

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

*Applicant,*  
  
vs.  
  
*Defendants.*

Case No.

**FINDINGS, ORDER,  
AND OPINION ON DECISION**

The above-entitled matter having been heard and regularly submitted, the Honorable  
Workers' Compensation Administrative Law Judge, now decides as follows:

**FINDINGS OF FACT**

APPLICANT, born while employed as a tire technician,  
occupation code 460, at insured by  
Insurance Company, **did not** sustain injury arising out of and in the course of said employment  
to back and knees during the period of to

**ORDER**

**IT IS ORDERED THAT** Applicant takes nothing.

DATE: 05/29/2019

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WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## OPINION ON DECISION

The facts in this case are undisputed: According to the parties' stipulations and the QME report by Dr. [redacted] Applicant [redacted] has worked as a tire technician at [redacted] California for nine or ten years. (Ex. A at 2.) Applicant has had low back pain, which he attributes to work, and he self-procured treatment through his primary care physician at [redacted] Applicant has alleged a cumulative trauma date of injury from 08/17/2017 to 08/17/2018. It is the injured worker who has the initial burden of proof to show injury arising out of employment/in the course of employment (AOE/COE). When a cumulative trauma is alleged, lay opinion is usually insufficient such that an industrial injury must be established by substantial medical evidence.

Dr. [redacted] examined applicant and reviewed [redacted] and other medical records. The evaluation also included x-rays of the lumbar spine, which indicated some inflammation and degenerative disc disease. (Id. at 5, 10.) Dr. [redacted] concludes that applicant's back complaints are "presumably" the result of work activities "in part" but also attributes applicant's back condition to degenerative disc disease. (Id. at 10-11.) There is 0% permanent disability and applicant has continued his regular work, having lost no time due to his back. (Id. at 12.) Dr. [redacted] states that there are issues of apportionment, but in in light of the 0% rating, there is no need for discussion. (Id.)

Labor Code section 5412 provides that the date of injury for cumulative injuries is that date upon which the employee first suffered disability and had knowledge that the disability was cause by his employment. There is no evidence in the record that applicant has either permanent disability or temporary disability as the result of his back pain. He has continued to work regular duty. In addition, Dr. [redacted] is equivocal about the work "presumably" causing injury but also attributes

applicant's bad back to degenerative disc disease. These facts are not enough to establish a compensable disability.

On occasion, an employer will be liable for an employee's medical needs due to injurious exposure even where no date of injury has been established. Applicant argues that Dr. provides for future medical care on an industrial basis. Actually, Dr. affords medical care on an "as needed" basis. (Id.) In the context of this case, "as needed" is interpreted to mean when and if a need arises in the future. In other words, medical treatment is not foreseeable at *this* time. To be sure, Dr. list of potential "options" including possible physical therapy, acupuncture, medication, and "if nothing else...some education as to how to best manage his back symptoms." (Id.) This list appears nothing more than a statement describing back treatment in general, but not particular to applicant. The "educational" option appears to be nod toward exercise of common sense, which really cannot be considered medical treatment. There is insufficient specificity and no urgency behind the QME's list, and so I will decline to base an award on this part of his report.

In sum, there is insufficient evidence to support a claim at this time. Therefore, Applicant has not met his burden of proof. Accordingly, Applicant must take nothing.

DATE: 05/29/2019

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WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the  
Official Address record on the above date.

DATED: May 29, 2019 BY:

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DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
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