

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

JAN 11 1999

MARIA TERESA RUIZ,

VNO 0319720

VNO 0334386

VNO 0334387

Applicant

vs.

PHILIPS PRODUCTS,
INCORPORATED, NATIONAL;
UNION FIRE INSURANCE
COMPANY,

FINDINGS & ORDER

Defendants.

Law Office of Kenneth H. Rowan

By Alan Z. Gurvey, Attorney for Applicant

Law Office of Kenneth L. Peterson

By Kenneth L. Peterson, Attorney for Defendants

The above-entitled matter having been heard and regularly submitted, the Honorable CHARLES A. REGNELL, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Maria Teresa Ruiz, born January 2, 1959, while employed as an Assembler, at Rancho Cucamonga, California, on March 10, 1995; from July 6, 1994 through March 10, 1995; and from May 9, 1996 through June 2, 1997, by Philips Products Incorporated, then insured as to workers' compensation liability by National Union Fire Insurance Company, did not sustain injury arising out of and occurring in the course of her employment to her back, neck, head, internal system [as manifested by fibromyalgia] and psyche.

2. Applicant is entitled to reimbursement of medical-legal costs in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.
3. Applicant is not entitled to reimbursement for any self-procured medical expenses since there has been a finding of no injury AOE/COE.
4. All other issues have been rendered moot.

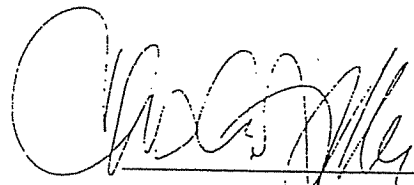
AWARD

AWARD IS MADE in favor of Maria Teresa Ruiz against National Union Fire Insurance of:

Medical-legal costs in an unknown amount to be informally adjusted by and between the parties, less credit to defendants for all sums heretofore paid on account thereof, if any.

ORDER

IT IS ORDERED that applicant take nothing by reason of her applications filed herein.



CHARLES A. REGNELL
WORKERS' COMPENSATION JUDGE

CAR/cr
SAN BERNARDINO, CALIFORNIA
Service made by mail in accordance with the Official
Address Record effective on the date shown below.
1-8-99 By: *[Signature]*

MARIA T. RUIZ

vs.

PHILIPS PRODUCTS INC.,
GALLAGHER BASSETT SERVICES

VNO 319720 (MF)

VNO 334387

VNO 334386

OPINION ON DECISION

CHARLES A. REGNELL
WORKERS' COMPENSATION JUDGE

INJURY AOE/COE

Applicant was not deemed particularly credible. She told AME Feiwell, for example, that she was not having any problems before March 10, 1995, although the overall medical record shows complaints prior to that date, even if of unknown etiology.

Applicant claimed at one point she had reported her injury to supervisor Alejo, but in her deposition at page 23 she denies telling Alejo she was injured at work, merely that she was hurting. At trial she testified she did not realize she had hurt herself at work.

The surveillance tapes taken of applicant reveal no hesitation or restriction in her movements, where she was primarily on her feet, as depicted, over a period of nearly twelve hours, even though her activities were portrayed for only an hour and a half. Her motions appeared fluid to the WCJ.

The WCJ also took note of the symptom magnification described by Dr. Robert L. Freed, in his October 23, 1997 report.

The WCJ relies on the opinions of AME Earl Feiwell expressed in his report of April 11, 1996 and his deposition of November 4, 1996. Dr. Feiwell concluded no orthopedic work injury was probable, and although he was looking to the specific injury of March 10, 1995, his examination came after

her claimed cumulative trauma injury from July 6, 1994 through March 10, 1985, for the same parts of the body. The AME found no objective factors of disability and no work restrictions.

Although psyche was also recited as a part of the body for the earlier cumulative trauma, the WCJ found no credible evidence of psyche injury or disability arising out of and occurring in the course of employment, looking both to applicant's testimony and the overall medical record.

The last claimed period of cumulative trauma was from May 9, 1996 through June 2, 1997. In reviewing the medical record, the WCJ was persuaded by the well-reasoned October 23, 1997 report of Robert L. Freed, a specialist in Rheumatology/Occupational Orthopaedic Medicine.

Although AME Feiwell discusses that applicant *may* have had some back and neck pain and headaches, he opined these did not arise from her specific lifting incident. He does not discuss these complaints, if she in fact had them, as arising from her work. The WCJ found no credible medical evidence to support an orthopedic injury.

Dr. Feiwell was not impressed with applicant's complaints, as expressed in his report, concluding she *may* be having certain subjective complaints. He does not conclude she in fact has these subjective complaints. The WCJ therefore concludes his description of subjective complaints she may be having does not rise to the level of supporting a Findings & Award.

Overall, based on applicant's testimony, with the WCJ concluding she was not overly credible, and the medical opinions of AME Feiwell and Dr. Freed, the WCJ concludes applicant did not sustain injury AOE/COE.

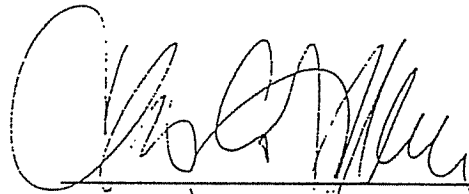
The WCJ finds no presumption of injury under Section 5402. Applicant at one point claimed she told supervisor Alejo in March or April that she had hurt herself at work, but was contradicted by her deposition testimony where she stated she merely told Alejo she was having complaints, without identifying them as having been caused by work. In fact, at trial applicant again testified she did not feel as of March/April of 1995 that she had hurt herself at work. Therefore, the WCJ concludes the employer was not on notice at that time of an industrial injury.

The WCJ also took into account the credible testimony of Sue Ashley, the employer representative, who spoke with applicant on July 7, 1997, learning for the first time that applicant was claiming a work injury.

MOTION TO EXCLUDE THE AME REPORT

The WCJ finds no credible evidence that AME Feiwell is not competent to comment and opine about orthopedic injuries. There is no showing he had an incorrect history, for example, or that he relied on an incorrect legal theory. He is Board certified in Orthopaedic Surgery. Although he mentioned fibromyalgia, he offered no comments or conclusions as to its etiology, or if applicant even necessarily had fibromyalgia.

The WCJ finds no necessity of developing the medical record on this point. The WCJ relies on the report of Robert L. Freed, which has been admitted into evidence as part of Defendant's Exhibit A. Dr. Freed finds no fibromyalgia.



CHARLES A. REGNELL
WORKERS' COMPENSATION JUDGE

CAR/cr
SAN BERNARDINO, CALIFORNIA
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1-8-99 By: f. yellowstone