1 2 3 4	STATE OF CALIFORNIA DIVISION OF WORKERS' COMPENSATION WORKERS' COMPENSATION APPEALS BOARD		
5 6 7			CASE NO.
8 9 10		Applicant,	OAKLAND DISTRICT OFFICE
11 12 13	vs.		MINUTES OF HEARING AND SUMMARY OF EVIDENCE
14 15	permissibly self- Insured, adjusted by		
16 17 18		Defendants.	
19 20 21 22	PLACE: DATE AND TIME:	OAKLAND DISTRICT OFFICE - OAKLAND, CA February 25, 2019, 1:40 PM TO 4:02 PM	
23 24 25	JUDGE: REPORTER:		
26 27 28	APPEARANCES:	PPEARANCES: Applicant represented by	
29 30 31 32 33		Defendant represent Dietz, Gilmor & Cha (Jonathan Freeman,	azen, A.P.C.
34 35 36	WITNESSES:	Applicant See page 2-3.	
37 38	EXHIBITS:		
39 40 41 42 43 44	DISPOSITION:	This matter stands	submitted.
45	(75 pages est.)		

1 2	STIPULATIONS		
3 4	The parties stipulate to the following facts:		
5 6 7 8 9 10	 Applicant, born while employed on March 14, 2018, as a handler, occupational group number deferred, at Oakland, California, by sustained injury, arising out of and in the course of employment to her head. At the time of injury, the employer was permissibly self-insured and administered by At the time of injury applicant's earnings were \$288.51 per week, warranting indemnity rates of \$192.34 per week for temporary disability and \$192.34 per week for permanent disability. 		
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19 20	4. The employer has furnished all medical treatment to date.		
21 22 23	5. No attorney's fees have been paid and no attorney fee arrangements have been made.		
24 25 26	 6. The report of panel qualified medical evaluator (PQME), M.D., rates to 0% permanent disability. 7. Applicant has been adequately compensated for all periods of temporary disability to present. 		
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32 33 34	 Permanent disability, with applicant disputing the substantiality of the POME's reporting. 		
35 36	 Need for further medical treatment. 		
37 38	3. Attorney's fees.		
39 40	EXHIBITS		
41 42 43 44	APP 1:		
	Injury Report, March 14, 2018		
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            APP 2:
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      Incident Statement by Applicant, March 16, 2018
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            APP 3:
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      Incident Report, April 5, 2018
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            APP 4:
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      Work Status Note, unsigned, October 1, 2018
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            APP 5:
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      Report of
                       Emergency Room, December 4, 2018
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           <u>APP 6:</u>
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      Work Status Note,
                                             PA-C, January 25, 2019
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           APP 7:
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      EDD Benefits Printout, July 19, 2018
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           DEF A:
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     Report of POME
                                           September 24, 2018
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           DEF B:
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     Benefits Printout, January 30, 2019
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     Defendant objects to the admission of applicant's exhibits as
     they were not served on defendant prior to today's hearing and
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     were not listed as proposed exhibits in the pre-trial conference
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     statement and relevance.
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     It is ORDERED that Defendant's Exhibits A and B are admitted
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     into the record. IT IS FURTHER ORDERED that applicant's Exhibits
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     1 through 7 are marked for identification only and a ruling as
     to their admissibility is deferred and will issue concurrent
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     with the Findings of Fact.
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SUMMARY OF EVIDENCE

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4 APP

CALLED AS A WITNESS ON HER OWN

BEHALF, HAVING BEEN DULY SWORN, TESTIFIED SUBSTANTIALLY AS FOLLOWS:

DIRECT EXAMINATION BY

 Applicant is under a lot of pressure today and she is nervous and may not be able to give her best effort in testifying. Applicant has a bachelor's degree in sociology but is working on a master's degree. Her workers' compensation injury has prevented her from proceeding with the master's degree. Her memory, thinking, and focus issues have prevented her from pursuing a master's program.

Applicant earned her bachelor's degree in with a GPA of 3.80. She started working for in September of 2017. Prior to she worked in education including tutoring a multitude of subjects, and substitute teaching.

Applicant is married with five children.

Applicant's job at was as handler, but then was moved to material handler with the same pay. She worked part-time while working on call as a substitute. As a material handler, she was working with boxes. The environment was horrible.

 She suffered head, knee, and back injuries at the head injury occurred on March 14, 2018. Applicant was working in a ULD can with a co-worker. They were unloading the can on opposite sides. Applicant was picking up items off the top belt. As she is putting items on the belt, something flew and knocked her out. She may have blacked out. She was feeling dizzy and funny. Applicant was about 6 or 7 feet across from applicant. The co-worker's name was

No heavy equipment was supposed to be on the bottom belt. That belt holds 55 to 100 pounds. She caught herself as she was going to floor. She was hit by a roll of carpet. She asked for help and told that he had just hit her. The length of the carpet was about 8 feet.

When she was hit, she was falling toward the floor, but just sat down on her knee instead. Someone told her that she should go to a trainer. Someone ran to get her some water. There was a chair near. She sat in the chair, but she had severe vertigo. She was seeing stars. Her head was spinning.

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Applicant filled out a statement of the injury. Applicant was out of it when writing the statement. It took her one to two hours to write the statement. It was a part of a page.

The witness is shown Applicant's Exhibit 2. She completed that statement. It is her handwriting. This appears to be the statement that she wrote. The statement is accurate.

The witness is shown Applicant's Exhibit 1. The report that the company generated is completely different. She feels the report makes it look like an accident, but she feels it was It felt like he hit her on purpose. on purpose. They were only supposed to be moving small packages. She had been working with for 4 or 5 months. The reason she feels this was intentional because of personnel disputes.

Following the injury, she was having problems with sensitivity to light, dizziness, nausea, and memory. applicant perform light duty but it was difficult for her.

The treating physician kept putting applicant through stress by putting her back at work. Applicant started going to her own doctor. She was being seeing by a physician's 30 assistant, was treating there from April 2018 to present.

The vertigo returns whenever she is under a lot of pressure. She has brain fogginess. She went to a job interview a month ago and was asked questions and she could not answer them. She could not think normally. Her focus was off. She also gets headaches and feels 'out of it'.

Applicant had headaches for 6 months after the incident. Initially it was daily, and then got better to three times per week. She had headaches three times last week.

Applicant's eyesight was off following the injury. almost got into four wrecks. Her prescription was off for almost 3 months following the injury.

Applicant recalls the interview with PQME He was standoffish and was upset that applicant did not fill out the packet prior to the appointment. She was having an anxiety attack while talking with him. Their appointment lasted 20 to 25 minutes.

There was a packet that applicant was supposed to fill out, but she could not focus on filling it out. She could not fill out the form because it was traumatic. performed a checkup of her eye and checked her gait.

About an hour after the accident, she almost hit somebody on highway 880 on the way home because of her sensitivity to light. The last time applicant suffered sensitivity to light was about a month ago.

They had applicant working at under bright light. She complained but they did not do anything about it.

Applicant threw up at work right after being hit. As she was leaving, she went to the bathroom and threw up a little bit. She threw up at work maybe five times following the injury. She threw up other times at home. She relates this to the head injury, as she did not have these issues prior to the injury.

Her last day of work at was July 27, 2018.

Applicant worked other jobs at the time of her injury. She was a driver, coach, and on-call substitute. After her injury, she stopped all concurrent work.

Applicant can no longer work as she used to, drive, coaching, and be in crowds. She cannot tutor. Her back was affected too. She cannot run. She was an assistance track coach. They made it to the junior Olympics. She cannot train students.

 did not want to hear any of her complaints. He had an attitude. Applicant is familiar with report. On page two of the report, the face-to-face time with the doctor was 20 to 25 minutes. They talked for about 10 minutes, performed tests for about 10 minutes, and then ended the examination.

At the bottom of page two, she told that she was having an anxiety attack talking with him and he got mad during this exchange.

Applicant did fall to her knees and takes issue with the history that she did not fall. She does not know whether she lost consciousness.

The statement that the injury has not impaired her activities of daily living were affected is not true. He did not want to hear her talk about that.

Some days applicant does not sleep for three nights in a row.

Applicant has been off since her last injury on July 27, 2018. Her current employment status is that they are starting the termination process. She was told she was injury prone. She is not able to back to work due to injuries.

On page four of the PQME report at the bottom, applicant recalls the mini-mental exam. He was having her hop, but her knee and back was hurt so it was difficult. Her knee and back hurt because she was under physical therapy for her knee. He was making her do little physical stuff.

Applicant told that her head was bothering her and having anxiety, but did not want to hear about that. Applicant is more aggressive. She has panic attacks and they come all of the time.

Applicant was in complete distress during the interview.

Applicant's symptoms of dizziness and headaches had not resolved by the time that she had seen

Applicant told this to

He said for her to keep her focus and that she would get better over time.

Applicant was not referred to a neuro-psyche examination. Applicant was not told she might have suffered a mild traumatic brain injury. Applicant recalls a CT scan. It was a little after her injury.

Applicant still complains of multiple cognitive complaints.

Applicant is undergoing treatment for her head injury and has a referral to a neurologist. The doctor's name is at the is also seeing

Applicant wants to see the actual extent of her injury.

looked at applicant's ears, but did not check her hearing. He had applicant complete an eye chart exam. He checked applicant's reflexes with a hammer and had applicant walk forward and backwards. Applicant's balance and coordination was a little bit off. When she closed her eyes, applicant almost fell.

did not ask applicant about this and did not notice it.

performed memory checks. Applicant had problems with slurred speech. Sometimes she will forget what she is talking about. Applicant has had a little tingling in the arm after the injury. She goes to acupuncture and does some of the exercises. She has more tingling in the legs. That started in July after a subsequent injury, but applicant is unaware what is connected to what.

Applicant testified that the tingling started in April because she fell twice. She fell at her child's school. She was walking up her sister's steps and fell. She relates these falls to the head injury and the knee injury. The knee was weak. Applicant was on light duty and was pushed at work. She was intentionally pushed. That occurred on July 27th. It was on her second day back off from the doctor. Applicant was pushed by

Applicant has kept a journal of her employment at with statements that she wrote to the managers. She has journal entries related to the March 14 head injury.

Applicant's manager gave her \$65.00 cash under-the-table about a week after the head injury.

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CROSS EXAMINATION BY MR. FREEMAN:

Applicant is not currently working. She is under a doctor's care at the clinic. Her practitioner is

She sees and another doctor. She has an appointment with on the $4^{\rm th}$. is a therapist who is going to see applicant for anxiety and mental health issues.

is going to see applicant for psychiatry. Applicant is collecting EDD at the moment. A doctor is certifying applicant to collect EDD for her back. Applicant has a referral coming for a neurologist.

Applicant previously worked as a substitute and a driver. Before applicant worked for she was an on-call substitute and a student. The last full-time job prior to was in 2013.

Applicant fell twice after her March 2018 injury. She cannot remember the date of the falls. It was approximately a month after the March injury. Applicant reported the fall to Applicant does not recall the doctor's name. Applicant fell going up her sister's steps and does not recall whether she fell after that. She reported that fall to her primary care doctor, physician's assistant

Applicant last saw on July 27. was listed as a witness but has not appeared today.

Applicant coached her children in track. She was not paid for this. The last time she coached was last year prior to this injury.

Applicant ran 5k races prior the injury. The last time she ran a 5k was approximately 2017. She has ran approximately 40 or 50 5k races in her life. Her time was approximately 40-45 minutes.

Applicant first saw report sometime in October or November.

Applicant has a driver's license and is able to drive. She last drove a car 3 weeks ago. Applicant is currently wearing glasses. She uses them all of the time to see. She has the same prescription that she had a year ago.

The last time that applicant saw a workers' compensation doctor was when she was having double vision. The double vision went away, but comes back every now and then. Applicant does not recall the date of her last visit.

called her and said she could not come in for more appointments because she was not covered.

Applicant left the court this morning to retrieve paperwork. She went home to get this paperwork. The medical reports were not at home. She just went home. She did not get any paperwork from home. She had problems focusing on finding paperwork and came back empty handed. The proposed exhibits from Applicant were already in her possession this morning. She was unable to get any additional papers from home.

RE-DIRECT EXAMINATION BY

Applicant recalls exhibit 3, which is a complaint that applicant drafted because the employees on the job were against her. There were personnel issues going on in the workplace.

LET THE MINUTES REFLECT that applicant wished to call her 2 husband, , as a rebuttal witness. Defendant objected as the witness was not disclosed on the pre-trial conference 3 4 statement. is not listed as a witness on the Mr.5 pre-trial conference statement and good cause was not shown to 6 allow an amendment to the witness list. Furthermore, defendant 7 has not presented any witnesses; thus, it would not be proper 8 to call any rebuttal witnesses at this time. It appears that 9 the purpose of Mr. testimony is to bolster applicant's 10 testimony. Accordingly, applicant's request to call 11 as part of her case in chief is DENIED. 12 13 APPLICANT RESTED. 14

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DEFENDANT RESTED.

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STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF WORKERS' COMPENSATION

02-27-2019

PROOF OF SERVICE

Case Number:

Injured Worker

DIETZ GILMOR SAN FRANCISCO Law Firm

Employer

Claims Administrator

2/25/19 Minutes of Hearing & Summary of Evidence Served via US Mail or e-mail on counsel and parties as indicated above.

Date: 2/27/19

By: