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KENNITH L. PETERSON

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

JAN 13 1997
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JESUS MARTINEZ,

Applicant,

vs.

PHILIPS INDUSTRIES; NATIONAL UNION
FIRE INSURANCE COMPANY,
Defendants.

Case No. MON 196897

FINDINGS, AWARD AND ORDER

MALLERY & STERN
By: T. Sean Butler, Esq.
Attorneys for Applicant

LAW OFFICES OF KENNITH L. PETERSON
By: Kenneth L. Peterson, Esq.
Attorneys for Defendants

An application having been filed herein; all parties having appeared and the matter having been regularly submitted, the Honorable Bernardine M. Baldwin, Workers' Compensation Judge, finds, awards and orders as follows:

FINDINGS OF FACT

1. Jesus Martinez, born 8/31/50, while employed as a loader/unloader at Rancho Cucamonga, California, by Philips Industries, insured by National Union Fire Insurance Company, did sustain injury arising out of and in the course of said employment to his right knee on 2/6/95.
2. Applicant suffered no temporary or permanent disability and has no need for future medicals for the admitted right knee injury.
3. Defendant has no liability to pay self-procured medical treatment costs.

WCAB CASE NO. MON 196897

JESUS MARTINEZ vs. PHILIPS INDUSTRIES; NATIONAL
UNION FIRE INSURANCE CO.
DATE OF INJURY 2/6/95
JUDGE BERNARDINE M. BALDWIN

OPINION ON DECISION

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IT IS FOUND that applicant did sustain an injury arising out of and in the course of employment to his right knee while employed as a loader/unloader by Philips Industries on 2/6/95. This finding is based on stipulation of parties.

The finding of no temporary or permanent disability or need for future medical treatments is based upon applicant's testimony which the undersigned trier of fact finds to be so lacking in credibility as to render it insufficient to sustain any finding of T.D., P.D. or need for future medical treatment.

Although applicant urges applicant should be compensated for claimed subjective complaints, such claims rest on the reliability of the reporting applicant. Unfortunately, applicant's testimony was not reliable in this and other critical areas and applicant was seriously impeached on major issues on cross-examination.

An applicant has the burden of proof regarding subjective complaints which are generally dependent on an applicant's credibility absent objective medical finding to support the claim. Moreover Dr. Harvey Wieseltier in two thorough reports dated 2/12/96 and 3/11/96 analyzes applicant's history, medical reports and results of his examination of applicant. Dr. Wieseltier concludes applicant is not a credible historian and that applicant made false statements to Dr. Fedder in another of applicant's workers' compensation cases. (Dr. Wieseltier's 3/11/96 Report, Page 3.) Dr. Wieseltier further concluded applicant did sustain a right knee injury on 2/6/95 with contusions and abrasions for which he received appropriate treatment. However Dr. Wieseltier opined applicant required no additional treatment beyond his initial visit to the Occucare Clinic. He also found no work restrictions or T.D. (Dr. Wieseltier's 2/12/96 Report, Page 14.)

Defendant is not liable for payment of any self-procured medical treatment in this case.

MEDICAL-LEGAL COSTS

The lien claims for medical-legal expenses are to be paid, adjusted or litigated by defendants, jurisdiction is reserved by the Workers' Compensation Appeals Board over all the claim.

Dated: 1-10-97



BERNARDINE M. BALDWIN
Workers' Compensation Judge