Knowing that she might injury her back and neck again, she applied for a much more sedentary position with St. Mary Medical Center as a home health nurse. In this manner she modified her employment, remaining as an R.N. but took on a much less physically demanding position.

She re-injured her back and left shoulder on May 24, 1995, when she rear ended another vehicle. Medical treatment was furnished and temporary total disability indemnity paid for about two months. After treating with Dr. H. Marinow, he released her to return to work on July 24, 1995. He followed up with several supplemental reports.

At time of trial the WCALJ, adjudicated the differences separating the parties, by finding that Dr. Marinow was the primary treating physician. The findings and award issued, (9-25-98) that pursuant to the opinion of Dr. Marinow, she had no residual permanent disability as a result of the car accident nor did she need further medical care.

Dr. Kim acted as a QME for the applicant, raising the rebuttable presumption under 4062.9. However his report failed to rebut the findings of Dr. Marinow, and the WCALJ made findings on the latter report and opinion.

Following a dispute, over QIW status, on December 11, 1996, the Rehabilitation Unit had issued its determination that applicant was QIW and needed a J.A. The defendant filed a timely appeal to this determination and on May 10, 1999 filed its petition, that the determination be rescinded and a DOR. On January 24, 2000, the matter came forward for trial and was submitted on the record of these proceedings. Defendant file its trial brief.

RATIONALE FOR FINDINGS

The burden of proof that the determination is in error, is on the defendant (appellant) under BR 10958. Dr. Marinow's opinion is deemed "correct" under the statute cited above as well as the standards of Minniear v. Mt. San Antonio Comm. College Dist. (1996) 61 C.C.C. 1055. He found that the applicant no longer had neck and back pain, desired to return to work and had no residual disability. When he released her to return to work it was to the same duties and position she had before she was injured. If any employer is liable to provide vocational rehabilitation it would be the former employer, not

St. Mary Medical Center. Under these circumstances the defendant has met its burden as the applicant based on this "correct" medical opinion, is not a qualified injured worker.


FINDINGS OF FACT

1. Applicant was declared to be permanent and stationary with no residual disability, no need for treatment and no need for rehabilitation, by the primary treating physician.
2. The primary treating physician's opinion was found to be correct under both statutory and case law standards. It is the opinion that should govern the provision of vocational rehabilitation services.

ORDER

The determination of the rehabilitation unit is be and hereby is annulled. The applicant can take nothing by reason of this order.

Date: April 25, 2000



JULES L. GREENBERG
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

DATED AT ANAHEIM, CALIFORNIA
SERVED ON PARTIES MARKED ON THE
OFFICIAL ADDRESS RECORD EFFECTED
ON THE ABOVE DATE.
By: nbg

A PETITION FOR RECONSIDERATION FROM THIS DECISION SHALL BE FILED ONLY AT THE ANAHEIM DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.