

1 STATE OF CALIFORNIA
2 DIVISION OF WORKERS' COMPENSATION
3 WORKERS' COMPENSATION APPEALS BOARD
4

5
6 CASE NO.

7
8
9 Applicant,

OAKLAND DISTRICT OFFICE

10
11 vs.

12 MINUTES OF HEARING AND
13 SUMMARY OF EVIDENCE

14 permissibly self-
15 Insured, adjusted by

16
17 Defendants.
18

19
20 PLACE: OAKLAND DISTRICT OFFICE - OAKLAND, CA

21 DATE AND TIME: February 25, 2019, 1:40 PM TO 4:02 PM

22
23 JUDGE:

24 REPORTER:

25
26 APPEARANCES: Applicant represented by

27
28
29
30 Defendant represented by
31 Dietz, Gilmore & Chazen, A.P.C.
32 (Jonathan Freeman, Attorney)
33

34
35 WITNESSES: Applicant

36
37 EXHIBITS: See page 2-3.

38
39 DISPOSITION: This matter stands submitted.
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45 (75 pages est.)

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2 STIPULATIONS

3 The parties stipulate to the following facts:
4

- 5 1. Applicant, born while
6 employed on March 14, 2018, as a handler, occupational
7 group number deferred, at Oakland, California, by
8 sustained injury, arising out of and in the course
9 of employment to her head.
10
- 11 2. At the time of injury, the employer was permissibly
12 self-insured and administered by
13
- 14 3. At the time of injury applicant's earnings were \$288.51
15 per week, warranting indemnity rates of \$192.34 per week
16 for temporary disability and \$192.34 per week for
17 permanent disability.
18
- 19 4. The employer has furnished all medical treatment to date.
20
- 21 5. No attorney's fees have been paid and no attorney fee
22 arrangements have been made.
23
- 24 6. The report of panel qualified medical evaluator (PQME),
25 M.D., rates to 0% permanent disability.
26
- 27 7. Applicant has been adequately compensated for all periods
28 of temporary disability to present.
29

30 ISSUES

- 31
- 32 1. Permanent disability, with applicant disputing
33 the substantiality of the PQME's reporting.
34
- 35 2. Need for further medical treatment.
36
- 37 3. Attorney's fees.
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39 EXHIBITS

40 APP 1:

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43 Injury Report, March 14, 2018
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SUMMARY OF EVIDENCE

APPLICANT, 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.

/ / / /

1 Applicant recalls the interview with PQME He was
2 standoffish and was upset that applicant did not fill out the
3 packet prior to the appointment. She was having an anxiety
4 attack while talking with him. Their appointment lasted 20 to
5 25 minutes.
6

7 There was a packet that applicant was supposed to fill out,
8 but she could not focus on filling it out. She could not fill
9 out the form because it was traumatic. performed a
10 checkup of her eye and checked her gait.
11

12 About an hour after the accident, she almost hit somebody
13 on highway 880 on the way home because of her sensitivity to
14 light. The last time applicant suffered sensitivity to light
15 was about a month ago.
16

17 They had applicant working at under bright light.
18 She complained but they did not do anything about it.
19

20 Applicant threw up at work right after being hit. As she
21 was leaving, she went to the bathroom and threw up a little bit.
22 She threw up at work maybe five times following the injury. She
23 threw up other times at home. She relates this to the head
24 injury, as she did not have these issues prior to the injury.
25

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

28 Applicant worked other jobs at the time of her injury. She
29 was a driver, coach, and on-call substitute. After her injury,
30 she stopped all concurrent work.
31

32 Applicant can no longer work as she used to, drive,
33 coaching, and be in crowds. She cannot tutor. Her back was
34 affected too. She cannot run. She was an assistance track
35 coach. They made it to the junior Olympics. She cannot train
36 students.
37

38 did not want to hear any of her complaints. He
39 had an attitude. Applicant is familiar with
40 report. On page two of the report, the face-to-face time with
41 the doctor was 20 to 25 minutes. They talked for about 10
42 minutes, performed tests for about 10 minutes, and then ended
43 the examination.
44

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1 Applicant is undergoing treatment for her head injury and
2 has a referral to a neurologist. The doctor's name is
3 at the
4 is also seeing
5

6 Applicant wants to see the actual extent of her injury.
7

8 looked at applicant's ears, but did not check
9 her hearing. He had applicant complete an eye chart exam. He
10 checked applicant's reflexes with a hammer and had applicant
11 walk forward and backwards. Applicant's balance and
12 coordination was a little bit off. When she closed her eyes,
13 applicant almost fell. did not ask applicant about
14 this and did not notice it.

15 performed memory checks. Applicant had
16 problems with slurred speech. Sometimes she will forget what
17 she is talking about. Applicant has had a little tingling in
18 the arm after the injury. She goes to acupuncture and does some
19 of the exercises. She has more tingling in the legs. That
20 started in July after a subsequent injury, but applicant is
21 unaware what is connected to what.
22

23 Applicant testified that the tingling started in April
24 because she fell twice. She fell at her child's school. She
25 was walking up her sister's steps and fell. She relates these
26 falls to the head injury and the knee injury. The knee was weak.
27 Applicant was on light duty and was pushed at work. She was
28 intentionally pushed. That occurred on July 27th. It was on
29 her second day back off from the doctor. Applicant was pushed
30 by
31

32 Applicant has kept a journal of her employment at
33 with statements that she wrote to the managers. She has journal
34 entries related to the March 14 head injury.
35

36 Applicant's manager gave her \$65.00 cash under-the-table
37 about a week after the head injury.
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1 CROSS EXAMINATION BY MR. FREEMAN:

2
3 Applicant is not currently working. She is under a
4 doctor's care at the clinic. Her practitioner is
5 She sees and another doctor. She has an
6 appointment with on the 4th. is a
7 therapist who is going to see applicant for anxiety and mental
8 health issues.

9
10 is going to see applicant for psychiatry.
11 Applicant is collecting EDD at the moment. A doctor is
12 certifying applicant to collect EDD for her back. Applicant
13 has a referral coming for a neurologist.

14
15 Applicant previously worked as a substitute and a driver.
16 Before applicant worked for she was an on-call substitute
17 and a student. The last full-time job prior to was in
18 2013.

19
20 Applicant fell twice after her March 2018 injury. She
21 cannot remember the date of the falls. It was approximately
22 a month after the March injury. Applicant reported the fall
23 to Applicant does not recall the doctor's
24 name. Applicant fell going up her sister's steps and does not
25 recall whether she fell after that. She reported that fall to
26 her primary care doctor, physician's assistant

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

30
31 Applicant coached her children in track. She was not paid
32 for this. The last time she coached was last year prior to this
33 injury.

34
35 Applicant ran 5k races prior the injury. The last time
36 she ran a 5k was approximately 2017. She has ran approximately
37 40 or 50 5k races in her life. Her time was approximately 40-45
38 minutes.

39
40 Applicant first saw report sometime in October
41 or November.

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1 Applicant has a driver's license and is able to drive. She
2 last drove a car 3 weeks ago. Applicant is currently wearing
3 glasses. She uses them all of the time to see. She has the
4 same prescription that she had a year ago.
5

6 The last time that applicant saw a workers' compensation
7 doctor was when she was having double vision. The double vision
8 went away, but comes back every now and then. Applicant does
9 not recall the date of her last visit.
10

11 called her and said she could not come in
12 for more appointments because she was not covered.
13

14 Applicant left the court this morning to retrieve
15 paperwork. She went home to get this paperwork. The medical
16 reports were not at home. She just went home. She did not get
17 any paperwork from home. She had problems focusing on finding
18 paperwork and came back empty handed. The proposed exhibits
19 from Applicant were already in her possession this morning.
20 She was unable to get any additional papers from home.
21

22 RE-DIRECT EXAMINATION BY
23

24 Applicant recalls exhibit 3, which is a complaint that
25 applicant drafted because the employees on the job were against
26 her. There were personnel issues going on in the workplace.
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1 LET THE MINUTES REFLECT that applicant wished to call her
2 husband, , as a rebuttal witness. Defendant objected
3 as the witness was not disclosed on the pre-trial conference
4 statement. Mr. is not listed as a witness on the
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 Mr. as part of her case in chief is DENIED.

12

13 APPLICANT RESTED.

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15 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: