

## Work Comp Alert *an e-newsletter*

### **OUR RECENT TAKE NOTHING'S:**

In the matter of Patricia Pena v. Louis Vuitton U.S. Manufacturing (LAO 0785641), Judge Joseph Bewick of the Los Angeles WCAB, ruled that the defendant owed nothing to Universal Psychiatric and Dr. Ronald Zalis for alleged medical-legal and treatment charges totaling \$34,248. The applicant was a seamstress/purse assembler, who sustained an admitted injury to the upper extremities and denied injury to the psyche. As part of the Compromise and Release agreement, defendant persuaded applicant to stipulate in the settlement document that she had not been an employee for six months and that Labor Code Section 3208.3(d) applied to her. This particular code section requires that there must be some type of sudden and extraordinary employment condition involved for employees of less than six months to sustain a psychiatric injury. The case proceeded to lien trial, with lien claimant Universal Psychiatric claiming it was owed \$8,795 in medical-legal charges and Dr. Zalis claiming he was owed \$25,553 in treatment charges. Defendant argued that because the applicant had stipulated that she was not a six-month employee within the meaning of Labor Code Section 3208.3(d), and no sudden and extraordinary employment condition was involved (applicant claimed she was depressed because she wasn't seeing improvement in her condition), there should be nothing owed on claimed treatment charges. As for the medical-legal charges, defendant argued that the reporting from Universal Psychiatric could not be considered medical-legal in nature, as the lien claimant failed to obtain a history from the applicant that she had been an employee for less than six months. Defendant contended that had the lien claimant properly obtained this history, it would then be required to determine if a sudden and extraordinary employment condition was involved and to include this in its report. On the basis of the parties' arguments, Judge Bewick issued a decision finding that defendant had no liability on the liens from either Universal Psychiatric or Dr. Zalis.

In the matter of Armando Orihuela v. Stater Bros. Markets (VNO 0501266), Judge Eileen O'Kane of the Van Nuys WCAB, issued a take nothing decision against the applicant who had alleged injuries to his neck, back, shoulders and psyche. The applicant alleged that he had sustained injuries to his neck, back and shoulders during his employment as a custodian at Stater Brothers Markets. He also alleged injury to the psyche, claiming he was wrongfully terminated after being accused of sexual harassment by two female co-workers. The defendant denied the claims based on its in-house investigation and a post-termination defense. The case proceeded to trial over the course of two days of testimony from the applicant and the two female co-workers. Applicant's wife was not allowed to testify on behalf of her husband as a character witness following objection by defense counsel. The applicant admitted that he had not been seen by a physician for his orthopedic complaints prior to his termination. He claimed his psychiatric complaints developed right after being told he was being accused of sexual harassment. Defendant presented testimony from both of applicant's co-workers. One witness testified that applicant had hugged her and licked her ear.

The second witness testified that applicant pushed her against a wall and tried to kiss her. In issuing her take nothing decision against applicant, Judge O'Kane noted that the applicant did not obtain any medical reporting reflecting orthopedic complaints prior to his termination, and that she found the testimony from the two defense witnesses on the psyche issue, to be very credible.

In the matter of Gloria Ricks v. Mt. San Jacinto Community College (VNO 0535773), Judge Julianne Reeves of the Van Nuys WCAB, issued a take nothing with respect to applicant's claim of injury as the result of compensable consequences. The applicant, a switchboard operator, had an accepted injury to her bilateral knees and back. The applicant alleged that after visiting her treating physician, Dr. Anthony Fenison, she was involved in a motor vehicle accident on her way home, resulting in injury to her neck and right shoulder. The defendant denied the claim on the grounds that applicant had made a material deviation in her route home. The applicant was seen by Agreed Medical Examiner, Dr. Harvey Wieseltier on the accepted body parts, and was allowed to comment as to the nature and extent of injury to the denied body parts. Dr. Wieseltier indicated that he believed applicant was a surgical candidate with respect to her right shoulder complaints. As a result, the parties proceeded to an injury AOE/COE trial of the disputed body parts. At trial, the applicant testified that she left Dr. Fenison's Moreno Valley office at approximately 5 p.m. She claimed that she then sat in her car for 15 minutes reviewing her medical records, before proceeding to stop at a gas station before getting on the freeway. The applicant testified that she was driving southbound on the 215 freeway, on her way to her fiance's home in Perris, not her home in Ontario, when she was involved in a car accident, approximately 8 miles from Dr. Fenison's office. Applicant's husband testified that the applicant would stay at his house a few times per week and that she contacted him around 6:15 p.m. to advise she had been in a car accident. Defendant contended that: 1) applicant had materially deviated from her route home by going to her fiance's house instead, and 2) that applicant could not satisfactorily account for what she had been doing during the 1 hour 15 minute time frame between leaving Dr. Fenison's office and her involvement in the car accident. In an interim Findings and Order, Judge Reeves ordered that applicant take nothing on the compensable consequences claim. Utilizing a Thomas guide supplied by defense counsel and Google maps, Judge Reeves determined the applicant should have reached the accident scene within 12 minutes of leaving Dr. Fenison's office (applicant had testified that freeway traffic was flowing freely). Judge Reeves said that even adding on another 15 minutes for sitting in Dr. Fenison's parking lot and another 10 minutes to get gas, there was nothing to explain the inordinate amount of time for the applicant to drive 8 miles. She said she could not logically conclude that applicant had been involved in an industrial commute when the accident occurred.

In the matter of Roy Ramos v. American Airlines (LBO 0304988/LBO 0304883) Judge Payne of the Long Beach WCAB concluded that the defendant had not violated the provisions of Labor Code Section 132a in its discharge of the employee in 2000. Prior to this, the applicant, a flight attendant for the airline, had a compensable psychiatric claim which had been settled by way of stipulated Award. In his petition, the applicant sought reinstatement of his job, wages and benefits, and the statutory penalty capped at \$10,000. After a purported negative telephone exchange with the applicant's supervisor (the applicant in his direct testimony would deny this occur), he was discharged; it was the employer's position that this was according to guidelines. Subsequent to the termination, the matter was considered by a 5-member arbitration panel with a joint decision affirming the employer's position. During the course of the WCAB Trial, the Arbitration Decision, reports and depositions of the treating physician and agreed medical examiner (which questioned the applicant's ability to return to work and confirmed that he was receiving Social Security Disability benefits), and the personnel file were entered into evidence. Testimony included the applicant, the most recent supervisor and the immediate preceding supervisor. On the basis of the evidence, Judge Payne concluded that the applicant had not sustained his burden of proof that discrimination had occurred. The applicant discharged his attorney and has proceeded to file a Petition for Reconsideration which is pending.