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STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

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JOSE CANTARERO,
Applicant

vs.

THE MAY DEPARTMENT STORES,
Defendants.

Case No. POM 227-997, POM 227-998,
POM 221-658

FINDINGS, AWARD
AND ORDER

JOHN C. ELLENA, Attorney for Applicant

KENNETH L. PETERSON, Attorney for Defendant

Application having been filed herein; all parties having appeared and the matter having been regularly submitted, the Honorable THOMAS E. HARVEY, Workers' Compensation Judge, finds, awards and orders as follows:

FINDINGS OF FACT

1. Applicant did sustain an injury arising out of and occurring in the course of his employment to his left shoulder on September 2, 1994, his right shoulder on February 19, 1993 and to his right wrist on December 31, 1993.
2. The surgery on his left shoulder was not related to his industrial injury and temporary disability resulting from that surgery is non-industrial.
3. The injuries to his right wrist and right shoulder caused no temporary disability.
4. This injury caused no permanent disability.
5. There is no basis for apportionment.
6. Further medical treatment is not now required to relieve from the effects of the injury.
7. Applicant is entitled to reimbursement of self-procured medical treatment prior to November 1994 in an unknown amount to be informally adjusted by and between the parties

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KENNETH L. PETERSON

1 pursuant to the appropriate fee schedule, less credit to defendants for all sums heretofore paid on
2 account thereof, if any.

3 8. Applicant did not incur medical-legal expense.

4 9. There is no compensation for the period E.D.D. made payments.

5 10. There are no funds available against which a lien for attorney's fees can be
6 allowed.

7 11. There is insufficient basis to award costs or to assess sanctions against applicant.

8 **AWARD**

9 **AWARD IS MADE** in favor of JOSE CANTARERO and against THE MAY
10 DEPARTMENT STORES of:

11 Reimbursement for the expense of self-procured medical treatment as set forth in Finding
12 No. 7.

13 **ORDER**


14 **IT IS ORDERED** that applicant's claim for temporary disability be denied.

15 **IT IS FURTHER ORDERED** that applicant's claim for permanent disability be
16 denied.

17 **IT IS FURTHER ORDERED** that lien claims for all treatment subsequent to
18 November 1994 is denied.

19 **IT IS FURTHER ORDERED** that the liens of Vision Quest and E.D.D. is
20 disallowed.

21 **IT IS FURTHER ORDERED** that the request for costs and sanctions is denied.

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25 **THOMAS E. HARVEY**
26 Workers' Compensation Judge

25 Executed on JUL 31 1998
26 Served on said date by mail
27 on persons shown on the
Official Address Record.
By: A. Valenzuela

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. POM 226-658
POM 227-997
POM 227-998

JOSE CANTARERO

v s.

THE MAY DEPT. STORES

Workers' Compensation Judge:

Thomas E. Harvey

Date: JUL 31 1998

Injury: 9/2/94, 12/31/93 and
2/19/93

OPINION ON DECISION

Applicant alleges injury to his right wrist and right shoulder on February 19, 1993, right wrist on December 31, 1993 and to his left shoulder on September 2, 1994 while working as a warehouseman for Robinsons-May in the City of Industry, California.

INJURY AOE/COE

Defendant relies on the report of Dr. Sabety dated June 12, 1997 and the applicant's failure to testify in an accurate manner to dispute the injury to the left shoulder on September 2, 1994. While the applicant's testimony and information to the various physicians is not accurate relating to prior problems with his left shoulder, there is sufficient documentation of applicant's injury on September 2, 1994 to establish that it did in fact occur on the job.

Applicant was the only witness to testify at trial. He testified that he reported the injury and was sent to a medical clinic for treatment the same day. This is corroborated by the medical report of Dr. Holz dated the same day. The mechanism of injury is just as applicant describes. He was diagnosed as probable subluxation left humerus. Defendant does not deny applicant reported the injury, that the condition took place while he was working or that he was sent to Dr. Holz.

While Dr. Sabety tries to give another theory for the left shoulder injury three years after the fact, it is more logical that a left shoulder with prior pathology would be more prone to repeat or additional injury than a normal left shoulder. Accordingly, it must be found that the applicant injured his left shoulder in the course and scope of his employment on September 2, 1994. As indicated by Dr. Sabety, other theories of injury are possible, but the preponderance of the evidence indicates the applicant sustained an industrial injury to his left shoulder on September 2, 1994.

Relying on the initial report of Dr. Tuazon dated February 26, 1993, applicant sustained an industrial injury to his right shoulder on February 19, 1993. Defendant has not offered any evidence to the contrary.

Relying on the initial report of Dr. Holz dated January 21, 1994, applicant also sustained an industrial injury to his right wrist on December 31, 1993. Defendant does not dispute the medical record and has no evidence to dispute the finding of this injury either.

TEMPORARY DISABILITY

Applicant claims his surgery for the left shoulder in June of 1996 was caused by the injury on September 2, 1994, which resulted in temporary disability during the period of June 12, 1996 to March 2, 1998. Relying on the reports of Dr. Sabety and the medical records dating prior to applicant's industrial injuries, his surgery was unrelated to the September 2, 1994 injury. The applicant has had several dislocations of his left shoulder, the exact number known only to himself. His testimony on this subject is not credible based on the records of Queen of the Valley Hospital documenting prior dislocations. As Dr. Sabety indicates, the applicant was in need of this surgery prior to and after the September 2, 1994 dislocation. There is no credible evidence that the dislocation on September 2, 1994 changed applicant's pre-existing condition in his left shoulder at all. He continued to work at his usual and customary work for almost two more years. The applicant was a surgical candidate prior to September 2, 1994 as indicated by Dr. Sabety but he continued to work. He was a surgical candidate after September 2, 1994 but continued to work. Therefore, the surgery on his left shoulder was not related to his industrial injury and the temporary disability resulting from the surgery must also be considered non-industrial.

There is no evidence that the injuries to his right wrist and right shoulder caused any temporary disability.

The claim for temporary disability during the period of June 12, 1996 through March 2, 1998 is denied.

PERMANENT DISABILITY AND APPORTIONMENT

Applicant has failed to establish any permanent disability related to his injuries. The applicant's testimony is not credible as it relates to his condition today. The applicant denied too many prior injuries that are established in the medical record.

The reports of Dr. Robach are also not credible since they are based on the applicant's medical history which leaves out highly relevant information.

Dr. Sabety declared the applicant permanent and stationary with no restrictions or disability on November 17, 1994 and June 12, 1997. In addition, applicant was discharged with no disability on November 17, 1994 from the treating medical center.

Applicant's claim for permanent disability is denied.

NEED FOR FURTHER MEDICAL TREATMENT

Based on the November 17, 1994 and June 12, 1997 reports of Dr. Sabety, there is no current need for further medical treatment.

LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT

All treatment for the applicant's shoulders and right wrist subsequent to November 1994 is denied based on the reports of Dr. Sabety. Any treatment bills prior to that date are to be paid pursuant to the appropriate fee schedule.

Accordingly, the lien of Vision Quest is disallowed.

LIABILITY FOR MEDICAL-LEGAL EXPENSE

There are no liens of record relating to medical-legal expense.

E.D.D. LIEN

The lien of E.D.D. identifies payments from June 19, 1996 to June 18, 1997. There is no compensation for this period and therefore the lien is disallowed.

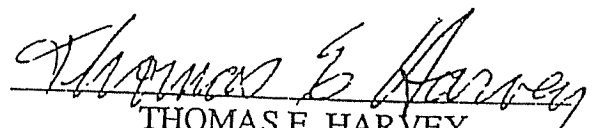
ATTORNEY FEES

There are no funds from which to award attorney fees.

COSTS AND SANCTIONS

There is insufficient basis to award costs or to assess sanctions against applicant. Applicant did not accurately disclose or discuss his prior treatment or injuries which were relevant to this action. The applicant still did not discuss his prior treatment even when confronted with the prior medical records during the trial. It is unknown why the applicant offered no explanation or acknowledgment when confronted with the facts. Failure of memory does not warrant sanctions and intentional fraud has not been proven.

Accordingly, costs and sanctions are denied.


THOMAS E. HARVEY,
WORKERS' COMPENSATION JUDGE