

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SBR 228388

JOSE NAZARIO
aka JOSE ANGEL NASARIO,

Applicant,

vs.

LEVITZ FURNITURE;
TRAVELERS INSURANCE COMPANY,

Defendants.

FINDINGS OF FACT
AND
ORDER GRANTING APPEAL
AND SETTING ASIDE
DETERMINATION OF
REHABILITATION UNIT
OF DECEMBER 19, 1996

The above-entitled matter having been heard and regularly submitted on the appeal of defendant from determination of the Rehabilitation Unit of December 19, 1996, the Honorable John F. Parker, Workers' Compensation Referee, now makes his decision as follows:

FINDINGS OF FACT

- (1) Jose Nazario, aka Jose Angel Nasario, applicant, born March 25, 1963, at San Bernardino, California, on October 29, 1991, sustained injury to the back, neck, and dorsal lumbosacral spine arising out of and occurring in the course of his employment as a service technician for Levitz Furniture Corporation, whose worker' compensation insurance carrier was the Travelers Insurance Company.
- (2) A Compromise and Release as to the "normal issues" and including a Thomas finding request was filed with this Appeals Board on July 27, 1995. Order Approving the Compromise and Release issued on August 2, 1995, including a Thomas finding as to any alleged injury to the psyche only.
- (3) Applicant has previously been provided vocational rehabilitation services by defendant. Applicant failed to cooperate in connection therewith.
- (4) Applicant has previously declined further vocational rehabilitation services by execution of an RU 107, dated May 5, 1995.
- (5) Applicant had the advise of counsel at the time of the execution of said RU 107 (Declination).
- (6) There has been no showing of good cause to set aside or reopen that Declination of May 5, 1995.
- (7) Applicant did request further vocational rehabilitation services by letter of his attorneys dated August 5, 1996. Such is untimely for two reasons:
 - (a) It is more than one year from the Declination of May 5, 1995.
 - (b) It is more than one year from the date of the Order Approving the Compromise and Release of August 2, 1995.
- (8) Defendant has fully complied with any obligation it had to provide vocational rehabilitation services to applicant.

- (9) Defendant is not liable for any further vocational rehabilitation services to applicant.

ORDER

(A) The appeal of defendant from the determination of the Rehabilitation Unit dated December 19, 1996, is granted.

(B) The determination of the Rehabilitation Unit of December 19, 1996, is reversed and set aside.

///


///

///

DATED: 4-9-97

SAN BERNARDINO, CALIFORNIA
Filed and Served by mail on: 04-09-97
On parties as shown on the
Official Address Record.
By: M. Solis

M. Solis



JOHN F. PARKER
WORKERS' COMPENSATION REFEREE

JOSE NAZARIO
aka JOSE ANGEL NASARIO

vs. LEVITZ FURNITURE;
TRAVELERS INSURANCE COMPANY

WORKERS' COMPENSATION REFEREE:

JOHN F. PARKER

DATE:

APRIL 9, 1997

OPINION ON DECISION

This matter is pending on an appeal by defendant from determination from the Rehabilitation Unit of December 19, 1996, finding that applicant was a Qualified Injured Workers and entitled to rehabilitation services.

BACKGROUND:

Unfortunately, the Rehabilitation Unit in connection with its case no. 96 Y 12506, did not have complete information regarding this matter before issuing its determination of December 19, 1996.

A complete record has been made before the Workers' Compensation Appeals Board and this decision on the Appeal is based upon that record. Such record consists of detailed reports of a Vocational Counselor, John Q. Adams, who testified at a hearing of February 5, 1997, before this Board. Testimony was also taken of the injured worker. Additionally, extensive documentary evidence was received.

The carrier closed its file after having attempted to provide services to this injured worker over a period of approximately sixteen months. Although the applicant described a situation where he was moving from one location to another and was rather difficult to locate, there is still sufficient information in the record, through the reports and testimony of Mr. Adams, that the applicant failed to cooperate.

Additionally, applicant through his attorneys, entered into a Compromise and Release Agreement with the defendant in connection with the normal issues, which settlement is dated May 5, 1995. For some reason this document was not brought to the attention of Judge Casari, who approved it, until August 1, 1995. Order Approving the Compromise and Release issued on August 2, 1995.

By letter dated August 5, 1996, the attorneys for applicant requested reinstatement of vocational rehabilitation.

Following that request for vocational rehabilitation services, the carrier made no response to the Rehabilitation Unit, resulting in the determination dated December 19, 1996, based upon the AME report of George Watkin, M.D. of January 7, 1993.

HEARING OF FEBRUARY 5, 1997:

At the time of this hearing a number of evidentiary items were brought up including a claim by defendant that applicant utilized more than one social security number, and that a birth certificate showing applicant was born in the State of New Jersey, were not legitimate documents.

The substance of the position of applicant was that this matter should be reopened for good cause to allow the applicant further services. However, applicant had previously executed a declination of vocational rehabilitation services dated May 5, 1995, and obviously had legal advise at the time that he entered into that agreement. In my opinion, no good cause has been shown to set aside that document or to allow further services. There has been no showing of any pressure placed on the applicant to require him to sign that document in connection with the Compromise and Release Agreement which was entered into concurrently.

Under the circumstances, the appeal is granted. Findings will made consistent with the above and the record made at the hearing of February 4.

It is noted further, that despite being given the opportunity to do so, the counsel for applicant has not filed any rebuttal Points and Authorities to those filed on behalf of defendant.

Decision will issue accordingly.



JOHN F. PARKER
Workers' Compensation Referee

JFP:ms