

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

4 CASE NO: (MF)

5 Applicant

POM District Office

6 vs.

7 MINUTES OF HEARING

AND

8 SUMMARY OF EVIDENCE

AND

9 ORDER OF CONSOLIDATION

10 INC.;

11 Defendant(s)

12 LOCATION: Pomona, California

13 DATE AND TIME: August 21, 2019; 2:59 P.M. - 4:27 P.M.

14 JUDGE: THE HONORABLE

15 REPORTER: Hearing Reporter

16 APPEARANCES:

17 APPLICANT IN PROPRIA PERSONA

18 DIETZ, GILMOR & CHAZEN

19 BY: CLARA FORMAN, ESQ.

20 Attorneys for Defendant(s)

21 Spanish Interpreter

22 Employer Representative

23 WITNESSES: Applicant

24 (43 pp.)

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ORDER OF CONSOLIDATION

GOOD CAUSE APPEARING:

IT IS ORDERED that Case Nos. and be, and they hereby are consolidated for trial and the evidence in one is received in the other insofar as relevant.

IT IS FURTHER ORDERED that Case No. be designated as the Master File, and all exhibits will be filed therein.

* * *

THE FOLLOWING FACTS ARE ADMITTED: - MF)

1. was born and while employed on April 9, 2018 as a pipe fitter in Los Angeles, California, for claims to have sustained injury to his back.

2. At the time of the injury the employer was insured by

ISSUE:

- 1. Injury AOE/COE.
- All other issues are deferred.

THE FOLLOWING FACTS ARE ADMITTED:

1. was born and while employed on as a fire sprinkler pipe fitter in Los Angeles, California, by claims to have sustained injury to his back and leg.

2. At the time of the injury the employer was insured by

ISSUE:

- 1. Injury AOE/COE.
- All other issues are deferred.

1 EXHIBITS:

2 APPLICANT EXHIBIT 1: (Excluded) Audio recordings
3 made by the applicant.

4 APPLICANT EXHIBIT 2: (Marked for I.D.) E-mail from
5 (Not in file.)

6 APPLICANT EXHIBIT 3: Two reports and an MRI by
7 Dr. (Not in file.)

8 APPLICANT EXHIBIT 4: Four reports by Dr.
9 (Not in file.)

10 APPLICANT EXHIBIT 5: Four reports by Dr. from
11 U.S. HealthWorks. (Not in file.)

12 APPLICANT EXHIBIT 6: One report by Dr.
13 (Not in file.)

14 APPLICANT EXHIBIT 7: One reports by Dr. and
15 one report by Dr. from U.S. HealthWorks. (Not in file.)

16 APPLICANT EXHIBIT 8: Applicant's DWC-1 form. (Not in
17 file.)

18 LET THE RECORD REFLECT defendant objected to the
19 Court hearing the audio recordings in Applicant Exhibit 1 under
20 Penal Code 632, that the applicant recorded the conversations
21 with people without their knowledge. Because of Penal Code 632
22 the Court cannot consider those recordings as evidence.
23 Therefore, Applicant Exhibit 1 will be excluded from evidence.

24 LET THE RECORD REFLECT that defendant objected to
25 Applicant Exhibit 2 based on lack of certain information on
26 said exhibit. The Court will mark Applicant Exhibit 2 for
27 identification at this time.

28 LET THE RECORD REFLECT Applicant Exhibits 3 through 8
29 are admitted into evidence without objection.

30 DEFENSE EXHIBIT A: Denial letter of January 25, 2019.
31 (Not in file.)

32 DEFENSE EXHIBIT B: (Marked for I.D.) Surveillance
33 video under sub rosa.

34 DEFENSE EXHIBIT C: (Marked for I.D.) Applicant's
35 deposition transcript. (Not in file.)

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SUMMARY OF EVIDENCE

the applicant in pro per, was duly sworn and testified, through the interpreter, who was also duly sworn, substantially as follows:

EXAMINATION BY THE COURT:

For the April 9, 2018 date of injury applicant was in a pump room in the subterranean level. came with pipes that were 21 feet that weighed between 600 and 800 hundred pounds and told them to unload it. He told that they needed help and that they should get a forklift. who was also there, told the same thing, but told them that they were going to do it anyways.

Applicant went to push the pipes so that they could get a 45-degree angle on it. The pipe was sliding. was in the back grabbing it. When it was sliding, applicant told them they should do this another way. The pipe started sliding, and he grabbed it and then felt a pop in his back. He then finished bringing down the pipe. was the supervisor at that time. was a co-worker. He did not tell that something had popped in his back.

He started feeling more pain over time, although from April to October that year he continued to work. He never told the supervisor that he had hurt himself in April until October 12, 2018 when he told that he had hurt himself. He did not go to the doctor between April and October of 2018.

For the October 26, 2018 date of injury he claims that his back was already swollen and he felt numbness from his hip to the tip of his foot. He was walking down the stairs on that day as the elevator was occupied. He was either on the 5th or 6th floor. He stepped and fell because his body was not responding. Afterwards the plumbers and electricians on site asked him what was wrong. He testified at that time that there was no actual witness to the fall. The first time he went to the doctor was on October 29, 2018.

CROSS-EXAMINATION:

He testified that he was with and on the day in April. They continued moving the pipe after the incident that day. He does not remember whether stayed or left.

1 The defendant then brought forth the exhibit which was
2 marked for identification as Exhibit C and referred applicant
3 to page 28. Applicant remembered taking the depo and the oath.
4 Defense attorney questioned applicant about testimony where he
5 testified that left and then came back but left the
6 truck at the work site. This apparently refreshed his
7 recollection. He says he doesn't know where went but
8 that the truck was there the entire six hours.

9 The applicant is questioned about the testimony of no
10 one being at the October incident, referring to Exhibit C at
11 page 40 where he indicated that he had been walking with his
12 brother He lived with his brother They have
13 lived together for a long time since about 1999. He sees
14 every day. Although he testified earlier that there was
15 no one present on the stairs, he claims the deposition is the
16 truth.

17 He is questioned whether he continued working after
18 the April incident, and he stated that he did. He stated that
19 he reported the injury to on October 12 and was sent to
20 U.S. HealthWorks as that was the date on the papers. He
21 then stated that he reported the injury in a meeting with
22 Mr. and and they were alleging that his production
23 was not quick and that they were giving him a report that he
24 was not producing quickly. The reason he wasn't producing
25 quickly is because he was injured. He states that his
inspections were all good except for one.

 Defendant then referred applicant to page 33 of
Exhibit C where he indicated that he filled out the report with
 on about the 25th or 26th of October. Applicant stated
he doesn't remember but he did acknowledge that that was what
the depo stated, so he indicated that he reported his injury
the day that he was reprimanded.

 were at the meeting. He claims that he did not
believe he was going to be fired prior to the meeting.

 Defendant referred him to page 39 of Exhibit C where
he admitted that he had told them that he couldn't work
that day and that he had been afraid of being fired. This
refreshed his memory. He indicated his last day at work was
October 30, 2018 and that he stopped working at about 12:30.
He claims that he was not told he was fired that day.

 Defendant then referred him to page 34 of his
deposition where he testified that had been teasing
him that they were going to fire him that day. This again
refreshed his recollection.

1 He then testified that he has not worked since his
2 last day at work with the defendant. He claims his work
3 restrictions won't let him work. He pointing to a report from
4 Dr. on November 12, 2018, which is Exhibit 3, referring
5 to an industrial spine herniation. He then did testify that
6 after the diagnosis was received, he did work on his roof. He
7 claims he carried nothing heavy and that he wasn't squatting.
8 He doesn't remember whether he was on his hands and knees but
9 acknowledges bending over to do the work. He states that he
10 worked for an hour the first day and then maybe 30 minutes on
11 the second day.

12 Defendant then referred applicant to page 55 of his
13 deposition where he testified that he had been helping his
14 brother. He acknowledged that discrepancy, but he stated that
15 he doesn't remember dates very well. He acknowledged that in
16 his deposition he claimed that he never did any bending or
17 squatting on the roof during the deposition. He stated that he
18 was never on top of the roof in his deposition and his answer
19 in that deposition also is that he was up on the roof one time.

20 EXAMINATION BY THE COURT:

21 Applicant just pointed to his doctors' reports and
22 stated that he doesn't remember all the things that he
23 testified to during his deposition.

24 * * *

25 a witness on behalf of the applicant, was called, duly
sworn and testified substantially as follows:

EXAMINATION BY THE COURT:

Mr. remembers working with the applicant on
April 9, 2018. They were working downtown, and was with
them. They were installing pipe for the pump room.
showed up with the pipe on the truck, and they were off loading
it to cut it.

When came with the pipe, applicant stated that
they needed help and so did Mr. however,
told them they could do it themselves. They were lifting the
pipe and then let go of the pipe on the bottom end
without telling anyone. moved away and then
(referring to the applicant) grabbed it; but the front end of

1 the pipe hit the cement. told them to be careful as
the pipe and the cement could break. left at that
2 time. He and stayed with the pipe. never told them
that he had got hurt that day. He just said over time he felt
3 weird.

4 CROSS-EXAMINATION:

5 Mr. testified that they had started work
around 7:00 A.M. started early with them. maybe
6 got there a few minutes after 7:00 A.M. He was not sure how
long they had been working before got there.

7
8 had climbed up on the truck. was on the
ground. As the pipe was sliding, tried to pull down on the
pipe before it slid once they were offloading the pipe.
9 left in his truck and then returned later that day, maybe
sometime before lunch which was at 10:00 or 11:00 A.M.

10
11 has a company truck. Mr.
indicated that there is a GPS monitor in the truck and there
would be a record of where he was going that day. He does not
12 remember the address exactly where they were working, but it
was downtown in front of some UC building.

13
14 Today he was working in San Pedro. He started at
6:00 A.M. He lives in Long Beach.

15 The morning of the trial Mr. called him about
coming but had told him prior to that date that there would be
16 a trial and that he should come. The witness had indicated to
the applicant that he would try to come. He did not ask for
17 the day off. He claims he had forgotten to ask for the day
off.

18
19 On the morning of trial the babysitter called him
around 8:00 A.M. telling him that his daughter was sick. He
told the I&A officer that he was going to the hospital that
20 day.

21 EXAMINATION BY THE COURT:

22 The witness indicated that he did not go to the
hospital; he stayed at work. He stated that he was there
23 because he was closer to his daughter and therefore couldn't
come to court. The Court discussed the fact with
24 Mr. that he had been untrue with the I&A officer who
was an officer of the court about his reasons for not being
25 able to be at trial this morning.

1 CROSS-EXAMINATION: (Resumed)

2 He indicated that he knows the applicant from the job
3 but doesn't consider him a friend, although sometimes they'll
4 go out.

4 He states the last time he talked with applicant was
5 at a Christmas reunion party, and then after that, the
6 applicant had called him about coming to court.

6 He reiterated the applicant never told him he was
7 injured with the pipes on 4/9/19. However, after the Christmas
8 party he started hearing some things about being injured at
9 work.

8 He did not recall being interviewed by a defense
9 investigator about the incident. He indicated that sometime
10 after Christmas had called him about the court date and
11 indicated he had a paper from the judge about the court date
12 and had told him about his injury. He stated he was surprised
13 that was injured on the April date because prior to
14 last day of work he did not know that had been injured. He
15 did state that prior to last day with the company he did
16 see him a few times and was walking funny. He indicated
17 that a foreman so he had his cell phone number.

14 * * *

15 **DISPOSITION:**

16 The case is continued to September 12, 2019 at
17 8:30 A.M. for continuing testimony.

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

08-23-2019

PROOF OF SERVICE

Case Number:

DIETZ GILMOR
ONTARIO

Law Firm, 3333 CONCOURS ST BLDG 7 FL 2 ONTARIO CA 91764

Injured Worker,

8/21/19 Minutes of Hearing & Summary of Evidence & Order of Consolidation
filed and served by US Mail on counsel and parties as indicated above.

Date: 8/23/19

Bv: