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STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD
CASE NO. POM 0231873

JOHN KERR

vs.

CITY OF ESCONDIDO POLICE DEPT.;
Permissibly self-insured,

WORKERS' COMPENSATION JUDGE:

JOSEPH S. MANDEVILLE

DATED: JUL 03 1998

OPINION ON DECISION

This court considers the Minutes of Hearing and Summary of Evidence dated April 21, 1998 and June 8, 1998 to be correct.

INJURY AOE/COE

The court has reviewed each item of evidence twice. Defendants contend that the applicant did not sustain injury AOE/COE. They contend that if there was stress to the applicant, it arose in a lawful personnel action, and is therefore non-industrial. On the other hand, the applicant maintains that he was under stress and started having gastrointestinal problems in May of 1990. This condition then became worse in May of 1996. Unfortunately, the applicant did not go to a doctor but instead apparently tried to treat the condition himself. This court finds this hard to believe. That is, if his condition was getting worse then a reasonable person would see a doctor. In fact, the applicant did not report any gastrointestinal prior to going to Dr. Jay, which is after the personnel actions were proceeding.

The applicant stated that he gave Dr. Jay a complete medical history. Dr. Jay took the applicant off work October 3, 1997 for a stress related medical condition, with no indication that the condition was work related. Dr. Jay provides a medical report dated December 16, 1997, wherein he states that the condition is caused by job stress. He finds the applicant to be temporarily totally disabled.

Dr. Jay does take a history of a bowel resection when the applicant was age 9. Dr. Jay provided a follow up evaluation on January 13, 1998, wherein he still finds the applicant temporarily totally disabled.

The applicant admits that he did not tell Dr. Jay that he had a history of gastrointestinal problems causing the applicant to be off work in 1988.

Dr. Jay provides us with a report dated April 9, 1998, wherein he finds the applicant's condition to be permanent and stationary, along with a significant work restriction. However, the report fails to have a complete and accurate history.

Dr. Jay's reports are also in conflict with the record of Dr. Odubela's, dated January 21, 1997, wherein Mr. Kerr indicated that he did not have excessive nausea or vomiting, diarrhea (frequent) or abdominal pain or burning. Note that this record is subsequent to the increased problems starting in May of 1996.

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KENNITH L PETERSON

Assuming for a moment that all the above is irrelevant we can look at the testimony of the applicant's supervisors. A basic problem developed when the applicant failed to perform proper reporting of incidents, failed to follow instructions of future reporting and in the words of one witness, "Mr. Kerr lied to him in several situations."

This court could go on and highlight a few other incidences, but quite frankly finds it depressing to do so.


This court finds that the applicant is not credible and believable. That medical reporting by Dr. Jay is not credible and lacks a true and correct history. Therefore, this court finds that the applicant did not sustain injury AOE/COE. Applicant is to take nothing.

ATTORNEY FEES

There are no funds with which to award attorney fees.

LIEN CLAIMS

Defendant is to pay reasonable medical-legal, with jurisdiction reserved.


JOSEPH S. MANDEVILLE
WORKERS' COMPENSATION JUDGE

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STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

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JOHN KERR,

Applicant

vs.

CITY OF ESCONDIDO POLICE DEPT.;
Permissibly self-insured,

Defendants.

Case No. POM 0231873

FINDINGS AND ORDER

Law Offices of Scott A. O'Mara, by Dorothy D. Benton, as attorneys for applicant;
Kennith L. Peterson, as attorneys for defendant.

* * * * *

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the HONORABLE JOSEPH S. MANDEVILLE, Judge, now finds and orders as follows:

FINDINGS OF FACT

1. John Kerr, born April 1, 1947, was employed at Escondido, California, during the period of May, 1996 through September 30, 1997, as a police officer, by the City of Escondido Police Department, who was permissible self-insured.
2. Applicant did not sustain injury arising out of and occurring in the course of said employment to his gastrointestinal and skin as alleged herein.

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3. Defendant is to pay reasonable medical-legal costs in an amount to be adjusted by and between the parties or absent such adjustment to be determined by a workers' compensation judge.

4. There are no funds with which to award attorney fees.


O R D E R

IT IS ORDERED that applicant take nothing further herein.

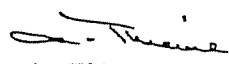
IT IS FURTHER ORDERED that defendants pay reasonable medical-legal costs.

DATED AT POMONA, CALIFORNIA

JUL 0 3 1998


JOSEPH S. MANDEVILLE, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

SERVED BY MAIL ON PERSON SHOWN ON THE OFFICIAL ADDRESS RECORD

DATE BY: 
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