

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

<p><i>Applicant,</i></p> <p>vs.</p> <p><i>Defendants.</i></p>

Case No.

FINDINGS AND AWARD

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

FINDINGS OF FACT

1. born while employed as a Truck Driver at Bloomington, California, on 1/29/16, by then insured as to workers' compensation liability by sustained injury arising out of and occurring in the course of his employment to his bilateral feet.

2. Based on the facts, it is found applicant did not sustain injury to his left eye/orbital bone, left hand, left middle finger, left ribcage and back as a compensable consequence.

3. Applicant's injury caused temporary disability from 1/30/16 thru 10/26/16 paid at the stipulated TTD rate of \$613.35.

4. Applicant is permanent and stationary as of 10/26/16.

5. Applicant's job duties support an occupation group code of 350.

6. Applicant's injury caused permanent disability of 26%, entitling applicant to 106.75 weeks of disability indemnity payable at the rate of \$290.00 per week in the total sum of \$30,957.50 per Labor Code, less attorney's fees.

7. Applicant will require further medical treatment reasonably required to cure or relieve from the effects of this injury is required per the reporting of the PQME and consistent with Labor Code.

8. There was no evidence offered of any self-procured medical treatment. Reimbursement of self-procured medical treatment in an amount to be adjusted by the parties, with jurisdiction reserved.

9. The reasonable value of the services and disbursement of applicant's attorney entitled to an attorney's fee of \$4,643.62, representing 15% of the permanent disability benefits. This attorney's fee is to be deducted and paid to commuted from the far end of the award.

10. All other issues have been rendered moot.

AWARD

AWARD IS MADE in favor of _____ against _____

Permanent disability of 26%, entitling applicant to 106.75 weeks of disability indemnity at the rate of \$290.00, in the total sum of \$30,957.50, less credit to defendant for all sums paid on account thereof, if any, less \$4,643.62 payable to commuted from the far end of the award.

Temporary disability from 1/30/16 thru 10/26/16 at the TTD rate of \$613.35, less credit to defendant for all sums previously paid.

Reimbursement of self-procured medical treatment in an amount to be adjusted by the parties.

Future medical treatment reasonably required to cure or relieve from the effects of this injury is required per the reporting of the PQME and consistent with Labor Code.

DATE: 10/11/2019

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

DIETZ GILMOR ONTARIO, US Mail

On: all parties as shown on Official Address Record
ON: October 15, 2019
BY:

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

CASE NUMBER:

-vs.-

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

DATE: 10/11/2019

OPINION ON DECISION

The parties stipulated that the applicant, born _____ while employed at Bloomington, California on 1/29/16, by _____ sustained injury to his feet. _____ insured the employer, at the time of the injury. Applicant also claims to have sustained an injury to his left eye/orbital bone, left hand, left middle finger, left ribcage and back. At the time of the injury, applicant's average weekly wage was \$920.02 warranting indemnity rate of \$613.35 for temporary total disability.

Parties also stipulated to average weekly wage and rates as indicated below. The employer furnished some of the treatment. Applicant's Primary Treating Physician is _____ MD and the PQME is _____ DPM. The applicant's Serious and Willful claim, has been deferred.

The only witnesses at trial was the applicant and his wife.

PARTS OF BODY INJURED

Parties jointly offered the PQME reports of Dr. _____ DPM as well as PTP reports of Dr. _____ Dr. _____ concluded that the applicant sustained injury in the form of burns to both feet due to exposure to sodium hydrochloric acid. Based on the evidence presented and applicant's testimony in regards to the mechanism of injury, it is undisputed that the applicant sustained injury to his bilateral feet.

INJURIES DUE TO COMPENSABLE CONSEQUENT

Applicant contends he injured additional body parts as a compensable consequence of the injury. Applicant claims that two separate subsequent events resulted in injury to his left hand, left middle finger, left eye/orbital bone and left ribcage. Additionally, at Trial, applicant amended the body parts to include back. Defendant objects to any injuries as the result of compensable consequence as well as adding of the back. Defendant contends the alleged compensable consequence incidents are attributable to non-industrial factors.

Applicant asserts that following the initial date of injury he suffered two subsequent injuries. The first of which was on or about 12/27/17. The applicant testified that while cutting a piece of wood on a circular table saw in his garage, he was feeding a piece of wood into the table saw when a portion of the wood broke off and hit his left middle finger. The applicant believes he lost his balance as his right foot shifted (SOE PM pg 6, ln 13). The applicant went to for medical care. Records reflect applicant lacerated his finger due to “the high energy kickback of the table saw”. There is no reference as to loss of balance or any other causation (Def Ex B, pg 13 bate# 96). None of the chart notes/reports of the follow up visits reflect any loss of balance issue that contributed to the incident nor that the incident had an industrial component.

Applicant further contends that a second incident occurred on or about 6/7/18 after visiting his neighbor. The applicant fell in the street while walking home. There are no witnesses to the injury. The applicant was able to return home. After returning home, his wife took him to the Hospital. Applicant was seen at for follow up treatment. Medical records reflect that the applicant had a “syncopal episode” and fell. Records note that the applicant while in the emergency room, had another episode suggestive of a grand mal seizure. (Def Ex B, pg 8). There is no reference in the records as to loss of balance causing the incident nor an industrial related component.

Even though the WCAB and Appellate Courts must construe workers’ compensation laws liberally in favor of extending disability benefits, an employee seeking benefits still carries the burden of proof by a preponderance of evidence that an injury or disease arose out of and in the course of employment. (Labor Code § 3202, 3202.5, 3208, 3600 5705, *Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 753, 57 CCC 355).

Records surrounding the incident reflect that the applicant incorrectly stopped all his medication in preparation for a colonoscopy, which may have contributed to his condition (Def Ex B, pg 10). Low blood pressure was noted at admission (Def Ex C, bate#143). Referencing the above fall, records from Dr. reflect that the applicant had a syncopal episode and fell (Def Ex D, pg 7). Records also reflect the applicant suffered a prior syncopal episode in 2012 (Def Ex B, pg 14 & Def Ex C, pg 9, 13, 16).

It is well established that an award must be based on legally competent evidence, not on mere speculation that an injury was industrially caused, nor on a judge’s lay belief (*City & County of San Francisco v IAC (Murdock)* (1953) 18 CCC 103). I do not find that applicant’s testimony is sufficient to constitute substantial medical evidence without substantiation via competent and substantial medical evidence from a physician.

Applicant's testimony as to the compensable consequence incidents conflicts with the medical reports on the date of the incidents and subsequent visits. Applicant denied prior incidents although medical records support at least one incident in 2012. In the instant matter, I find no medical reports that support that the causes for the claimed compensable consequences are industrially related. On the other hand, I find the medical reports of Dr. PQME do constitute substantial medical evidence. The doctor thoroughly discusses the bases for his opinions and persuasively sets forth his conclusions in terms of reasonable medical probabilities. This is also supported by the reporting of PTP, Dr. who noted the applicant was seen for dizziness which is non-industrial (Jnt Ex Y-4, pg 2).

TEMPORARY DISABILITY

Applicant is claiming he is owed the full 104 weeks of temporary total disability benefits. Defendant asserts the applicant has been adequately compensated.

Parties stipulated that the applicant received temporary total disability benefits from 1/30/16 to 9/23/16 totaling \$20,843.12. Records reflect that the applicant was receiving care at the during the period of 2/3/16 thru 10/26/16 (Def Ex E). The last off work order provided, dated 7/27/16 notes, off work for "one more month 8/27/16" (Def Ex E, pg 6). No other off work orders or TTD status reports were offered. However, chart notes reflect the applicant returned on 8/24/16 and was seen for wound care although refused to wait to be seen by the physician. The applicant returned on 10/26/16 and chart notes reflect the wound had healed (Def Ex E, pg 1).

PQME, Dr. concluded that the applicant would be TTD up until the time the applicant's ulcers were healed (Jnt Ex X-2, pg 3). Applicant's primary treating physician, Dr. considered the applicant permanent stationary in his in his initial report of 12/20/16 (Jnt Ex Y-8, pg 2).

Based on the evidence, and having received no evidence to the contrary, the applicant was TTD from 1/30/16 thru 10/26/16.

PERMANENT STATIONARY DATE

Applicant contends that he is not MMI. However, Defendant contends applicant was MMI on 9/23/16. Although Defendant represented their position is based on his Primary Treating Physician, Dr. it appears the date is taken from the Notice of Termination of TTD benefits dated 9/28/16 (Def Ex A-1) as no reports were offered reflecting an MMI date of 9/23/16.

However, PQME, Dr. concluded the applicant was permanent and stationary in his 3/10/18 report (Jnt Ex X-3, pg 7) and confirmed this in his subsequent report of 5/29/18 (Jnt Ex X-2, pg 2). Dr. indicated the applicant's last day of TTD would be when applicant's ulcers completely healed, i.e.: 10/26/16. Dr. also considered the applicant MMI in his initial evaluation of 12/20/16. Based on the applicant's treatment and evaluations, the applicant is considered MMI as of 10/26/16.

OCCUPATION GROUP NUMBER

Applicant is alleging the applicant was a Truck Loader/Unloader with an occupation code of 460. Defendant is alleging the applicant was a Truck Driver with an occupation code of 350. Based on applicant's description of his job duties at trial, occupation code 350 is appropriate.

PERMANENT DISABILITY

WCJ having observed the applicant while testifying at Trial and after review of all of the evidence submitted, finds that the applicant suffered an industrial injury to his feet. Permanent disability is based on the reporting of Dr. [redacted] dated 3/10/18, 5/29/18 and 5/2/19 (Joint Exhibit X-1, X-2, X-3). I did not find it necessary to refer this matter to the Disability Evaluation Unit for a rating. I have rated the applicant's disability as follows:

13.08.00.00 - 13% [1.4] -360G – 20 -26

26% = \$30,957.50

NEED FOR FURTHER MEDICAL TREATMENT

Based on the totality of the evidence, it is found further medical treatment reasonably required to cure or relieve from the effects of this injury is required per the reporting of the PQME and consistent with Labor Code.

LIABILITY FOR SELF PROCURED MEDICAL TREATMENT

There was no evidence offered of any self-procured medical treatment.

ATTORNEY FEES

Applicant's attorney provided legal services on applicant's behalf, and is entitled to an attorney's fee of \$4,643.62, representing 15% of the permanent disability benefits. This attorney's fee is to be deducted and paid to [redacted] commuted from the far end of the award.

DATE: 10/11/2019

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

DIETZ GILMOR ONTARIO, US Mail

On: X all parties as shown on Official Address Record
ON: October 15, 2019
BY:

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

10-15-2019

PROOF OF SERVICE

Case Number:

DIETZ GILMOR
ONTARIO

Law Firm,

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

Employer,

Claims Administrator,

Injured Worker,

Law Firm,

Law Firm,

*“FINDINGS AND AWARD, OPINION ON DECISION DATED
10/11/2019”*

Served on all parties listed above:

On: October 15, 2019

By: