

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

Case No.

*Applicant,*  
  
vs.  
  
permissibly self –  
insured, administered by  
  
*Defendants.*

**FINDINGS OF FACT  
FINDINGS AND ORDER**

**LAW OFFICES OF  
By:  
Attorney for Applicant**

**DIETZ, GILMOR & CHAZEN  
By: ERIN WARD-DUGAN  
Attorney for Defendant**

**Spanish Language  
Interpreter, Certification**

**Applicant**

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

**FINDINGS OF FACT**

1. The applicant, born 1983, while  
employed during the period from November 1, 2017 through May 31, 2018, as a

logistics team member, occupational group number 360, at Tustin, California, by  
permissibly self-insured, and administered by  
claims to have sustained injury  
arising out of employment and in the course of employment to her knees.

2. Based on the Trial Court's consideration of the applicant's testimonial evidence and the parties' submitted documentary evidence, the Trial Court finds that the applicant did not sustain injury to her knees, arising out of employment and during the course of employment [AOE / COE], while she was employed by  
during the period from November 1, 2017 through May 31, 2018.
3. Since the Trial Court has already determined that the applicant did not sustain an industrial injury, as claimed, and therefore, is not entitled to any workers' compensation benefits, the Trial Court will not address and decide the other presented issue, regarding the doctrine of res judicata, as being a bar to the applicant's recovery for workers' compensation benefits in the applicant's present case, since the Trial Court has already denied benefits to the applicant, based on the Trial Court's threshold finding of no injury AOE / COE.

**ORDER**

**IT IS HEREBY ORDERED THAT** the applicant take nothing by reason of the Application for Adjudication of Claim filed herein on May 7, 2019.

DATE: January 29, 2020

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WORKERS' COMPENSATION JUDGE

***SERVICE MADE ON THE PARTIES LISTED BELOW AT THEIR ADDRESSES  
SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD***

DIETZ GILMOR LONG BEACH, US Mail

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

vs.

permissibly self-insured,  
administered by

**OPINION ON DECISION**

**INJURY, EMPLOYMENT AND INSURANCE COVERAGE BACKGROUND:**

The applicant, \_\_\_\_\_ born \_\_\_\_\_ 1983, while employed during the period from November 1, 2017 through May 31, 2018, as a logistics team member, occupational group number 360, at Tustin, California, by

permissibly self-insured, and administered by

\_\_\_\_\_ claims to have sustained injury arising out of employment and in the course of employment to her knees. [See 12/17/2019 MINUTES OF HEARING [MOH], page 2, THE FOLLOWING FACTS ARE ADMITTED, item numbers 1 and 2.]

**Mechanism of Alleged Cumulative Trauma Injury:**

**The Applicant's Testimony:**

The applicant testified that she injured her right knee, while working for \_\_\_\_\_ at the end of April 2018. She said that while she was coming down from a ladder, she slipped and hurt her right knee on one of the rungs of the ladder. The applicant said that she reported this injury to her supervisor \_\_\_\_\_ He told her to sit down for a little bit and she did so. She

felt pain in her right knee. [See 12/17/2019 MOH, Applicant's testimony, page 8, line 23, page 9, line 3.]

Very clearly, the applicant provides a history of a specific right injury, not a cumulative trauma right knee injury.

**Medical Reporting:**

According to Dr.

“... The patient states that from November 1, 2017 through May 31, 2018, she conducted repetitive continuous motion with both of her upper and lower extremities in performing her duties as a stock clerk. She was required to lift boxes of merchandise weighing from 25-50 pounds. Progressively, she developed pain to her right knee. She mentioned her symptoms to her supervisor, but was not referred to medical treatment. On May 31, 2018, she had to quit work due to the severe pain and symptoms to her right knee.” [See Dr. 7/10/2019 report, pages 1-2, HISTORY: History of Incident, Applicant's Exhibit 2.]

Dr. concluded that “the patient's disability is the industrial injury.” [See Dr. 7/10/2019 report, page 7, CAUSATION, Applicant's Exhibit 2.]

Very clearly, Dr. provides a history of a cumulative trauma right injury, not a specific right injury.

Regarding the existence of the applicant's claimed right knee cumulative trauma injury, Dr. based his entire medical opinion and conclusion, on the verbal information and history which was provided to him by the applicant. Dr. was not provided with any other evidence for his review and consideration, such as prior medical reports regarding the applicant's six (6) prior workers' compensation injury claims, and six (6) prior workers' compensation injury claims and settlement documents, regarding these prior claimed injuries.

Therefore, Dr. [redacted] did not review any of the type of evidence, which is relevant with regard to his complete understanding of the applicant's presently claimed right knee cumulative trauma knee injury. [See Dr. [redacted] 7/10/2019 report, page 5, re no review of the applicant's right knee x-rays, MRI study, or medical records, Applicant's Exhibit 2.]

In sum, Dr. [redacted] medical reporting, does not constitute substantial medical evidence, since it is missing so much information, regarding the applicant's prior right knee injury and medical history, which is very relevant to his medical determination, regarding whether the applicant's presently asserted right knee cumulative trauma injury, actually exists.

**The Applicant Has Filed Six (6) Prior Workers' Compensation Injury Claims Against**

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The applicant has filed six (6) prior workers' compensation injury claims against

**ADJ**

This case involves a claimed cumulative trauma injury, running from July 1, 2008 through June 13, 2012, which the applicant filed against [redacted] regarding multiple body parts, including the applicant's right knee. This injury claim was resolved by way of a Compromise and Release [C&R], for the lump sum amount of \$10,700. The Order Approving C&R issued on February 26, 2014. [See 2/26/2014 C&R and Order Approving C&R, Defense Exhibit A.]

ADJ

ADJ

ADJ

ADJ

ADJ

This case involves a disputed cumulative trauma injury claim, running from May 1, 2013 through May 1, 2014, which the applicant filed against  
regarding multiple body parts, which may have included her right knee.

ADJ

This case involves an accepted December 1, 2013 specific hand and wrist injury (right or left not designated) claim, which the applicant filed against

ADJ

This case involves a disputed hand and wrist cumulative trauma injury (right or left not designated) claim, running from December 2, 2013 through October 7, 2014, which the applicant filed against

ADJ

This case involves an accepted cumulative trauma injury, running from October 7, 2014 through January 25, 2016, which the applicant filed against  
regarding multiple body parts, which may have involved the applicant's right knee.

The four above identified injury claims, were resolved by way of a Joint Compromise and Release Agreement, for the lump sum amount of \$4000. The Joint Order Approving C&R issued on December 6, 2016.

[See 12/6/2016 Joint C&R and Joint Order Approving C&R, Defense Exhibit B.]

ADJ

This case involves a disputed back, shoulder (right or left not identified) and knee (right or left not identified) cumulative trauma injury, running from September 26, 2016 through

September 26, 2017, which the applicant filed against [redacted] This injury claim was resolved by way of a Compromise and Release [C&R], for the lump sum amount of \$10,000. The Order Approving C&R issued on June 7, 2018. [See 6/7/2018 C&R and Order Approving C&R, Defense Exhibit C.]

**The Trial Court's Conclusion Regarding Injury AOE / COE Regarding the Applicant's November 1, 2017 Through May 31, 2018 Presented Cumulative Trauma Injury Claim:**

**ADJ**

Very clearly, there is no substantial medical evidence in the trial record, which is capable of supporting the existence of the applicant's presently asserted November 1, 2017 through May 31, 2018 cumulative trauma injury claim, involving her knees, which the applicant has filed against [redacted] Dr. [redacted] Medical reporting, wherein he opines that the applicant sustained a cumulative trauma injury from November 1, 2017 through May 31, 2018, is not reliable, since it is obvious that Dr. [redacted] was not provided with the applicant's complete and accurate medical history, regarding her six (6) prior injury claims involving [redacted] Some of these injury claims involved claimed injuries to the applicant's knees. Dr. [redacted] also was not provided with any prior medical records, reports, and diagnostics for his review and consideration, in formulating his ultimate medical opinion, regarding the existence of the applicant's presented cumulative trauma injury.

Therefore, Dr. [redacted] medical opinions and conclusions, as they relate to the existence of the applicant's presently asserted cumulative trauma injury, does not constitute substantial medical evidence. As such, it cannot be relied on, with regard to establishing injury AOE / COE in this case.



**No Evidence of Injury AOE / COE Regarding the Applicant's Presented Cumulative Trauma Injury Claim:**

Based on the Trial Court's consideration of the applicant's testimonial evidence and the parties' submitted documentary evidence, the Trial Court finds that the applicant did not sustain a cumulative trauma injury to her knees, arising out of employment and in the course of employment [AOE / COE], while she was employed by \_\_\_\_\_ during the period from November 1, 2017 through May 31, 2018.

**The Doctrine of Res Judicata:**

Since the Trial Court has already determined that the applicant did not sustain an industrial injury, as claimed, and therefore, is not entitled to any workers' compensation benefits, the Trial Court will not address and decide the other presented issue, regarding the doctrine of res judicata, as being a bar to the applicant's recovery for workers' compensation benefits in the applicant's present case, since the Trial Court has already denied benefits to the applicant, based on the Trial Court's threshold finding of no injury AOE / COE.

DATE: January 29, 2020

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WORKERS' COMPENSATION JUDGE