

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

BRINDA KAHMANN,

Applicant

vs.

LASCO BATHWARE/
TOMPKINS INDUSTRIES;
GALLAGHER BASSETT,
Defendants.

Case No. AHM 012913

FINDINGS AND ORDERS

RECEIVED

JAN 12 1994

KENNETH L. PETERSON

GOLI ALAI
Attorney for Applicant

KENNETH L. PETERSON
Attorney for Defendants

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted. the Honorable Nancy M. Gordon, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. Brinda Kahmann born August 11, 1949 while employed as a receptionist/switchboard operator at Anaheim, California by Lasco Bathware/Tomkins Industries during the period June 1991 to June 25, 1992 did not sustain injury arising out of and in the course of her employment to psyche.
2. The lien of the Employment Development Department is disallowed as there has been no demonstration that the applicant has sustained a compensable injury producing any periods of temporary disability.
3. Medical-legal expenses are to be disallowed for the reasons set forth in the Opinion on Decision.
4. All liens for medical treatment are disallowed as there has been no finding of a compensable industrial injury.
5. Defendants did not violate Labor Code §132a.
6. The balance of the issues raised are deemed moot.

ORDERS

IT IS ORDERED that the applicant take nothing by reason of this application filed herein.

IT IS FURTHER ORDERED that the lien of Employment Development Department be, and it is hereby, disallowed.

IT IS FURTHER ORDERED that the medical-legal liens be, and they are hereby disallowed.

IT IS FURTHER ORDERED that the liens for treatment be, and they are hereby disallowed.

IT IS FURTHER ORDERED that the applicant's petition pursuant to Labor Code §132a is denied.

Executed at Anaheim, California
this 11 day of January, 1994, and served
on the parties shown on the official
address record.
By: P. Paley


NANCY M. GORDON
WORKERS' COMPENSATION JUDGE

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KENNETH L. PETERSON

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BRINDA KAHMANN,

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LASCO BATHWARE/
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WORKERS' COMPENSATION JUDGE
NANCY M. GORDON

DATED: JAN 11 1994

OPINION ON DECISION

INJURY AOE/COE

It is concluded that the applicant did not sustain injury arising out of and in the course of her employment between June 1991 and June 25, 1992 to her psyche.

The judge is not persuaded that the applicant has demonstrated by a preponderance of the evidence that she has sustain a compensable injury by reason of a continuous trauma exposure. In addition to the discrepancies in the testimony, there are several discrepancies in the documentary records. At the time of the hearing, it was decided that all records would be admitted subject to testimony. Upon review of the exhibits, it is found that there are several problems with the applicant's medical records. First, it should be noted that neither letter sent by defense counsel dated October 19, 1993 nor the lien holders letter from William M. Mason and Associates dated October 25, 1993 can be considered in this decision since the record was closed on October 6, 1993. Both letters are to be stricken from the Courts file.

The Court is able to read the reports and note discrepancies without the aid of these letters.

A job performance review was given to the applicant on June 25, 1992. This included a warning concerning the allegations of the applicant being late for work or taking excessive breaks. She refused to sign the document when asked by her employer. She then became upset and went to the bathroom to try to pull herself together. The discrepancy in the testimony is that the applicant claims that she mentioned something to her supervisor although the supervisor did not verbally respond. Her supervisor, June Nichols, denies that the applicant ever told her that she was walking off the job.

The next morning the applicant called in and said she was unable to come to work that day. Ms. Nichols testified that she then terminated the applicant. The applicant

acknowledged that she did not tell Ms. Nichols that she was filed a workers' compensation claim prior to her termination. The applicant informed Ms. Nichols on June 26, 1992 that she had been to a doctor on June 25, 1992 and that she would be filing a workers' compensation claim.

Although the applicant testified that she was having psychiatric problems during the course of her employment, the Court concludes that actually the applicant was doing her job and other than the tardiness or possible extra breaks, there is no evidence of the applicant being unable to perform her duties. The applicant even testified that had she not been terminated she feels she would have been able to continue on in this job. In fact, during her last review in February of 1992 she had been given a raise as a result of her work. There seems to be no evidence of the applicant's inability to perform her duties due to any disability.

The applicant denied becoming infuriated at all by her termination. She denied any outside stress or any other problems in her personal life as having contributed to her emotional condition.

None of the applicant's medical reports refer to the incident on November 27, 1991 wherein the applicant threatened to kill her children. A police report was taken at that time by the Placentia Police Department. Ultimately this led to the applicant's losing custody of her children in March of 1992. Thereafter she had to pay support while her children lived with her first husband. The applicant testified that she threatened to kill her children due to her stress at work. The Court is not persuaded by this argument since the evidence is that the applicant was functioning in an acceptable manner at work and doing her normal jobs duties without impairment at that time. The evidence is clear that she and James Kahmann had a very hostile divorce and that they have been involved subsequent legal proceedings which have no doubt been very emotionally painful. He described his ex-wives condition during the time of the divorce as being very depressed and one in which she threatened to commit suicide.

The applicant clearly testified that she was first examined by Dr. B. Garg on June 25, 1992. In fact Dr. Garg has certified in his own handwriting that he did examine her on June 25, 1992. This is evidenced by the disability certification that was completed by the doctor and dated by him on June 25, 1992. There are two claim forms in this file, both of which are dated June 25, 1992 although there is only evidence that one was ever served. The applicant did not retain the services of her attorney until the next day June 26, 1992. There is no other conclusion that can be drawn other than to conclude that the applicant was examined by Dr. Garg June 25, 1992. There is no record of his findings or diagnosis on that day other than what is contained in the certification for disability benefits. Contrary to

his own representation to the disability department, Dr. Garg writes in his report of July 24, 1992 that he first examined the applicant on July 10, 1992. In fact he specifically states "it must be made clear that this is the initial underlying contact with this patient". This is clearly untrue. As to whether this report is simply misdated or whether there is actually no record of what transpired on June 25, 1992, any conclusion would be speculative. What is certain is that this is not a correct history since there is both testimonial and documentary evidence that she had been examined before she even hired an attorney. The report of Luis E. Arevalo, Pd.D. dated August 4, 1992, which refers to an assessment done on July 9, 1992, represents that the applicant is currently in treatment with Dr. Garg. Both these reports are clearly in violation of Labor Code §4620 and it can be argued that the July 24, 1992 report of Dr. Garg also contains a false history since it is not an initial examination.

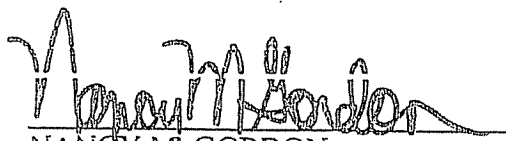
Although applicant's attorney listed six reports from Dr. Garg, the reports for September 3, 1992 and August 7, 1992 were never filed with the Board. Since there is no record of these examinations and no attempt to file the report, they simply do not exist for the purposes of this trial. The reports of October 28, 1992 and December 16, 1992 are also inadmissible since they violate Labor Code §4628(j). Therefore the only admissible evidence is the report of Dr. Lopez which concludes that the applicant did not sustain an industrial psychiatric injury.

MEDICAL-LEGAL EXPENSES

For the reasons set forth above, it is found that there are violations of Labor Code §§4620, 4628 including 4628(j) and a false history. The medical-legal expenses are to be disallowed in their entirety.

LIABILITY FOR SELF-PROCURED MEDICAL TREATMENT

It is concluded that the medical treatment received by the applicant ostensibly by reason of the claimed injury shall be disallowed. The lien of the Employment Development Department is also disallowed. There has been no demonstration that the applicant sustained a compensable injury giving rise to any periods of temporary disability.


NANCY M. GORDON
Workers' Compensation Judge

NMG/pp